



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10864/2017

THE IMMIGRATION ACTS

Heard at Field House
On 4 September 2018

Decision & Reasons Promulgated
On 27 September 2018

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

SB

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Shah, Solicitor

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh, born in 1992. She arrived in the UK on 29 June 2014 as a Tier 4 Migrant. Her leave was curtailed to expire on 17 March 2015 on account of her failure to attend her course. She has a son in the UK, born on 20 March 2015, and who has Down's syndrome
2. She claimed asylum on 28 April 2016 but that claim was refused in a decision dated 13 October 2017. Her appeal came before First-tier Tribunal Judge Aziz at a hearing on 12 February 2018 resulting in her appeal being dismissed.
3. The basis of her claim for asylum as summarised by Judge Aziz was that she was harassed in Bangladesh by a particular individual who was a member of the Awami League whose father was powerful in their area. That individual sought to force the

appellant to marry him but she refused. She suffered harassment and threats from him. The police were unwilling to assist.

4. Permission to appeal against the decision of Judge Aziz was sought on the basis of Judge Aziz's findings in relation to the risk that she claimed to face from the person who harassed and threatened her. The grounds also took issue with his conclusions in relation to Article 3 concerning the appellant's child.
5. A judge of the First-tier Tribunal refused permission to appeal and permission to appeal was also refused by Upper Tribunal Judge Bruce on the grounds advanced on the renewed application. However, Judge Bruce granted permission on a ground not advanced on behalf of the appellant. She stated as follows:

“...There is no arguable error in the Tribunal's approach to the Appellant's claim that she faces a risk from a 'thug' in her home town. The only arguable error in this determination is not raised in the grounds but I grant permission because it is *Robinson* obvious. It is arguable that the Tribunal may have erred in excluding the 'unmarried mother' risk from its assessment on the grounds that it was a 'new matter', since the factual basis of that claim was known to the Respondent at all material times: Mahmud (S.85 NIAA 2002 - 'new matters') [2017] UKUT 488 (IAC).”

6. It was accepted on behalf of the appellant before me that the grant of permission was limited to the matter identified by Judge Bruce. In order to put my decision into context it is useful to set out in full the basis of the application made to Judge Aziz in respect of the 'new matter' sought to be relied on, and his reasons for concluding that the appellant was not entitled to rely on that matter raised at the hearing.
7. At [22]-[27] Judge Aziz said as follows:

“22. *Preliminary issue:* At the outset of the hearing, Mr Hussain stated that the appellant was also relying upon the case of SA (Divorced woman - illegitimate child) Bangladesh CG [2011] UKUT 00254(IAC). The appellant would be returning to Bangladesh with an illegitimate child and the factual circumstances of her case fell within the ambit of the country guidance case law.

23. I indicated to Mr Hussain that this ground had not been raised in the appellant's interviews. In her Screening Interview, she had stated that the basis of her claim was that she feared a man called S R. Reference had also been made to her own mental health. During her asylum interview, she had been asked why she was unable to return to Bangladesh. Almost the entirety of the interview covers her fear of S R and his links to the Awami League. At the end of the interview (questions 133 and 134), she is asked if there is anything else which has not been covered and which she may believe is relevant to her claim. She makes reference to a student who she was aware of that had been attacked and killed by a man who had proposed to her and she had not agreed to marry him. She then goes on to make reference to the fact that her son has got medical issues and that she does not believe that medical support will be available to them in Bangladesh.

24. I informed Mr Hussain that the appellant's asylum claim had been based upon two grounds. Firstly, a protection claim based upon a fear of S R. Secondly, a human

rights claim based on medical grounds relating to her own health and her son's ill-health.

25. Mr Hussain initially stated that the new ground had been raised in the grounds of appeal. He referred the Tribunal to paragraphs 12–14 of the grounds (page 18 of the appellant's bundle). I indicated to Mr Hussain that the grounds do not expressly state that the appellant had an illegitimate child and that as a result of this if she is returned to Bangladesh she is at risk of ill-treatment that would engage either Convention. Only on a most liberal interpretation could one argue that the grounds incorporate this particular line of argument.
26. I accepted that the appellant's statements do make some brief reference to this issue. However, the statements are very recent. I found that the appellant was seeking to raise a new ground. Under section 85 of the Nationality, Immigration and Asylum Act 2002, the Home Office would need to give the appellant permission to raise a new ground. Ms Venables indicated that permission was not being granted.
27. I indicated to Mr Hussain that in the event that this appeal was refused, there was nothing preventing the appellant from making a fresh application raising this particular ground. I also indicated to him that having read through the papers, I was somewhat surprised that this issue had not been raised at a much earlier stage. *Prima facie*, the argument might be made that this was the appellant's strongest ground. Mr Hussain agreed and stated that as counsel, he had only received the papers recently."

Submissions

8. In his submissions before me, Mr Shah relied on the decision in *Mahmud*. He referred me to page 26 of Home Office guidance on rights of appeal version 7.0 dated 30 July 2018 in terms of the approach to be taken by the Secretary of State in cases of this kind.
9. As to the facts, Mr Shah directed my attention to the respondent's decision on the asylum claim at [36] and in particular [55] in support of the contention that the matter raised at the hearing before Judge Aziz was not a new matter.
10. Although no copy of it was provided, it was also submitted that the decision in *Secretary of State for the Home Department v Paranjit Kaur* [2018] EWCA Civ 1423 was relevant, albeit that it was not a case dealing directly with the 'new matter' provisions.
11. In his submissions, Mr Melvin relied on the 'rule 24' response. It was submitted that Judge Aziz explained why he regarded the matter raised at the hearing as a new matter.
12. As to the appellant's reliance on particular paragraphs of the decision letter, it was submitted that [36] was considering s.8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and [55] was in relation to internal relocation only. It was further submitted that it is clear from the grounds of appeal before the First-tier Tribunal that the matter was a completely new ground. It was unrelated to the other grounds raised by the appellant.

13. It was submitted that Judge Aziz's decision was in line with *Mahmud* and *Quaidoo* (*new matter: procedure/process*) [2018] UKUT 87 (IAC).

Conclusions

14. As well as the paragraphs of the refusal letter to which I have referred, Mr Shah also relied on what the appellant said in interview in answer to question 12 whereby she was asked when contact ended with the father of her child. In answer to that question she referred to the premature birth and the fact that her son has Down's syndrome and the medical support that he required. She referred to arguments that they had which led to the end of the relationship. I infer from Mr Shah's submissions that it was evident from this that the appellant did put before the respondent the fact of her having a child who necessarily would return with her to Bangladesh.
15. However, there is a difference between facts being brought to the respondent's attention or known to the respondent and issues which are advanced as supporting a protection claim, whether in terms of asylum or human rights under Article 3. In my judgement, Judge Aziz was entirely correct to point out that in her screening interview the appellant said that the basis of her fear of return was the person who had harassed and threatened her. Likewise, he referred to the fact that in the asylum interview she expressed the same fear.
16. I also note that when asked at questions 133 and 144 of the asylum interview whether she had any other matter that she wanted to put forward in relation to her asylum claim, she referred to a student who had similar things happen to her in terms of harassment or abuse from another man, and referred to her son's medical condition. The appellant was also given the opportunity to add anything further that she wanted to and to express any other reasons she wanted to in relation to her wish to remain in the UK, in a section of the asylum interview entitled "Concluding Questions". Nothing in terms of the reliance on her status as a single mother with an illegitimate child was advanced at that stage.
17. Furthermore, I note that in the course of her asylum interview she had a legal representative
18. Before Judge Aziz it was submitted that the grounds of appeal before the First-tier Tribunal raised the issue in question, [12]-[14] being relied on. Judge Aziz concluded that only on a most liberal interpretation could one argue that the grounds incorporate that particular line of argument. The only modification I would make to that conclusion is to refer to [5] of the grounds of appeal (albeit that it was not referred to in submissions before me) where it is stated that the appellant contended that there are Convention reasons in that she is a member of a social group as a lone female. However, that is not the basis upon which the 'new matter' was advanced before Judge Aziz, which was, as already indicated, that the appellant would be at risk as a woman with an illegitimate child.
19. So far as [55] of the respondent's decision is concerned, I agree with Mr Melvin that this was a matter that was considered by the respondent in the context of internal relocation, as is clear from the context of the respondent's decision, that matter

appearing under a heading of “Internal Relocation”. It was not considered, and not advanced, as a matter that on its own created a risk to the appellant. In that paragraph the decision states as follows:

“Relocation to Dhaka is suitable in your circumstances. The mother of an illegitimate child may face social prejudice and discrimination if her circumstances and the fact of her having had an illegitimate child become known but she is not likely to be at a real risk of serious harm in urban centres by reason of that fact alone.”

20. It is clear therefore, that that was a matter considered in the context of internal relocation and thus the reasonableness of such.
21. At [31] of *Mahmud* it was said that a new matter is a factual matrix which has not previously been considered by the Secretary of State in the context of the decision in s.82(1) of the Nationality, Immigration and Asylum Act 2002, or a statement made by the appellant under s.120, and that that requires the matter to be factually distinct from that previously raised by an appellant, as opposed to further or better evidence of an existing matter. That paragraph goes on to state that the assessment would always be fact-sensitive.
22. The matters sought to be relied on by the appellant at the hearing before the First-tier Tribunal in the context of the ‘new matter’ provisions, were matters that had not previously been considered by the respondent *qua* Convention reason and thus the respondent did not engage with that issue in that connection. I am satisfied that Judge Aziz was correct to conclude that it was a new matter which required the consent of the Secretary of State.
23. Consent was withheld and there was no application for an adjournment for any further consideration of that issue by way of judicial review, as described in *Quaidoo*. That last consideration is not pertinent to the question of whether there was any error of law in the decision of Judge Aziz but I mention it simply to indicate that it could not be contended that there was any error of law in Judge Aziz having failed to adjourn the matter for further consideration along the lines suggested in *Quaidoo*.

Decision

24. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. Its decision to dismiss the appeal on all grounds therefore stands.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.