



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/13424/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 21 November 2018**

**Decision & Reasons
Promulgated
On 21 December 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

and

D R T

(ANONYMITY DIRECTION MADE)

Appellant

Representation:

For the Appellant: Mr L Youssefian, Counsel.

For the Respondent: Mr T Lindsay, Home Office Presenting Officer.

DECISION AND REASONS

1. The Appellant is a citizen of India who made application for international protection. It was refused and she appealed and following a hearing, and in a decision promulgated on 7 February 2018, Judge of the First-Tier Tribunal Maka dismissed her appeal. In so doing he found, that her evidence was not credible.
2. The Appellant sought permission to appeal which was initially refused but a renewed application was subsequently granted, in part, by Upper Tribunal Judge Grubb. His reasons for so doing were: -

“1. The First-tier Tribunal (Judge Maka) dismissed the appellant’s appeal against a decision to refuse her international protection, humanitarian protection and human rights claims.

2. Grounds 2 and 3 are arguable. The judge has arguably provided irrational reasons for rejecting the appellant’s account and failed properly to consider the supporting expert and medical evidence.

3. Grounds 4 and 5 are not arguable. The judge did not wrongly apply Deveseelan and the finding that the appellant’s removal would not breach Art 8 was not arguably irrational.

4. Ground 1 is also arguable and would be material if the other Grounds are made out.

5. For these reasons, permission is granted on Grounds 1, 2 and 3 but refused on Grounds 4 and 5.”

3. Thus, the appeal came before me today.
4. At the outset Mr Youssefian put before me the authority of **Safi and others (permission to appeal decisions) [2018] UKUT 00388 (IAC)**. However, the submissions he wished to make, relying on that authority and in relation to all grounds seeking permission to appeal bar grounds two and three, became redundant for the reasons given below.
5. The Appellant entered the United Kingdom on 3 February 2008 with entry clearance as a student. She made further applications for leave to remain which were refused. Ultimately, she made an application for asylum on the basis that she feared if returned to India she would be forced to marry and if she were to object she would be subject to serious ill treatment and harm.
6. Ground two asserts that the Judge made a series of perverse findings against the Appellant without taking into account the context of background information relating to her country of origin. The ground goes on to provide seven such examples and Mr Youssefian submitted that they were made without any, or any proper, reference to evidence. Further that they are speculative in nature and some “wholly irrational”. The finding that an educated man would not be violent towards his daughter, for example, “is plainly a *non- sequitur* and demonstrably wrong”. Further the Judge has failed to refer to any evidence supporting his conclusion that those who suffer brutal mistreatment would not or could not go on to complete their studies. The Judge has failed to refer to the Appellant’s considerably detailed witness statement which addressed many of these findings. For example, at paragraph 51 of the Appellant’s witness statement she stated that “studying and going to school was my only escape from my miserable and torturous life”. These findings played a material part in the Judge’s conclusion to ultimately dismiss the appeal. Such findings are vitiated in all material respects in light of the above.
7. The third ground relates to the Judge’s approach to the expert evidence. The Appellant relied on both medical and country expert evidence in support of her claim. It is submitted that the Judge has engaged in a “wholesale dismissal” of all experts based on misunderstandings, assumptions and mistakes. For example, at paragraph 54 of his decision the Judge concludes that he does not accept the report of Dr Sinha for a number of reasons. The

Judge goes on to find that the expert was not aware of the Appellant's immigration status and that the expert had referenced an injury involving a laceration to the Appellant's hand which she had not mentioned to the experts. The Judge has failed to have regard to the fact that the expert set out the Appellant's immigration history within the report and that the Appellant's own witness statement detailed that history which was provided to him. Further the Judge failed to consider paragraph 59 of the Appellant's witness statement in respect of the injury to her hand which expressly states, "I did not mention this incident to the Doctor as I did not remember this at the time and the physical examination did not trigger the memory, as fortunately I have no scar as a result". The ground is then further particularised.

8. In response to grounds two and three Mr Lindsay submitted that the Judge had applied the correct burden and standard of proof throughout and had given reasons for coming to the credibility findings that he did. Read as a whole the decision is sustainable and contains no material error of law as asserted.
9. I disagree with Mr Lindsay's conclusion. This is a decision that cannot stand.
10. I find the Judge has materially erred for all the reasons put forward in grounds two and three. The Judge's approach to both credibility and expert evidence contains perversity and irrationality within the findings and takes account of irrelevant matters. His approach to the expert evidence is flawed for the reasons asserted. It is an error to give no weight to a report of an expert which has clearly indicated the expertise of the report writer and the sources of information.
11. Both parties accepted given my findings in relation to grounds two and three that the appeal should be reheard de novo.

Notice of Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge Maka.

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 him or any member of their 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.

Signed
2018

Date: 17 December

Deputy Upper Tribunal Judge Appleyard