Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/11960/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7 January 2019	**On 31 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MS SARAH JANE PEARSON
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Bellara, counsel, instructed by Western Solicitors
For the Respondent: Mr S Whitwell, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant a national of the Republic of South Africa appealed against the Respondent's decision dated 26 April 2016 to refuse leave to remain following an application made in January 2016. The basis of that application was summarised by the Respondent as being that the Appellant was fearful of a return to South Africa because of a relationship with an abusive partner, which was claimed to have resulted in her

suffering from PTSD and a major depressive disorder leading to suicidal ideation.

2. Her appeal against that adverse decision came before First-tier Tribunal Judge Hussain (the Judge) who on 12 July 2018 dismissed the appeal.

3. Permission to appeal was given in the Upper Tribunal on 16 November 2018 as was expressed by Upper Tribunal Judge Kekić

> "The grounds take issue with the Judge's credibility findings and argue that adequate reasons were not provided. It is argued that the medical evidence was not properly considered and the impact of the Appellant's removal upon her mother was not assessed.
>
> Arguably the Judge's brief findings do not properly assess the Appellant's circumstances and evidence adduced."

4. Mr Bellara who appeared before the Judge confined his submissions to two principal arguments. First that the Judge had failed to address and provide credibility findings, for the evidence, given by the Appellant's mother, which was that the Appellant was entirely dependent upon her. Secondly, he criticised the Judge's failure to properly address the medical evidence.

5. I have to say at the outset that the Judge's reasoning is so brief in parts to be difficult to be sure what he was relying upon in his decision [D]. His decision appears to contain formatted parts which repeat 'the totality of the evidence was considered'. Whether or not the totality of the evidence was considered the fact is that it is difficult to see if that is the correct summation of the assessment, how some of the conclusions should be so opaque and difficult to be sure about.

6. Be that as it may, it did seem to me having heard the arguments that this was a case where adequate and sufficient reasons have not been given. I do not second guess the outcome of this appeal on the evidence that may be advanced. Before me it is fair to say that the evidence was thin in some respects. I could not say with confidence that any other Tribunal

would have reached a different decision but this is a case where the absence of clear, adequate and sufficient reasons renders the Original Tribunal's decision unreliable and established an error of law.

7. For example, the Judge noted the evidence given by the Appellant's mother in [D15 to 17] but failed, for example, to say whether he accepted that evidence; not just the written evidence but the oral evidence which was subject to some cross-examination. Ultimately his concluding remarks are nearly impenetrable [D25] when he says:-

> "However, I am prepared to proceed on the basis that there is family life between the Appellant and a mother and as stated, I accept there is some form of private life that the Appellant has established".

Whether that amounted to accepting the generality of the evidence given by the Appellant and her mother I do not know and cannot tell. I find that is a good example of the problems of such brevity in reasoning.

8. It was also unclear whether the Judge was even applying the correct approach to the evidence in assessing the Article 8, ECHR claim: That was not a point raised in the grounds of appeal. On the face of it, his assertion of the law, as he understood it to be, appeared to be somewhat wayward in the light of the decisions in Hesham Ali [2016] UKSC 60 and Agyarko [2017] UKSC 11. It seemed to me that the Judge was perhaps presented with less than helpful evidence of the Appellant's current mental health issues, not insofar as they are relied upon for the purposes of an Article 3 ECHR claim, but on the basis of the impacts of separation of the Appellant from her mother, of separation upon her mother and their concerns for the wellbeing of the Appellant.

9. I do not necessarily think that a different outcome may arise but that will be a matter for another Judge looking at the evidence properly prepared dealing with the Article 8 ECHR claim.

NOTICE OF DECISION

The Original Tribunal's decision cannot stand. The matter will have to be remade in the First-tier Tribunal.

DIRECTIONS

(1) Relist for a further hearing at Hatton Cross not before First-tier Tribunal Judges Hussain and Grimmett.

(2) Time estimate two hours, no interpreter required.

(3) Any further evidence in support of the human rights based claim to be served not later than ten working days before the date the matter is relisted.

(4) No findings of fact to stand.

(5) Issues:-

Article 8 ECHR and human rights based claim to remain based on family/private life rights.

(6) Any further directions to be dealt with by way of a CMRH or PTR at Hatton Cross.

(7) No anonymity order was made nor was one sought.

Signed Date 18 January 2019

Deputy Upper Tribunal Judge Davey