



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06461/2018

THE IMMIGRATION ACTS

Heard at Field House
On 28th March 2019

Decision and Reasons Promulgated
On 02nd April 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

M D Q Z
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr C Talacchi, Counsel, instructed by L and L Law

For the respondent: Mr Melvin, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a national of the People's Republic of China, born in [~] 1965. She came to the United Kingdom on 20 December 2011 on a visit Visa. She was arrested in November 2014 in relation to a charge of actual bodily harm. She gave false aliases. It was then discovered she had no status in the United Kingdom. She was later released from custody whereupon she absconded. She was arrested

again in November 2017 for suspected human trafficking offences. She then indicated a wish to claim protection.

2. The basis of her claim is that she had been married in China. Her husband was addicted to gambling. He was also a gang member. He would take money from the appellant and assault her. They had one son. They divorced in May 2010 but he continued to demand money from her.
3. The claim was refused on 8 May 2018. The claim made did not engage the Refugee Convention. The respondent concluded the appellant had not established the underlying facts. She had not provided evidence to show she had been married and her evidence about gang membership was vague. There was inconsistency in aspects. For instance, she said the last time her former husband beat her was in 2011 whereas at screening she said it was 2001. In considering her credibility reference was made to section 8 considerations and her failure to claim until her 2nd arrest.
4. The respondent also felt that even if the claim were true then there was protection in China and she had the reasonable option of relocating.

The First tier Tribunal

5. Her appeal was heard by First-tier Tribunal Judge Swinnerton at Taylor House on 17 December 2018. In a decision promulgated on 18 January 2019 it was dismissed.
6. Both parties were represented in the Upper Tribunal. Under the heading 'Preliminary Issues' the judge recorded that the respondent had not received the appellant's appeal bundles. The judge allowed the Presenting Officer time to read these.
7. Within the appeal bundle was a draft report from a Dr Gupta, consultant psychiatrist. At paragraph 12 the judge observed that the report was unsigned; undated; in draft form and appeared incomplete. The judge made the appellant's representative aware of this and granted her time to take instructions. She advised the judge that a complete report would be submitted.
8. In the decision the judge commented that at the time of preparation, a month later, the final report had not been provided. The judge commented the appellant's solicitors had the opportunity to do so during and after the hearing.
9. The decision indicates that the judge did consider the draft medical. Paragraph 12 suggests that the presenting officer had made submissions that the report should not be considered on the basis it was incomplete; in draft form only; and the doctor had not had access to the appellant's medical records.

10. In the decision the judge rejected the consultant's draft diagnoses of a complex mental health condition associated with trauma. The judge expressed concern that the diagnoses had been made in the absence of any medical history. At paragraph 46 the judge referred to the absence of any evidence from a clinician treating the appellant for mental health issues.
11. At the appeal the appellant had produced documents purporting to be her marriage certificate and the divorce certificates. The judge commented on the absence of certified copies of the documents. There was an earlier reference to issues over the translation of the divorce certificate (Para 15). The judge was not prepared to rely upon these documents.
12. The judge also concluded the appellant had failed to demonstrate her former husband was a gang member. She had claimed to have approached the police for protection and they were unhelpful. However, the judge found the evidence in this regard to be inconsistent and this claim was rejected. The judge also referred to inconsistency in the evidence about treatment for the claimed injuries sustained. The judge referred to country information in relation to sufficiency of protection.
13. Paragraph 42 contains a summary of the judge's conclusions: namely, that the appellant had not given a truthful and accurate account and she lacked credibility. The judge went on to deal with relocation. Given the absence of evidence of treatment and the submission of a draft report only the judge was not satisfied she had any serious mental illness.

The Upper Tribunal

14. Permission to appeal was sought on a number of grounds. The bulk of these were rejected on the basis they consisted of statements about the claim and no specific error of law identified. Permission to appeal was granted in relation to how the judge dealt with the draft psychiatric report.
15. Mr Talacchi said that his instructions were that the draft report been submitted in the original bundle in error by the caseworker. He then referred me to paragraph 12 of the decision. The judge records that despite Counsel for the appellant stating that a full and complete psychiatric report would be submitted this did not happen. Mr Talacchi said his instructions were that Counsel never advised her instructing solicitors of the need to do this. He said the first they became aware of this was when the decision was promulgated. He submitted that the contents of the report were relevant to the consideration of the reasonableness of return. He highlighted this in the context of article 8, albeit the decision records at hearing that article 8 was not in contention.

16. He submitted that the decision should be set aside on the basis there had been unfairness and the submission of a completed report could have affected the outcome.
17. Similarly, in relation to the divorce documentation and the absence of a translation, his instructions where that this was again a caseworker error.
18. I noted that the claim made included the appellant being forced into prostitution when she arrived in the United Kingdom. Whilst the refusal letter refers to the appellant being arrested herself for alleged sexual exploitation and trafficking offences I asked if there had been a referral to the Competent Authority in respect of her own claims. I was advised that subsequent to the hearing on 15 March 2019 a referral was made by a charity. A reasonable grounds decision has been made and a conclusive decision is awaited.
19. Mr Melvin relied upon the rule 24 response. Paragraph 5 states that the judge was correct in rejecting the draft report produced. The appellant's representative has now produced a completed report but this is post hearing. Mr Melvin pointed out the was no record of the appellant's representatives asking for an adjournment pending the submission of a complete report. He made the point that there was no statement from Counsel in the First tier Tribunal that she had not relayed to her instructing solicitors the need to submit a complete report.
20. Mr Talacchi confirmed that there was no correspondence from his instructing solicitors upon receipt of the decision in January 2019 indicating they were unaware of the issue.
21. I note that the judge did read the draft report which is contained at page 6 of the appellant's supplementary bundle. The appellant's representatives have also provided a final version of that report which is dated 20 March 2019. The draft is largely the same as the final report. It is a very lengthy report, the bulk of which is a recitation of the appellant's family history and her claim to have been in an abusive relationship. This is largely based upon what the appellant has told the doctor, albeit the doctor did have a copy of her statement of evidence form and the refusal letter. Most significantly, the doctor did not have access to her medical records. At the outset the doctor commented that she had not been assessed in respect of mental health issues.
22. Given the incomplete nature of the report its admissibility and weight if admitted was in issue. The judge raised this with Counsel and allowed time for her to take instructions. This would suggest she contacted her instructing solicitors as she was able to advise the judge that a fall and complete report would be submitted. This does not square was the suggestion that the 1st her representatives were

aware of this issue was when the decision was promulgated. This is further undermined by the fact that they did not respond when the decision was promulgated.

23. My conclusion is that no unfairness is demonstrated. The same applies in relation to the documents about her divorce. The judge can only deal with the case as presented. Similarly, the trafficking issue postdates the decision.
24. The decision indicates careful preparation and addresses the various issues arising and evaluates the evidence. The judge said the central issue was the appellant's credibility. The judge rejected the truth of the claim and give a number of reasons for doing so. The challenge in the Upper Tribunal has been on a relatively narrow point. I find this has not been successful. The outcome is consistent with the appellant's immigration history and her delay and behaviour. I see no evidence of possible underlying unfairness. I find no material error of law established.

Decision.

No material error of law has been demonstrated in the decision of First-tier Tribunal Judge Swinnerton. Consequently, that decision, dismissing the appeal shall stand.

Francis J Farrelly
Deputy Upper Tribunal Judge.

Dated 28 March 2019