



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

Appeal Number: PA/10731/2018

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice
Centre
On 6 August 2019**

Decision & Reasons Promulgated

On 19th August 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**EOO
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. Z. Jafferji, Counsel, instructed by French & Company
For the Respondent: Mr. D. Mills, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Clarke who, in a decision promulgated on 25 February 2019, dismissed the Appellant's appeal against the Respondent's decision to refuse a grant of asylum.
2. As this is an asylum appeal, I continue the anonymity direction made in the First-tier Tribunal.
3. Permission to appeal was granted as follows:

“In reading the determination as a whole it is difficult to discern what findings of fact have been made by the judge. At [20] it was accepted that the appellant’s husband had been made chairman of the oil company but she finds that there is no specific separate finding relating to the appellant and fails to take into account the acceptance at [24] of the refusal letter that the appellant was the managing director of the company.

There has arguably been a general lack of engagement with the facts and inadequate findings of fact. Internal relocation was a major element in this appeal but the judgment did not consider this.”

4. The Appellant attended the hearing. I heard submissions from both representatives. In his submissions, Mr. Mills accepted that, while he considered it almost inevitable that the Appellant’s appeal would fail on the basis of internal relocation, he could not say that it was so inevitable that the errors in the decision, which were clear, were not material.
5. I thanked Mr. Mills for his approach. I stated that I found the decision involved the making of material errors of law. I set the decision aside.

Error of Law

6. I do not intend to go through all of the errors in the decision, but will focus on two areas where the Judge has erred.
7. The previous decision of the First-tier Tribunal, which related to the Appellant’s husband, was relevant. It was necessary to apply Devaseelan principles. However, as identified at [19] of the decision, there were three areas which required re-examination. Although the previous decision was the starting point, this was an appeal by the Appellant, not her husband, and the basis of appeal was different.
8. At [20] the Judge states:

“Turning to the first of these issues: at paragraph 49 of his determination Judge Povey accepts, having considered the documentary evidence before him, that the Appellant’s husband is the Chairman of [the oil company]. There is no specific separate finding in respect of the Appellant, but the alleged threats faced by the Appellant are as a result of her husband’s business interests and religion and the Appellant states that she was often sitting next to her husband during these attacks. I have no other cogent information before me. I therefore find that this issue was considered and rejected by Judge Povey in November 2015 and I find there has been no material change in the factual situation and I make findings in line with that decision.”
9. In the second sentence of this paragraph the Judge states that there is no specific separate finding in respect of the Appellant. However, at the end of the paragraph she states, “I make findings in line with that decision”. I find that this is internally inconsistent. On the one hand she has found that there was no specific separate finding in respect of the Appellant, but on the other hand she has made findings in line with that decision.

10. The Judge also neglects to consider in this paragraph that at [24] of the reasons for refusal letter the Respondent accepted that the Appellant was the managing director of the oil company. Therefore, not only has the Judge been internally inconsistent in this paragraph, as set out above, but she has failed to take into account the acceptance by the Respondent that the Appellant was the managing director of the oil company. I find that this is a material error of law.
11. Further, in this paragraph, the Judge states that there was “no other cogent information” before her. This indicates that she has not taken into account either the evidence of the Appellant, or the evidence of the expert. The Judge deals with the evidence of the expert from [26] to [30]. She states that she does not find the report to be persuasive, and attaches little weight to its conclusions. However, I find that inadequate reasons are given for not relying on the expert report.
12. Mr. Jafferji referred me to section 7 of the expert report, which covered the issues that the oil company had faced in Nigeria, section 8, which dealt with the issue of the Appellant returning as a Christian to Nigeria, section 9, which referred to the position of a lone woman returning to Nigeria, and section 10, which referred to protection from the authorities. I find that the Judge has failed to give reasons for not accepting any of this evidence. As was pointed out, the expert report was properly referenced. The Judge does not appear to have given any consideration to sections 7 to 10 of the report, sections which were all relevant to the Appellant’s appeal.
13. These sections were particularly relevant to the issue of internal relocation, which is of paramount importance in this appeal. Whereas at [33] the Judge cites the Country Information, Nigeria: Women fearing gender based harm or violence, and quotes from it “the individual circumstances of each case will need to be taken into account”, she then fails to do this. There is no proper consideration of the Appellant’s individual circumstances. I find that the Judge has not engaged with the issue of internal relocation at all, either by reference to the Appellant’s evidence or by reference to the expert report.
14. I find, as set out in the grant of permission to appeal, that the Judge has not properly engaged with the Appellant’s case. She relied on the case of Devaseelan but failed properly to take into account that the determination of Judge Povey was in relation to the Appellant’s husband, and that the Appellant’s circumstances were different. Indeed, the decision of Judge Povey does not refer to the Appellant at all, even though the Appellant was dependent on her husband’s appeal.
15. I find that the decision involves the making of material errors of law. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party’s case to be put to and considered by the First-tier Tribunal. Given

the nature and extent of the fact-finding necessary to enable this appeal to be remade, and having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

Decision

16. The decision involves the making of material errors of law and I set the decision aside.
17. The appeal is remitted to the First-tier Tribunal to be reheard de novo.
18. The appeal is not to be listed before Judge Clarke or Judge Povey.

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.

Signed

Date 12 August 2019



Deputy Upper Tribunal Judge Chamberlain