



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

Appeal Number: PA/11142/2018

THE IMMIGRATION ACTS

Heard at Field House

On 11 March 2019

**Decision & Reasons
Promulgated
On 21 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**N K T
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs G Brown, Dannielle Cohen Immigration Law Solicitors

For the Respondent: Ms S Jones, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from a decision of First-tier Tribunal Judge Andrews promulgated on 9 January 2019.
2. The appellant is a citizen of Bangladesh, born on [~] 1986, who claimed international protection as a refugee. For reasons which will become apparent, it is not appropriate for me to say more about the background facts or findings, suffice it to say that the judge rejected the appellant's appeal on asylum and human rights grounds.

3. Detailed grounds of appeal were settled by Counsel, the most significant of which (ground 1) related to an alleged failure on the judge's part to make findings in respect of certain evidence. First-tier Tribunal Judge Kelly, in a decision of 7 February 2019, granted permission to appeal on this ground but refused permission on the second, third and fourth grounds.
4. There is a renewed application seeking permission to appeal on the grounds where it had been refused. It is unnecessary for me to determine whether the permission to appeal should be enlarged. Ms Jones, for the respondent, properly conceded that there is an error of law in the First-tier Tribunal Judge's determination and the proper course is for the decision to be set aside.
5. In the light of that concession, my reasoning can be shortly stated. In addition to the appellant and her husband giving evidence, evidence was also adduced (both in a witness statement and orally) from Mr X (as I shall style him to preserve his anonymity) who was a friend of the appellant. That evidence was subject to cross-examination.
6. Paragraph 17 of the decision reads:

"I then heard from the appellant's second witness [Mr X] who adopted his 20 November 2018 witness statement with one correction. The second word on line 5 at paragraph 3 (not) should be deleted. This statement presents a similar picture as the appellant's and MR's statements. It also serves that [Mr X] is the appellant's distant cousin and he also knows her from university. [Mr X] offered to speak to MR's family after they refused the appellant. MR's family did not accept what [Mr X] said and MR's brother referenced honour killing saying that [Mr X] would not be spared if MR and the appellant married. [Mr X] never returned to MR's family because he was afraid of the consequence for himself. MR's mother telephoned [Mr X] in 2007 saying she would do whatever was necessary to get rid of the appellant. [Mr X] then advised MR to leave the country saying it was too dangerous for MR and the appellant to stay in Bangladesh. In cross-examination this witness repeated some of what was in his witness statement. In re-examination he told me that he had no contact with [Mr P] (the ICT Minister) but he had once seen [Mr P] at MR's family's home."
7. In summarising counsel's submissions at paragraph 30 of the decision, it is recorded that Mrs Brown, for the appellant, stated that counsel for the respondent had not made any submissions as to the credibility of Mr X. Mrs Brown submitted that he was sufficiently objective and that the Tribunal should accept his evidence, namely that he intervened at MR's parents and knows Mr P to be a close relative of MR's mother.
8. The judge dealt with credibility and findings at paragraph 31, and spoke there and elsewhere in the decision of considering the evidence "in the round". She mentions giving full account of all of the evidence that was before her whether referred to or not. At paragraph 36(vi) she says:

“Mrs Brown pointed out that [counsel for the respondent] had not made any specific submissions as to the credibility of [Mr X] the second witness at the hearing. However [he] did invite me to find the appellant not credible. As such I do not consider that [he] was in any way conceding that the second witness’s evidence was all true.”

9. In paragraph 37 the judge also says that she has taken account of the fact that except as highlighted elsewhere “there is a reasonable level of internal consistency in the appellant’s own evidence and that of her witnesses”. But she goes on to find that the appellant is not credible and continues

“in coming to these conclusions I have taken into account the evidence of the appellant’s witnesses. I also do not find credible that their claims that MR’s family would have attacked or threatened to kill the appellant”.

10. With respect to the First-tier Tribunal Judge, the extracts I have quoted (and these are the only matters which touch on the evidence of Mr X) do not amount to a proper assessment of his credibility and the extent to which his evidence may have supported the case advanced by the appellant. There is no judicial engagement at all.
11. Any judge who hears live evidence must give proper and adequate findings of credibility in relation to each witnesses whose testimony is disputed. Regrettably the judge gave no independent consideration to the credibility of Mr and the substance of his largely corroborative evidence in the course of concluding that the appellant was not a credible witness.
12. This appeal must be allowed and the decision of the First-tier Tribunal set aside. The error goes to the fundamental fact-finding role of the judge. Both Counsel concur that the proper course is to remit this matter to the First-tier Tribunal to be determined afresh by a judge other than Judge Andrews. No findings of fact will be preserved. An anonymity direction was made in the First-tier Tribunal and I renew it.

Notice of Decision

- (1) Appeal allowed.
- (2) Decision of First-tier Tribunal set aside;
- (3) Matter remitted to First-tier Tribunal to be heard afresh by a judge other than Judge Andrews.
- (4) No findings of fact preserved.

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 *Mark Hill*

Date

18 March 2019

Deputy Upper Tribunal Judge Hill QC