



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12312/2018

THE IMMIGRATION ACTS

Heard at Field House
On April 8 2019

Decision & Reasons Promulgated
On 17 April 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MISS A B
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Avery, Senior Home Office Presenting Officer
For the Respondent: Ms Allen, Counsel, instructed by Polpitiya and Co Solicitors

DECISION AND REASONS

1. Whilst the respondent is the appellant in these proceedings before me, I hereafter refer to the parties using terminology used in the First-tier Tribunal. The appellant in the First-tier Tribunal will hereafter be referred to as “the appellant” in these proceedings, and the respondent will be referred to as “the respondent”.
2. The appellant entered the United Kingdom on June 13, 2013 on a spouse visa following a successful appeal to the Tribunal. She returned to Pakistan on October 8,

2013 but when she returned on October 29, 2013, she was refused entry because her relationship was no longer subsisting. Her appeal against this decision was refused on June 20, 2014. She initially claimed asylum on October 23, 2015 but she withdrew this application on November 25, 2015.

3. On November 9, 2015 she made a notification under the Destitute Domestic Violence Concession and was granted limited leave to remain until February 11, 2016. A subsequent application for indefinite leave to remain on the grounds she was a victim of domestic violence was refused on September 29, 2016 and following a request for administrative review the decision was upheld on November 11, 2016.
4. The appellant applied for asylum on March 17, 2017 but the respondent refused her application on October 9, 2018 under paragraphs 336 and 339M/339F HC 395.
5. The appellant appealed this decision on October 23, 2018 under section 82(1) of the Nationality, Immigration and Asylum Act 2002. Her appeal came before Judge of the First-tier Tribunal Housego on January 4, 2019 and in a decision promulgated on January 30, 2019 her appeal was allowed on protection, article 3 and article 8 ECHR grounds.
6. The respondent appealed this decision February 5, 2019 and on March 7, 2019 Judge of the First-tier Tribunal Landes granted permission to appeal finding it arguable the Judge erred by failing to:
 - (a) Engage with a number of points made in the decision letter.
 - (b) Deal with the fact the appellant had previously given oral evidence to Judge of the First-tier Tribunal Parkes (June 2014) who had found the appellant would have support from family members and that article 3 would not be breached if the appellant were returned (See paragraph 18 of the FTT Judge's decision).
 - (c) Explain why he departed from Judge of the First-tier Tribunal Parkes' starting point.
7. The appellant provided what was purported to be a Rule 24 response on the morning of the hearing in which she argued:
 - (a) The Judge did have regard to the previous decision of Judge Parkes as the Judge referred to it in his decision but in any event that decision was not binding on the FTT Judge as 4 ½ years had passed since that decision was handed down and there was new evidence before the Tribunal.
 - (b) The FTT Judge had considered all the evidence including the content of the decision letter and gave reasons for his findings at paragraphs 65-72 of his decision.
8. Pursuant to Rule 14(1) of the Tribunal Procedures (Upper Tribunal) Rules 2008 (the UT Procedure Rules) I make an order prohibiting the disclosure or publication of specified documents or information relating to the proceedings or of any matter

likely to lead members of the public to identify any person whom the Upper Tribunal considers should not be identified. The effect of such an anonymity order may therefore be to prohibit anyone not merely the parties in the case from disclosing relevant information. Breach of this order may be punishable as a contempt of court.

SUBMISSIONS

9. Mr Avery submitted there were conflicting written and oral statements given by appellant relating to her true situation. There had been a previous appeal before Judge of the First-tier Tribunal Parkes and Judge of the First-tier Tribunal Housego did not engage with the issues in any detail but instead engaged in generalities. Findings of fact were intermixed with a recording of the evidence and he submitted the Judge gave inadequate findings and failed to demonstrate any engagement with the previous findings of Judge Parkes. There were a number of issues raised in the decision letter which the Judge failed to address. He submitted the decision should be set aside and remade.
10. Ms Allen adopted her Rule 24 response and argued the Judge did engage with the previous decision of Judge Parkes but that the previous decision was an entry clearance application and Judge Parkes was only concerned with whether she had any family members to turn to. Paragraphs 10-12 of Judge Parkes' decision set out the evidence given and she submitted there was nothing contradictory in the current evidence.
11. Ms Allen submitted the Judge was now concerned with different issues and had to apply SM (lone women-ostracism) CG [2016] UKUT 67 (IAC). The issue was whether she would be at risk as a single woman whose two marriages had failed which was different to the issue Judge Parkes had to decide.
12. The Judge considered the documents at paragraphs 65 and 67 and the issue of return was dealt with at paragraph 73. The Judge set out respondent's position and the finding at paragraph 67 was not challenged. There was nothing wrong with the Judge intermixing findings and various factual statements as long as the Judge made findings on that evidence.

FINDINGS

13. Mr Avery has challenged the decision:
 - (a) The format of the Judge's decision.
 - (b) A failure to engage with the evidence.
 - (c) A failure to take Judge Parkes' decision as the starting point.
14. The appellant had originally been granted leave to enter the United Kingdom as a spouse on June 13, 2013 but when her marriage broke down her leave was curtailed and she appealed that decision to the FTT Tribunal under article 3 and 8 ECHR albeit when the appeal came before Judge Parkes, her representatives did not pursue the

appeal under article 3 as it was accepted the facts did not reach the necessary threshold.

15. The evidence given to Judge Parkes was that the appellant had no family to turn to in Pakistan, but the Judge concluded at paragraph 27 that she would be supported in Pakistan by either her UK relatives or distant relatives, even if they did not include her brother or uncle.
16. The appeal, considered by Judge of the First-tier Tribunal Housego on January 4, 2019 centred on membership of a particular social group namely women in Pakistan being members of a social group. Reliance was placed on the country guidance decision of SM.
17. The respondent had not accepted her claim that she had been the subject of domestic violence from her first husband or forced into marrying her second husband. Weight on the second finding was placed on the evidence placed before Judge Parkes.
18. Reading paragraphs 52 to 64 of the Judge's decision it appears the Judge accepted everything that was advanced on her behalf. Mr Avery's submission is that in doing so the Judge failed to make any findings on the content of the decision letter even though it had been recorded at paragraph 65 that the document had been considered carefully. Mr Avery argued that paragraphs 52 to 64 were not "facts found" but simply a stating of the appellant's own case. There was no engagement with the decision letter. His argument has merit.
19. Thereafter, between paragraphs 65 and 72 the Judge set out what are described as "reasons for the findings of fact" but with the exception of a reference in paragraph 72 to the decision letter there was no other engagement with the content of the decision letter especially in relation to her second marriage.
20. The Judge's conclusions from paragraph 73 are based on the flawed findings and, whilst they may ultimately be open to a Judge, I accept Mr Avery's submission that by failing to engage with the decision letter or explain why she rejected those submissions, the actual conclusions/findings were flawed.
21. This case is all about credibility and findings of fact will be required on all the evidence.
22. In the circumstances, I find there has been an error in law and I remit this matter back to the First-tier Tribunal to be heard by a Judge other than Judge of the First-tier Tribunal Housego under section 12(1) of the Tribunals, Courts and Enforcement Act 2007.

NOTICE OF DECISION

23. There is an error in law. I set aside the original decision and remit the matter back to the First-tier Tribunal under section 12(1) of the Tribunals, Courts and Enforcement Act 2007.

Signed

Date 15/04/2019

A handwritten signature in black ink, appearing to read 'SP Alis', with a long horizontal stroke underneath.

Deputy Upper Tribunal Judge Alis