



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

Appeal Number: PA/12330/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 11 February 2019**

**Decision & Reasons Promulgated
On 25 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**S A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**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.

Representation:

For the Appellant: Ms E Sanders, Counsel, instructed by Wilson Solicitors LLP
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Monson (the judge), promulgated on 1 October 2018, by which he dismissed her appeal against the Respondent's refusal of her protection and human rights claims.
2. In essence, the Appellant's claims involved the following threads. First, she asserted that she was at risk from an ex-partner, R, who had pursued and harmed her in the past and who, it was said, would be able to do so once again if the Appellant were to return to Bolivia. She would not be afforded sufficient protection from the authorities and she would be unable to relocate. Second, the Appellant suffers from mental health problems and these would of themselves lead to risks, or at least significant problems, on return.

The judge's decision

3. It is clear that the judge put a good deal of effort into his decision and there is a considerable amount of analysis of the evidence, running from [75] to [93]. It is quite apparent from these passages that the judge was decidedly unimpressed by various aspects of the evidence, finding there to be inconsistencies and a lack of what he believed to have been reasonably obtainable supporting documents, amongst other issues.
4. Ultimately, the judge concluded that the ex-partner would not pose a risk to the Appellant on return and that the Appellant was neither a refugee nor a person whose removal would expose to her Article 3 ill-treatment.
5. In respect of the medical issue, the judge concluded that there was no real risk of suicide or of the Appellant being unable to access relevant treatment in Bolivia. The appeal was duly dismissed on all grounds.

The grounds of appeal and grant of permission

6. The grounds are lengthy. Many of them take issue with particular aspects of the judge's consideration of the evidence ranging from expert reports to the Appellant's vulnerability (in light of her mental health), the medical evidence itself, and country information. However, it may be said that ground 1 encapsulates the strongest overall point, namely that the judge had failed to set out any actual findings of fact on the Appellant's claim, as opposed to an analysis of the evidence.
7. Permission to appeal was initially refused by the First-tier Tribunal but granted by Upper Tribunal Judge Kebede on 6 January 2019. She regarded

many of the more detailed grounds as amounting to little more than an attempt to reargue the Appellant's case. However, she found ground 1 to have greater merit. The grant of permission was not limited in its scope.

The hearing before me

8. Ms Sanders relied on the grounds as a whole. In respect of ground 1 she submitted that it was impossible to detect any clear findings within the relevant section of the judge's decision. There was a good deal of analysis and it was clearly the case that the judge was less than impressed with several aspects of the Appellant's claim. However, Ms Sanders submitted that actual findings were required, and there were none. The overall conclusions towards the end of the decision did not amount to such findings.
9. In addition, Ms Sanders relied on particular aspects of the other grounds relating to the Appellant's mental health and the effect that this would have on her both on return and respect of her ability to have presented her evidence when preparing the appeal (she had not been called to give oral evidence in light of expert medical evidence and the Respondent's representative at the hearing had accepted that no adverse inference should be drawn as a result of this).
10. For his part Mr Tufan acknowledged the absence of the clear findings of fact but suggested that these could be implied from what the judge had in fact set out. The judge had rejected a number of aspects of the Appellant's claim and it could be inferred that doing so he was rejecting the core elements of the case as a whole.

Decision on error of law

11. With a degree of hesitation I conclude that there are material errors of law in the judge's decision.
12. As mentioned previously, he did undertake a fairly detailed analysis of the evidence. The fact is however that he has not stated any actual findings of fact.
13. I fully appreciate that the decision of the First-tier Tribunal must be read holistically, sensibly, and in the context that each and every aspect of the evidence does not have to be specifically addressed. Having said that, it seems to me that the Appellant (indeed any appellant) is entitled to see the factual basis upon which ultimate conclusions are reached.
14. There is some merit to Mr Tufan's submission that one can infer from what the judge has said that he was essentially rejecting everything the Appellant was saying. In my view one should be cautious about adopting

this approach, however. There are aspects of the judge's reasoning which do not represent a clear picture of whether he was rejecting everything or only some parts of the claim. For example, it is not clear whether the judge was accepting that the Appellant had ever suffered at the hands of her ex-partner; it is also unclear whether he judge found that he had ever been able to track her down. It is difficult to discern whether the judge was accepting that family court proceedings had taken place at all and, if they had, what the effect of these were.

15. In addition, I agree with Ms Sanders that the judge seems to have failed to make clear findings on the unchallenged medical evidence as it related to the appellant's mental health. This evidence was potentially relevant to two issues: the assessment of credibility; the Appellant's position on return to Bolivia. Whilst it appears from [96] and [98] that the judge was accepting the mental health problems, this does not seem to have been factored into the credibility assessment and nor has it been placed in the context of the Appellant's arguments on her position on return, as set out in the skeleton argument and supported by relevant country information.
16. In my view there are material errors here and I must set the judge's decision aside.

Disposal

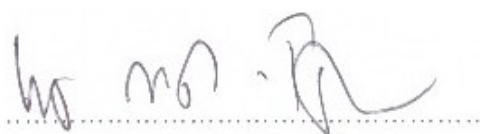
17. With reference to paragraph 7.2 of the Practice Direction and the necessary fact-finding, this is clearly a case that has to be remitted to the First-tier Tribunal for a complete rehearing. Both representatives were agreed on this course of action should I find there to be material errors of law.
18. The remittal shall involve a complete rehearing of the appeal. All aspects of the protection and human rights claims must be addressed.

Notice of Decision

The decision of the First-tier Tribunal contains material errors of law and I set it aside.

I remit this appeal to the First-tier Tribunal for a complete rehearing.

Signed

A handwritten signature in blue ink, appearing to be 'Ms. Sanders', written over a dotted line.

Date: 19 February 2019

Deputy Upper Tribunal Judge Norton-Taylor