



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13747/2018

THE IMMIGRATION ACTS

Heard at Field House
On 25 April 2019

Decision & Reasons Promulgated
On 07 May 2019

Before

UPPER TRIBUNAL JUDGE FINCH

Between

[F G]

(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. J. Dhanji of counsel, instructed by SMA Solicitors

For the Respondent: Ms B. Jones, Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant is a national of Pakistan, who arrived in the United Kingdom on 11 October 2011, as a Tier 4 (General) Migrant. His leave was extended in this capacity until 24 July 2012. He was also granted leave to remain as a Tier 4 (Student) Migrant between 15 January

2014 and 15 February 2015. He was refused further leave to remain on human rights grounds on 7 August 2015.

2. He applied for asylum on 24 May 2018 on the basis that he feared an honour killing if removed to Pakistan but his application was refused on 16 November 2018. He appealed and his appeal was dismissed by First-tier Tribunal Judge Mill in a decision promulgated on 24 January 2019. He also appealed against this decision and he was granted permission to appeal by Deputy High Court Judge Gullick on 26 March 2019.

ERROR OF LAW HEARING

3. Both counsel for the Appellant and the Home Office Presenting Officer made oral submissions and I have referred to the content of these submissions, where relevant, in my decision below.

ERROR OF LAW DECISION

4. Permission to appeal was principally granted in relation to the weight given by First-tier Tribunal Judge Mill to the Appellant's demeanour. However, Deputy High Court Judge Gullick also found that the other grounds of appeal were potentially relevant when read together with the one relating to the Appellant's demeanour.
5. For example, in the second ground of appeal, it was noted that First-tier Tribunal Judge Mill had reminded himself of the contents of paragraph 339L of the Immigration Rules but had failed to explain how this paragraph applied to the Appellant's particular case.
6. Furthermore, he failed to note that none of the factors in paragraph 339L refer to an Appellant's demeanour when giving evidence.
7. Most significantly, he failed to remind himself of the decision by the Upper Tribunal in *KB & AH (credibility – structured approach) Pakistan* [2017] UKUT 00491 (IAC) where it found at paragraph 50:

“We alluded earlier to the possible relevance of demeanour in assessment of credibility and stated our own view that it would rarely if ever be of importance in asylum appeals. Illustrative perhaps of why, it was our own reaction to the first appellant’s evidence that throughout he seemed uncomfortable and not always able to give answers to the specific question being asked of him (a number of questions had to be repeated for that reason). However, viewing the evidence as a whole, we bore in mind that we were receiving his evidence through an interpreter and that these features of his oral testimony were as likely to be personality traits not connected to matters going to credence. Hence we decided to attach little negative weight to such shortcomings. Hence we decided to attach little negative weight to such shortcomings”.

8. As a consequence, at paragraph 25 of his decision, First-tier Tribunal Judge Mill stated:

“I found the Appellant to be evasive in his oral evidence at times. This was particularly so when questions were being asked of him which sought to clarify his evidence which appeared to lack credibility. For example, he required to be repeatedly asked why he would give his brother’s telephone number to the woman he claims to be have been in a relationship with when he knew that his family would have serious problems with such a relationship. He evaded answering the question and struggled to provide a response and was dilatory in doing so. He also looked particularly awkward when trying to answer this”.

9. In his Rule 24 Response, the Respondent submitted that the Appellant’s demeanour was not mentioned at any point in paragraph 25. However, in last sentence of that paragraph, First-tier Tribunal Judge explicitly stated: “he also looked particularly awkward when trying to answer this”. I have also taken into account the fact that the dictionary definition of “demeanour” is “outward behaviour or bearing”. This definition is capable of encompasses being evasive and struggling to provide a response.

10. In paragraphs 36 to 43 of *SS (Sri Lanka), R (on the application of) v Secretary of State for the Home Department* [2018] EWCA Civ 1391 Lord Justice Leggatt also discussed the weight that should be given to demeanour. In paragraph 36 he found that “it has increasingly been recognised that it is usually unreliable and often dangerous to draw a conclusion from a witness’s demeanour as to the likelihood that the witness is telling the truth”.

11. At paragraph 37 he also noted that “the reasons for distrusting reliance on demeanour are magnified where the witness is of a different nationality from the judge and is either speaking

English as a foreign language or is giving evidence through an interpreter”. The latter was the case in the Appellant’s appeal before First-tier Tribunal Judge Mill.

12. In her oral submissions the Home Office Presenting Officer sought to rely on paragraph 41 of *SS (Sri Lanka)* but it did not appear to me that this assisted her when read as a whole, as in this paragraph Lord Justice Leggatt found:

“No doubt it is impossible, and perhaps undesirable, to ignore altogether the impression created by the demeanour of a witness giving evidence. But to attach any significant weight to such impressions in assessing credibility risks making judgments which at best have no rational basis and at worst reflect conscious or unconscious biases and prejudices. One of the most important qualities expected of a judge is that they will strive to avoid being influenced by personal biases and prejudices in their decision-making... Rather than attempting to assess whether testimony is truthful from the manner in which it is given, the only objective and reliable approach is to focus on the content of the testimony and to consider whether it is consistent with other evidence (including evidence of what the witness has said on other occasions) and with known or probably facts”.

13. The Home Office Presenting Officer also relied on the fact that in paragraph 42 of his judgment Lord Justice Leggatt accepted that it was permissible for the judge in that First-tier Tribunal Judge in *SS* to consider the plausibility of the appellant’s account and whether it was consistent with objectively verifiable information. She submitted that, even if First-tier Tribunal Judge Mill had relied on the Appellant’s demeanour in paragraph 25 of his decision, he had also considered the plausibility of his account in paragraphs 25, 26,31 and 34.
14. However, the manner in which plausibility was assessed by First-tier Tribunal Judge Mill did not take into account the cultural context of the appeal. For example, if the Appellant was going to spend time studying in the United Kingdom the woman, to whom he was engaged, may well have wished to delay their wedding so that she could continue to live with her own family and not move to live with his family whilst he was away. The First-tier Tribunal Judge also failed to enquire as to why the Appellant provided his girlfriend with a telephone number of his next of kin, when there may have been a particular culturally specific reason for doing so.
15. The First-tier Tribunal Judge also failed to take the totality of the evidence into account before reaching his decision on the credibility of the Appellant’s account or give sufficiently detailed

reasons for not finding the second witness to be credible. In my view it was also not necessarily incredible that the lawyer had not charged a fee for assisting the Appellant. His letter indicates that he was asked to mediate and that he was not instructed as a lawyer.

16. For all of these reasons, I find that there were errors of law in First-tier Tribunal Judge Mill's decision.

DECISION

- (1) The Appellant's appeal is allowed.
- (2) First-tier Tribunal Judge Mill's decision is set aside.
- (3) The appeal is remitted to the First-tier Tribunal to be heard *de novo* before a First-tier Tribunal Judge other than First-tier Tribunal Judge Mill or Gumsley.

Nadine Finch

Signed
Upper Tribunal Judge Finch

Date 26 April 2019