



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

Appeal Number: PA/06798/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 6 January 2020**

**Decision & Reasons
Promulgated
On 16 January 2020**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

**S I
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Patyna of Counsel instructed by Wimbledon Solicitors

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal comes before me following the grant of permission to appeal by First-tier Tribunal Judge Povey on 21 November 2019 against the determination of First-tier Tribunal Judge Swinnerton, promulgated on 4 October 2019 following a hearing at Hatton Cross on 1 October 2019. the final paragraph

of Judge Povey's decision refusing permission is clearly an error given the contents of the document and the heading which grants permission.

2. The appellant is a Pakistani national born on 21 February 1989. She entered the UK on 21 June 2013 on a visit visa and then made an unsuccessful application for leave and two applications for resident cards under the EEA Regulations. She then overstayed and claimed asylum on 5 July 2017. That was refused on 28 December 2017 and her appeal against the decision was dismissed on 23 February 2018. Her appeal rights were exhausted on in June 2018. the appellant still failed to embark and on 6 November 2018 made further submissions which led to a refusal on 2 July 2019 and the current appeal.
3. The appellant claims that her father who was a very religious and abusive man who arranged a marriage for her to a man to whom he owed money. The appellant did not agree and came to the UK to visit her brother. When he tried to persuade her to agree to the marriage, she went to live with her cousin for four years and made her EEA applications. When her cousin could no longer support her due to family pressure the appellant became destitute and has been in receipt of support and accommodation from the Refugee Council. Relatives informed her that an FIR had been lodged accusing her of stealing jewellery and running away with a non-believer. A second FIR has since been filed; this accuses her and three others of threatening her brother with a gun. The appellant fears her family and her situation if she were to be returned and unable to turn to her family for support.
4. In her grounds of appeal, the appellant maintains that the judge failed to reach any findings on whether or not the appellant was vulnerable and how that would impact on her evidence, failed to assess credibility in light of key conclusions in the medical evidence, failed to reach findings as to the evidence of a witness and failed to consider credibility in the context of the background evidence.
5. The Rule 24 response from the Secretary of State opposes the appeal.

The Hearing

6. The appellant attended the hearing at which I heard submissions from the parties. Ms Patyna expanded upon her grounds. She submitted that the judge was asked to take the Presidential guidance on vulnerable witnesses into account but

had failed to make any reference to it or how it applied to the appellant. The guidance from various authorities required findings on how the appellant was vulnerable and how that was relevant to the credibility assessment. She pointed me to her skeleton argument before the First-tier Tribunal in which lengthy submissions had been made about vulnerability. She also argued that the medical report referred to problems of concentration but that these matters were not taken into account when credibility was assessed. The medical report was only referred to for an assessment of any suicide risk. She submitted that no finding had been made as to whether the appellant suffered from anxiety and PTSD as the doctor had diagnosed and that the doctor's finding that the appellant's scars were consistent with the abuse she claimed to have suffered at the hands of her father had not been referred to in the determination. These failings meant that the credibility assessment could not be sustained and fresh findings were required.

7. Ms Patyna submitted that the evidence of the witness was not assessed. The witness had provided corroborating evidence. Whilst this was noted, no findings had been made on it. There was also a failure to look at the background evidence against which credibility should have been assessed. The appellant's account had been consistent with the CPIN report. Ms Patyna asked that the determination be set aside and remitted to the First-tier Tribunal for a fresh decision to be made.
8. Mr Whitwell submitted that the determination was sustainable. The judge had accepted that the appellants was a vulnerable witness and adjustments had been made. The appellant had already had an unsuccessful appeal when she was found to be lacking in credibility and so she was not starting out on an even footing but had to overcome previous adverse findings. The judge raised valid issues over the two FIRs noting that the first had not been provided for the previous hearing even though the appellant claimed to have had it for some months prior to that. The appellant's vulnerability had no bearing on the highlighted difficulties. The judge confirmed that all the evidence had been considered and set out the difficulties with the doctor's report. The Tribunal was now being asked to reach a different decision on the same evidence. The evidence of the witness was immaterial. It was recorded by the judge but it was essentially what the witness believed to be true. There had been no need to refer to the CPIN. It contained nothing controversial. It was accepted that marriages could be used to settle outstanding issues. The appeal should be dismissed.

9. In response, Ms Patyna submitted that the Devaseelan principles did not absolve judges from deciding the case in front of them and that credibility challenges could still be made by appellants. In this case there was fresh medical and other evidence and that required a thorough analysis by the judge. As for the issue of vulnerability, it was not enough for the judge to state that was accepted. There was then a need to link vulnerability to the evidence. The appellant's explanation for not having provided the FIR at the first hearing could be explained by her anxious condition. Whilst the GP had found the appellant fit to give evidence, the judge was still required to assess it in the context of her vulnerability. The evidence of the witness was not immaterial. It dealt with the plausibility issue which had been raised at the first hearing. The CPIN was not irrelevant. The first judge assessed credibility without any reference to country evidence and this report was, therefore, relevant to the findings.
10. At the conclusion of the hearing, I reserved my decision which I now give with reasons.

Discussion and Conclusions

11. I have considered all the evidence and the submissions made.
12. There are, I find, several serious shortcomings with the judge's determination and decision making which render the decision unsustainable.
13. Whilst I accept that the judge agreed to treat the appellant as a vulnerable witness and made adjustments accordingly (at 11) there is no further consideration of how this vulnerability impacted, if at all, on her evidence. The absence of any reference to the Presidential Guidance Note would not in itself be an error had the judge followed its contents but regrettably she failed to do so. There is no analysis at all of how this accepted state of mind affects the evidence. That is the first error.
14. The second error emerges from the judge's consideration of the medical evidence. I accept that she refers to Dr Gupta's report and lists the respondent's criticisms of it but she then fails to make her own findings as to what parts of it, if any, are accepted. She uses it only to assist her findings on suicide risk whereas it is much wider than that.
15. The third criticism of the determination is that no findings were made on the supporting evidence of the appellant's witness.

Whilst I accept that the judge recorded that evidence and noted that the witness believed the appellant, no findings are made on how, if at all, that corroborative evidence furthers the appellant's case.

16. The fourth and final failing in the determination is the judge's failure to consider the appellant's account in the context of the country information. It is not enough for a judge to simply state that all the evidence has been considered. There has to be some indication that that is the case and given the complete absence of any reference to the background material I do not find that this has been done here.
17. It follows therefore that the decision is unsustainable and the determination is set aside other than as a Record of Proceedings. No findings are preserved.

Decision

18. The decision of the First-tier Tribunal contains material errors of law. The appeal shall be re-heard by another judge of the First-tier Tribunal and a fresh decision shall be made.

Directions

19. Any further documentary evidence is to be filed and served no later than 5 working days prior to the next hearing.
20. An interpreter shall be booked. If an interpreter is not required the appellant is to notify the Tribunal forthwith.

Anonymity

21. No request for anonymity order has been made at any stage however in view of the appellant's vulnerability I make an anonymity order.

Signed



Upper Tribunal Judge

Date: 14 January 2020

