



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07429/2019

THE IMMIGRATION ACTS

Heard at Field House
On 27 January 2020

Decision & Reasons Promulgated
On 7 February 2020

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MS M S F
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of the Philippines born on 1 June 1958. She appeals against the decision of the Respondent dated 19 July 2019 refusing to grant her asylum and seeking to remove her to the Philippines. The decision also refused her claim with reference to the Immigration Rules and Article 8 and compassionate circumstances.
2. The Appellant appealed against this decision and her appeal came before Judge of the First-tier Tribunal Rothwell for hearing on 4 September 2019. The Appellant gave

evidence and in a decision and reasons promulgated on 10 October 2019 the appeal was dismissed.

3. The Appellant's then representatives sought permission to appeal to the Upper Tribunal in time on the basis of a number of points, none of which amount to an arguable legal submission showing an error of law in the decision of the First-tier Tribunal Judge.
4. Permission to appeal was granted by Upper Tribunal Judge Kekic in a decision dated 18 December 2019 in the following terms

"Although not raised as a ground for permission it is arguable that the judge erred in commencing her assessment of the claim with Section 8 and the finding that the credibility of the Appellant's asylum claim was damaged because of her delayed asylum application. Arguably that was the wrong approach and tainted the remaining findings."

Hearing

5. At the hearing before the Upper Tribunal, the Appellant appeared without a representative, stating that she could not afford to instruct one to attend court. I explained the procedure to the Appellant and that I would give her the opportunity to address the points made by the First tier Tribunal Judge; Ms Everett would then make submissions on behalf of the Secretary of State and that she would have the opportunity to respond to those submissions.
6. The Appellant submitted that, in terms of what the judge had said about damaging her credibility, she did not claim asylum when she arrived because she did not know she was coming to the UK, her brother arranged it, a friend of his collected her, she had left her sons in the Philippines and had not seen them since; that she claimed asylum in 2016 because she had previously been diagnosed with cancer in 2015 and thought that she was dying, her father had also died in 2015 and she wanted to regularise her stay. In respect of previous applications, she had had a partner in 2014 who said he would apply for papers for her but she did not know the basis of this claim. In relation to her claim to have been a victim of trafficking she was interviewed in respect of this. Her previous partner had also been abusive. She was interviewed by the police but did not want to support a prosecution because she was concerned about the safety of her nieces because he knew where they lived.
7. At that point I asked the Appellant whether she had a copy of the conclusive grounds decision dated 15 April 2019 as it was not on the Tribunal file. The Appellant stated she had seen this decision but did not have it with her. It was with her former representatives. Ms Everett was then able to access virtually the Appellant's Home Office file and provided copies by e-mail.
8. Ms Everett in her submissions stated that in terms of the grant of permission that this was not explicitly contained within the grounds of appeal. She submitted even if the judge had misdirected herself, it had not made a material difference to the outcome.

The judge had at [14] looked at the totality of the evidence in relation to the Appellant's claim and considered it in the round. She also made findings in the alternative. Consequently, the section 8 point was not determinative and did not exclude or preclude the judge from coming to other credibility findings. In any event, the judge found in favour of the Appellant in relation to her evidence that she had been subjected to domestic violence by her former husband [43]. The Judge then went on to consider the claim at its highest at [45]. Even if the Judge was wrong as to the ability of the authorities to protect the Appellant or the ability of her former husband to find her, she found that the Appellant could internally relocate [48]. Consequently Ms Everett submitted there was no error of law, material or otherwise in the judge's decision.

9. In response, the Appellant said she had read the decision. The timing of her asylum application depended on her situation. She had been through a lot and sought advice. Essentially, she said if she had known she would have sought asylum sooner. For clarity, I enquired why the Appellant's family members, i.e. her nieces had not attended the hearing at the First-tier Tribunal to which she responded that as nurses for the NHS they work on a schedule and by the time the hearing notice was received it was too late for them to change their schedule.

Findings and Reasons

10. It is apparent from the grounds of appeal as drafted that they do not raise any material errors of law. These provide as follows
 - “1. *The First-tier Tribunal made error in making the decision.*
 2. *The judge also erred in appreciating the genuine request made by the Appellant.*
 3. *It is submitted that the unawareness of the Appellant with regard to making initial claim for the asylum was misjudged by the honourable judge. The honourable judge at [41] of the decision questioned the credibility of the Appellant.*
 4. *It is submitted that the Appellant genuinely was not aware of the asylum claim. She was mainly focused on the issue of human trafficking which adversely affected her life. This incident happened in the UK.*
 5. *The Appellant submits that the submitted documents and initial NRM report confirmed that she was the victim of human trafficking in the UK.*
 6. *The Appellant submits that she was also the victim of domestic violence back in Philippines and the honourable judge at First-tier Tribunal accepted this at [43] of the court decision. Even though the honourable judge accepted the domestic violence back home it was painful that the judge did not even give importance to this issue however and erred in applying relevant law. The honourable judge mentioned in the decision that the background evidence notes that there is domestic violence against the Appellant.*

7. *The Appellant submits she has been living here in the UK since 2002 and developed private and family life in the UK.*
 8. *The Appellant submits she has been helped by her family members for her daily needs here in UK. She has provided sufficient documents to prove her relationship with her family members in UK. Even though the Appellant provided with the documents the First-tier Tribunal Judge refused the same and mentioned in paragraph 48 that the burden of proof is on the applicant.*
 9. *The Appellant submits that in paragraph 52 the honourable judge accepted that the Appellant has developed a private life here in the UK as she has been living here in the UK since seventeen years. But failed to apply Article 8 in favour of the Appellant.*
 10. *Therefore it is submitted that the notice of decision to refuse the Appellant's application is not in accordance with the law or facts.*
 11. *It is also submitted that there are above errors in the determination of the First-tier Tribunal.*
 12. *In the circumstances we most humbly request this honourable Tribunal to allow permission to appeal."*
11. The First tier Tribunal Judge accepted that the Appellant had been subjected to domestic violence by her former husband at [43] but went on to find that she could access sufficient protection from the authorities [45] or internally relocate [46]. There has been no challenge to these findings, which stand.
 12. Thus the Appellant's core credibility was not in issue, given the Judge's acceptance of the basis of her claim i.e. a fear of persecution from her former husband who previously subjected her to domestic violence.
 13. The further difficulty is that, even upon the ground identified by the judge as a basis to grant permission at [4] above, I have serious doubts whether the nature of that ground falls within the remit of the guidance set out in AZ [2018] UKUT 00245 (IAC) at [61] or Durueke [2019] UKUT 00197 (IAC) ie. it is *Robinson* obvious or raises a point of general importance. I find that the point raised by the Upper Tribunal Judge granting permission ie. that it was arguable that by commencing her assessment with consideration of section 8 and the delay by the Appellant in claiming asylum this infected the First tier Tribunal Judge's decision was neither *Robinson* obvious nor did it raise a point of general importance.
 14. I have for completeness also considered the other aspect of the Appellant's claim, that she was trafficked in the UK for the purposes of forced labour. I have had regard to the conclusive grounds consideration minute, helpfully provided by Ms Everett, where this claim was rejected because the Appellant was not held against her will.
 15. It follows that I find no material errors of law in the decision of the First-tier Tribunal Judge, whose decision is upheld.

Notice of Decision

The appeal is dismissed.

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 *Rebecca Chapman*

Date 5 February 2020

Deputy Upper Tribunal Judge Chapman

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed *Rebecca Chapman*

Date 5 February 2020

Deputy Upper Tribunal Judge Chapman