



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00567/2020

THE IMMIGRATION ACTS

Heard remotely at Field House
On 9th July 2021

Decision & Reasons Promulgated
On 26th July 2021

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

B R
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Griffiths, instructed by Bristol Law Centre

For the Respondent: Mr S Walker, Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Microsoft Teams (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in the bundles on the court file, the contents of which I have recorded. The order made is described at the end of these reasons.

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 the

Appellant or any member of the 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.

DECISION AND REASONS

1. The Appellant is a citizen of Mexico born in 1980. She appeals against the decision of First-tier Tribunal Judge Lever, promulgated on 23 October 2020, dismissing her appeal against the refusal of her protection claim on asylum, humanitarian protection and human rights grounds.
2. Permission to appeal was granted by Upper Tribunal Judge Kamara on 8 February 2021 on the grounds that the judge arguably erred in law in going behind the Respondent's concession that the Appellant had demonstrated a genuine subjective fear of domestic violence and there were procedural errors in failing to raise matters which were ultimately relied on in dismissing the appeal.
3. Mr Walker conceded the judge's approach indicated he had gone behind the concession which led to further procedural errors. It was agreed by the parties that the decision should be set aside and the appeal remitted to the First-tier Tribunal for rehearing.
4. In the refusal letter, the Respondent accepted the Appellant was a victim of domestic violence at the hands of her husband [HVP] and that she had demonstrated a genuine subjective fear on return to Mexico. The factual basis for the concession was not made clear in the refusal letter and it does not appear to have been addressed at the hearing before Judge Lever.
5. At [9] of the grounds of appeal the Appellant submits that the Respondent accepted the Appellant's factual account of domestic violence including:
 - (i) moving to/from the USA with HVP;
 - (ii) HVP's restrictions on her movement;
 - (iii) that the Appellant fled from HVP on three occasions and was found by him;
 - (iv) reporting HVP to the police to no avail; and
 - (v) threats made by HVP to the Appellant since she left Mexico.
6. Unfortunately, the judge fell into error because the accepted factual account was not made clear by the Respondent. This resulted in procedural unfairness because the Appellant, in reliance on the concession, proceeded on the basis that her account was accepted. The judge went on to make adverse credibility findings on matters which were not put to the Appellant.
7. I find that the judge erred in law in dismissing the Appellant's appeal and I set the decision aside. The appeal is remitted to the First-tier Tribunal. None of the judge's findings are preserved.

8. I direct the Respondent to address the matters at paragraph [5] above stating clearly which parts of the Appellant's factual account are accepted and which are in dispute.

DIRECTIONS

- (i) The appeal is remitted to the First-tier Tribunal to be re-heard *de novo* by a judge other than Judge Lever. None of the Judge Lever's findings are preserved.
- (ii) The Respondent to file and serve written submissions addressing the following matters by 4pm on 6 August 2021.
 - (a) stating the factual account upon which the concession is based addressing, in particular, the matters in [5] above;
 - (b) stating his position as to the country of return, specifically stating whether Peru is a proposed country of return and, if so, why.
- (iii) The Appellant to file and serve any further evidence upon which she intends to rely by 4pm on 3 September 2021.
- (iv) The appeal to be relisted on the first open date after 3 September 2021.
- (v) Time estimate 3 hours.
- (vi) Spanish Latin interpreter required.

Notice of Decision

Appeal allowed

J Frances

Signed
Upper Tribunal Judge Frances

Date: 9 July 2021

TO THE RESPONDENT
FEE AWARD

I make no fee award. The appeal remains outstanding.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 9 July 2021

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email