



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

Appeal Number: UI-2024-001099
Previous Appeal Number: PA/50968/2023
LP/02560/2023

THE IMMIGRATION ACTS

**Heard at Field House
On 14 June 2024**

**Decision & Reasons Promulgated
On 25 June 2024**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL McCARTHY

Between

**FB
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Ul-Haq, instructed by JM Wilson Solicitors
For the Respondent: Ms H Gilmore, Home Office Presenting Officer

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and any member of their family is granted anonymity. Failure to comply with this order could amount to a contempt of court. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant or any member of their family.

DECISION AND REASONS

Procedural matter

1. At the parties' request, this was a hybrid hearing. Both representatives attended by video link (Teams). There were no connectivity difficulties, and I am satisfied the hearing proceeded in a similar way had the representative attended in person.

Background

2. The Appellant appeals, with permission granted by First-tier Tribunal Judge T Lawrence, against the decision and reasons of First-tier Tribunal Judge Sangha, dated 19 January 2024. Permission to appeal was granted on the following grounds:

Grounds 1 and 4: Failing to give adequate reasons for not departing from a previous decision when presented with new medical and other evidence about the Appellant's disabled daughter,

Ground 2: Failing to decide whether the appellant or her daughter would be persecuted because of the daughter's visible disability, and

Ground 5: Incorrectly applying the test of incompatibility under Article 8 and an inadequate assessment of proportionality.

3. Permission was not granted on Ground 3, which alleged unfair procedures. An application to renew permission on that ground has also been refused by the Upper Tribunal and that ground can no longer be pursued.

Representations

4. In the absence of a rule 24 response from the Secretary of State, I invited Ms Gilmore to make her submissions first so that Mr UI-Haq would be able to elaborate on his written grounds. Ms Gilmore made the following points.
 - (a) The bundle contained the previous decision of First-tier Tribunal Judge Shepherd decision, dated 6 July 2021, which Judge Sangha used as the starting point, as required by *Devaseelan* and endorsed in subsequent decisions and judgments.
 - (b) When Judge Sangha's decision is read as a whole, it is clear he was aware of the case presented by the Appellant and her daughter.
 - (c) The judge considered whether the additional medical and expert evidence established a material change in circumstances requiring him to depart from the previous findings.
 - (d) The more recent medical evidence did not depart significantly from that previously considered and it was open to the judge to decide there was no material change.

- (e) The passage of time did not show any significant changes relating to the best interests of the appellant's children and it was open to the judge to decide there was no material change.
 - (f) The approach to article 8 and the assessment of proportionality, although brief, were sufficient in the circumstance given the other findings that had already been made.
5. Mr Ul-Haq amplified the grounds of application, and the key points of his submissions were as follow.
- (a) Judge Sangha did not have a full copy of Judge Shepherd's decision and reasons and therefore his conclusions were drawn from the extracts provided by the Secretary of State in the reasons for refusal letter, which meant Judge Sangh's findings were unsound.
 - (b) Judge Sangha failed to assess the fresh evidence, particularly that of Mr Fezulla, who provided an expert opinion about whether the appellant and her eldest daughter face a real risk of persecution in Albania because of the daughter's visible disability. In particular, the judge erred in concluding that the expert based his assessment on the testimony of the appellant and her daughter, when the expert clearly was examining objective evidence from independent sources.
 - (c) Judge Sangha's fixation and one-dimensional approach towards the appellant's previous adverse credibility findings pervades the determination and infects many aspects. In so doing, he failed to recognise the fresh nature of the claim, which was based on the risk of persecution arising because of the daughter's disability. As a result, he failed to make findings on whether the appellant's daughter fears persecution because of her disability and whether such fear was objectively well-founded.
 - (d) Judge Sangha failed to undertake the necessary proportionality assessment when reaching a conclusion on Article 8. In particular, he failed to have regard to the three years that had passed since the previous decision, which were particularly relevant given the ages of the appellant's children, and which required a broader assessment of the current circumstances.
6. Ms Gilmore added to her earlier submissions, reminding me that in paragraph 1 of his conclusions, Mr Fezulla relied on the account given by the appellant alongside objective evidence.

Analysis of Judge Sangha's decision

7. I have examined for myself the findings Judge Sangha made. As indicated by the sub-heading, they begin at paragraph 11 and run through to paragraph 31.
- (a) At paragraph 11, Judge Sangha accepted the evidence of the appellant's date of birth and nationality. These are not in dispute.

- (b) At paragraph 12, Judge Sangha identified that the second appeal was based on a different basis to the first appeal in that it was not focused on the appellant being a lone woman who had experienced domestic violence but on her eldest daughter's disability. Linking to this identification of the issues to be decided, at paragraph 15, Judge Sangha lists the elements of the current claim as including, (i) fear of her husband's family, (ii) fear linked to being a lone woman, (iii) the medical condition of her daughter, and (iv) social stigma arising from disability.
- (c) At paragraph 13, Judge Sangha recalled *Devaseelan* and set out the key principles he would have to apply. At paragraphs 14, 16 and 17, Judge Sangha identified the findings of Judge Shepherd that the appellant was lacking in credibility and had not made out her case based on being at risk from her husband's family. Judge Sangha found no reason to depart from the previous findings.
- (d) At paragraphs 18 and 19, Judge Sangha reviewed the background country information to see whether there had been a material change since Judge Shepherd's decision regarding the risks facing lone women in Albania and concluded this was not the case. Judge Sangha concluded there was no reason to depart from the previous findings.
- (e) At paragraphs 20, 21 and 22, Judge Sangha reviewed whether the social stigma and discrimination the appellant and her eldest daughter might face on return. He concluded that the evidence did not establish that the level of stigma or discrimination would reach the threshold of persecution or serious harm. Judge Sangha considered the current claim in light of the previous findings and concluded there was no material change because the evidence he had did not demonstrate that the appellant or her daughter were at greater risk than the general female population. Judge Sangha also concluded that the appellant would have access to State protection and internal relocation.
- (f) At paragraphs 23 and 24, Judge Sangha brings these different threads together and concludes that the appellant is not a refugee.
- (g) At paragraphs 25 to 30, Judge Sangha turned to the appellant's private and family life claim. He considered the current circumstances to see if any part of the immigration rules were engaged and concluded they were not. He went on to assess the reasonableness of requiring the children to leave the UK and explained why it was, considering the situation both in the UK and in Albania.
- (h) As part of this assessment, at paragraphs 27, 28, 29 and 30, Judge Sangha focused on the medical needs of the appellant's eldest daughter and concluded that these were not so significant and to engage article 3 or article 8.

Legal framework

8. I recall the Court of Appeal's judgment in *Volpi v Volpi* [2022] EWCA Civ 464, which set out the following general principles at paragraph 2.
 - i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
 - ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
 - iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.
 - iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.
 - v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.
 - vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract.
9. Similar points were made more recently by the same Court in paragraph 26 of *Ulla v SSHD* [2024] EWCA Civ 201.
10. I also have regard to the Senior President of Tribunals Practice Direction of 04/06/2024 on Reasons for Decisions particularly paragraph 8, which states:

Judges and members in the First-tier Tribunal should expect that the Upper Tribunal will approach its own decisions on appeal in accordance with the well settled principle that appellate tribunals exercise appropriate restraint when considering a challenge to a decision based on the adequacy of reasons. As the Court of Appeal has emphasised, a realistic and reasonably benevolent approach will

be taken such that decisions under appeal will be read fairly and not hypercritically.

My findings

Grounds 1 and 4: error in the application of Devaseelan

11. I begin by recording that Mr Ul-Haq did not pursue the question of whether Judge Sangha had sight of the whole of Judge Shepherd's decision. The fact it was in the hearing bundle is strong evidence to the contrary, particularly as Judge Sangha references having regard to the hearing bundle in paragraph 4(i) of his decision. Furthermore, at paragraph 6, Judge Sangha gives the date of the previous decision (26 July 2021), which does not appear in the Secretary of State's refusal decision, which again points to Judge Sangha having sight of the full document. I am satisfied that the allegation that he did not have access to the full document is misplaced.
12. The written grounds of appeal focus on two other matters in respect to Judge Sangha's approach to *Devaseelan*. First, what regard did he have to the report from Mr Fejzulla? Second, did he fail to understand the basis of the fresh claim and thereby misdirected himself by placing too much weight on the previous adverse credibility findings? In his oral submissions, Mr Ul-Haq focused on the first of these matters.
13. I have examined the report provided by Mr Fejzulla and accept that on the second page, Mr Fejzulla states that he is providing an independent assessment of all the facts and circumstances uninfluenced by the appellant, her legal advisers or any of her family members. Although Mr Ul-Haq presented this as meaning that Mr Fejzulla's report cannot be characterised as being all based on the testimony of the appellant and her daughter, as Judge Sangha stated in paragraph 30, that is not a fair approach to Mr Fejzulla's report. Mr Fejzulla's instructions, as recorded on page 3 of his report, were to provide background information drawn from a variety of independent sources to indicate what risks the appellant and her daughter might face in Albania if their accounts were accurate. That this was his approach is confirmed, as Ms Gilmore reminded me, in paragraph 1 of the conclusions on page 37.
14. I recognise that Judge Sangha does not refer to Mr Fejzulla's report until paragraph 30 of the decision, which is at the end of the decision and when Judge Sangha is considering the daughter's article 3 rights. The question, therefore, is whether there is sufficient in the decision to show that Judge Sangha considered the contents of the report elsewhere in reaching his findings. After carefully analysing the decision, I am satisfied there is sufficient indications. For example, in paragraph 20, Judge Sangha refers to there being "no cogent fresh evidence" and in paragraph 21 to the appellant's "further submissions". These are clear pointers that Judge Sangha was having regard to the contents of the hearing bundle, which he mentioned at paragraph 4.

15. In addition, I am unable to identify any matter in Mr Fejzulla's report that has not been adequately considered and decided by Judge Sangha. For example, Judge Sangha applied the correct legal approach to deciding whether the lack of medical facilities in Albania posed a real risk of persecution or serious harm to the appellant or her daughter, and concluded the evidence merely showed difficulties in accessing them. Judge Sangha accepted that the appellant's daughter would be likely to encounter disability discrimination but that such discrimination did not reach the threshold to be regarded as persecution or serious harm. Judge Sangha found the risks of the appellant's daughter being trafficked was dismissed as being speculative and failing to take account of the available protection, including from her family. Similarly, Judge Sangha rejected the allegations that the appellant and her children would not be able to relocate within Albania, as well as the concerns about the wellbeing of the appellant's children. As a result, I conclude that the arguments focusing on Mr Fejzulla's reports are merely a request that Judge Sangha should have made greater specific reference to it in his decision. Such a request does not identify legal error.
16. I move on to the question of whether Judge Sangha erred by not reviewing the adverse credibility findings made by Judge Shepherd. As my analysis of the decision shows, Judge Sangha deals at several points with the new elements of claim. However, he also recognised that the appellant and her daughter were seeking to present these as additional elements of claim and that they continued to pursue the issues relating to fear of the husband's family and risks associated with being a lone female. As far as the claims were rehearsing what had already been determined, Judge Sangha was correct to reject those elements. In respect of the new elements, it is evident Judge Sangha did not rely on the past adverse credibility findings. He accepted that the appellant's daughter was likely to experience disability discrimination and difficulties accessing medical treatment. These are positive factual findings and mean it is wrong to characterise Judge Sangha as being fixated on the adverse credibility findings previously made. I add that it was open to Judge Sangha to find that the accepted facts were insufficient to reach the relevant threshold to engage the UK's duty to protect people from other countries by providing refuge.

Ground 2: error in not finding the risk of disability discrimination would amount to persecution

17. The second ground falls away given the findings I have made about Grounds 1 and 4. Judge Sangha adequately address the issue of persecution arising from disability discrimination, concluding that although there is evidence that it is reasonably likely the appellant's daughter will encounter disability discrimination in Albania, the level of such discrimination could not be said to reach the threshold of what is serious harm. That was a finding open to Judge Sangha and the fact the appellant and her daughter disagree is insufficient to identify legal error.

Ground 5: error in the proportionality assessment

18. As to the fifth ground, having regard to paragraphs 25 to 28 of the decision, I am satisfied that Judge Sangha made adequate findings in respect of the appellant and her children's rights to private and family life.
19. Judge Sangha mentions the children's ages and considers the social ties and relationships they have established since being in the UK. He also considers the situation to which they would return in Albania. Towards the end of the paragraph, he balances the children's own circumstances with the fact the appellant has not succeeded in her protection claim, and that irrespective of the ties and relationships they have established, it would not be in their best interests to remain in the UK if their mother cannot stay here.
20. In paragraph 26, Judge Sangha considers the appellant's own position in respect of article 8 within the immigration rules. In paragraphs 26 and 27, he considers whether there are any exceptional circumstances that would justify allowing the appeal on article 8 grounds outside the immigration rules. His use of terms such as "unjustifiably harsh consequences" is a clear indication of a proportionality assessment, particularly because paragraph 28 is a further consideration of the application of article 8 outside the rules.

Conclusion

21. Overall, I find the grounds can be categorised as being disagreement with the judge's findings and / or a request for additional reasons. Neither identifies legal error. As all the grounds of appeal fail, the decision of First-tier Tribunal Judge Sangha is upheld.

Notice of Decision

The appeal is dismissed because there is no error of law in the decision.

The decision and reasons of First-tier Tribunal Judge Sangha is upheld.

Judge John McCarthy

Deputy Judge of the Upper Tribunal

Date: 17 June 2024