



Upper Tribunal

(Immigration and Asylum Chamber) Appeal Number: PA/06769/2018

THE IMMIGRATION ACT

**Heard at Civil Justice Centre
Manchester**

On 14th June 2019

**Decision & Reasons
Promulgated**

On 09th July 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

SS

(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Jorro Counsel instructed by Prestige Solicitors

For the Respondent: Mr Tan Senior Home Officer Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge O Williams promulgated on the 24th October 2018 whereby the judge dismissed the appellant's appeal against the decision of the respondent to refuse the appellant's protection claim.
2. I have considered whether or not it is appropriate to make an anonymity direction. Having considered all the circumstances including the fact that an anonymity direction was made in the First-tier Tribunal, I consider it appropriate to make an anonymity direction.
3. Leave to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Baker on 13 November 2018. Thus the case appeared before me to determine whether or not there was a material error of law in the decision.
4. The appellant, date of birth 12 April 1992, is a citizen of Bangladesh.
5. The appellant had entered the United Kingdom on 30th August 2011 on a student visa valid until November 2014. The appellant's student visa was extended until 17 August 2016.
6. On 16 August 2016 the appellant applied for leave outside the rules on the basis of private life in the United Kingdom. This was refused on 31 October 2017.
7. The appellant applied for asylum on 27 November 2017. That application was refused on 17 May 2018. It is against that decision and the appellant was appealing.
8. In support of her appeal the appellant claimed that :
 - a) Her father had run a shipping business but he had died at sea in 1995 and the father's family had taken over the running and control of the business.
 - b) When the appellant was aged between 6 and 8 a paternal cousin began to abuse her. The abuse continued for several years.
 - c) The appellant told her mother about the abuse when she was 10 or 11 but the mother did not believe her and took no action.
 - d) The appellant subsequently repeated the claims of abuse and her mother told her not tell anyone.
 - e) Ultimately when the appellant maintained her claims of abuse and when she was 15, in or about 2007, her mother believed her. At that stage the family, including the appellant and her mother, relocated in Bangladesh and the abuse ceased. However there is a claim that there was a degree of antipathy between the appellant, her immediate family and/or maternal family on the one side and the paternal family because of the abuse.

- f) Thereafter there was a land dispute between the appellant's mother and other family members which was pursued through the Bangladeshi courts. It was being alleged that a stranger was seeking to reclaim or claim land belonging to either the mother or the family.
 - g) The appellant claims that on return she would be at risk from her father's relatives by reason of her having made allegations of abuse, from the people seeking to claim land from the family and that otherwise as a single woman without a male guardian in Bangladesh she would be at risk.
9. To the benefit of the appellant the judge has in paragraph 13 and in paragraph 15 made findings that:-
- a) the appellant had been the victim of sexual abuse in the past; and
 - b) That there was a land dispute, between members of the appellant's family and the paternal side of the appellant's family.

I see no reason why, given that the judge has correctly approached the facts in respect of those issues and has given valid reasons for making the findings of fact that he has, those findings of fact should not stand.

10. I would also note consistent with paragraph 17 of the decision that there is no reason not to maintain the finding that it reasonably likely that the paternal side of the appellant's family in Bangladesh cannot be relied upon to provide protection or take the role of a male guardian for the appellant.
11. With regard to the issues of whether or not the appellant would continue to be at risk from her paternal family by reason of the allegations of sexual abuse in the past and the antipathy from the paternal family; or otherwise whether she would be at risk by reason of the alleged land disputes; or whether otherwise the appellant would be at risk as a lone woman being returned to Bangladesh, the judge in approaching the issues has sought to apply the asylum standard of proof but in doing so has reversed the burden and standard of proof.
12. In paragraph 17 the judge has found that it is not reasonably likely that the appellant would be without support from her maternal family. The judge in giving reasons for that finding has made findings to a reasonable degree of likelihood against the appellant.
13. Similarly in paragraph 20, the judge has found that it would be reasonably likely that the appellant could live with her brothers in-laws. With respect that is not asking the correct question, which should be whether it was reasonably likely that the appellant would not have male support and protection and was it reasonably likely

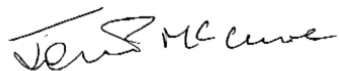
that she could not live with family members. If the answer to that question was that it was reasonably likely that she would not have male support or that there was a reasonable likelihood that she could not live her brothers-in-law, the appellant may succeed.

14. It still may be the case to the lower standard that there may be a reasonable likelihood that the appellant could live with her brothers-in-law but the asylum standard applies to the benefit of the appellant.
15. The same issue could be taken in respect of paragraph 21 where it is found to a reasonable degree of likelihood that the appellant could live with a maternal uncle. In using the asylum standard in making findings adverse to the appellant the judge has approached issues that go to the core of the claim to asylum by reversing the burden and standard of proof.
16. In applying the standard of a reasonable degree of likelihood to the issues in the case the judge has approached the question from the wrong standpoint. In so doing he has effectively reversed the burden and standard of proof. That is a clear error of law and is material to the outcome of the appeal.
17. Whilst the findings of fact set out above should stand, it still to be determined whether or not the appellant has proved to the required standard that she would be at risk of further sexual mistreatment or because of the allegations in the past at risk of mistreatment because of it; that she would be at risk by reason of the land dispute; or that she would not have the protection of male members of the maternal side of her family and thus would not be alone woman returning to Bangladesh without a male guardian.
18. Accordingly for the reasons set out there are material errors of law in the decision. Save for the findings of fact identified and preserved, it is necessary for a further hearing to determine the remaining issues in the appeal.
19. I have considered how best to deal with those issues. I have determined that the appropriate course is for the matter to be remitted to the First-tier Tribunal and for the case to be list for a further hearing where evidence on the issues identified can be considered.

Notice of Decision

20. I allow the appeal to the extent that the decision of the First-Tier Tribunal is set aside.
21. I direct that the case is remitted to the First-tier Tribunal for determination of the issues in the case save for the findings preserved.

Signed

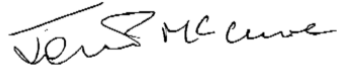


Deputy
Date 3rd July 2018

Upper Tribunal Judge McClure

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 appellant's family. This direction applies both to the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings



Signed

Date 3rd July 2018

Deputy Upper Tribunal Judge McClure