



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

Appeal Number: AA/09766/2013

THE IMMIGRATION ACTS

Heard at Field House

On 21 January 2015

**Decision & Reasons
Promulgated**

On 3 February 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**NN (BANGLADESH)
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Ms S Vidyadharan, Specialist Appeals Team

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal dismissing her appeal against the decision by the Secretary of State to refuse to recognise her as a refugee as otherwise requiring international or human rights protection. The First-tier Tribunal made an anonymity direction, and I consider it is appropriate that the appellant should continue to be accorded anonymity in these proceedings before the Upper Tribunal.

2. The appellant is a national of Bangladesh, whose date of birth is 26 October 1995. The appellant arrived in the UK on 30 November 2011 with her mother and brother. She had been issued entry clearance as a visitor, and her visit visa was valid until 14 May 2012. The appellant applied for settlement as the dependant of her aunt and grandmother in the UK. The settlement application was refused on 23 January 2013. The appellant lodged an appeal against the decision, but then withdrew the appeal. The appellant claimed asylum on 13 June 2013, at which point she was still a minor, being six months short of her 18th birthday.
3. She was interviewed about her asylum claim on 12 August 2013. Her core claim is set out in a witness statement which she had made in support of the application for settlement. In that statement, she said that her mother and brother had gone back to Bangladesh on 26 January 2012. She did not leave the UK with them at her aunt's request. Her aunt wanted her to stay longer, and her mother agreed to let her stay longer, as she knew that she needed a change of environment from everything that had happened to her in Bangladesh. On 28 April 2011 she had been abducted by a group of men in the presence of her father as she arrived home from college. The men forced her into a vehicle and pressed a handkerchief over her face until she became unconscious. When she regained consciousness, she realised she was in Chittagong. She was then taken to a hotel room. The last thing she remembered before losing consciousness again was someone sticking a needle in her arm. When she regained consciousness, she noticed she was in a different place. She was injected again, and lost consciousness. When she regained consciousness, she begged one of the men to let her go. The men started kicking and hitting her. She was injected again and became unconscious. When she regained consciousness, she realised her hair was cut and her eyebrows felt different. She was also wearing new clothes. She was taken to a brothel and she understood that the men wanted to sell her. She was injected, and fell unconscious. When she regained consciousness, she realised she was in Dhaka. Her relatives walked in and rescued her from there.
4. At the asylum interview, she was asked why she had not claimed asylum at the beginning (Q and A 101). She answered that when she first came here, she only wanted to visit her grandmother. After that she felt happy here, so she wanted to stay here.
5. On 21 October 2013 the Secretary of State gave her reasons for refusing to recognise the appellant as a refugee, as otherwise requiring international or human rights protection. In her witness statement she had given a relatively detailed account of the day of her abduction, as well as providing the specific date it happened. But in her asylum interview she could not provide any details when asked, and could not remember the date it happened. It was acknowledged that a person experiencing something so traumatic might have difficulty remembering all the details of what happened to them. But if a person had given a detailed account once, it was reasonable to expect that person to be able to recall to the

same level of detail again. Not only did her memory of her experiences appear to vary each time she gave evidence, it apparently diminished to the point when she could not even remember what she had said in her witness statement.

6. In her interview she claimed she could not remember where she was taken when abducted, yet throughout her witness statement she had provided a detailed account of each of the locations she had been taken to, including Chittagong, Coxebazar and Dhaka. In her asylum interview she said she did not know any of the men that took her; she had never seen them before and had no idea why they targeted her. But in her father's statement to the police he said he had come to know from his daughter's friends that the number one defendant SH very often used to tease and offer love to his daughter; and when his daughter did not agree to these offers from SH, they took her away forcefully by abducting her in front of him. Also, in her own police statement she had referred to SH and had said that her relatives, the police and her father had rescued her from the house of BN.
7. So it was not accepted that she was abducted in 2011, and it was not accepted that her family had been experiencing any continuing harassment as a result. But even considering her claim at its highest, she would not in any event be at real risk of persecution or serious harm on return to Bangladesh as there was sufficiency of protection. She had not demonstrated that the Bangladeshi authorities were unable or unwilling to provide protection against persecution or serious harm.
8. She had submitted a medical report by Dr Clare Arnold in support of her claim. Dr Arnold concluded she was suffering from PTSD and a major depressive disorder. The Bangladesh COIS Report detailed the various options for mental health care in Bangladesh. The list of essential medicines available in Bangladesh included anti-psychotics, anti-depressants and mood stabilisers.

The Hearing Before, and the Decision of, the First-tier Tribunal

9. The appellant's appeal came before Judge Oakley sitting at Hatton Cross in the First-tier Tribunal on 23 January 2014. Both parties were legally represented. The judge received oral evidence from the appellant and from her maternal uncle. He said he was in Bangladesh in 2011 when she was abducted, and had taken part in a police manhunt to find her. It took them nine days to find the appellant. He said he had to pay a lot of money to track down the suspects, and the appellant was eventually tracked down to a brothel. He confirmed that the suspects had been arrested, but there was a trial in Bangladesh that was ongoing. The judge also received oral evidence from the appellant's maternal grandmother, and from two maternal aunts.
10. The judge's findings and conclusions were set out in paragraphs 32 onwards of his subsequent decision. The judge did not find the appellant

credible. His first reason was that it was quite extraordinary, if the account was true, that her parents would *wait* to take her out of the country; and once they had brought her to the United Kingdom they would not have got her to claim asylum *at the first opportunity*.

11. He found that her credibility was further damaged by the fact that a claim for settlement was made, rather than a claim for asylum; and that the asylum claim had only been made after the settlement application had been rejected. The whole process of making an asylum claim led him to the conclusion that the whole account had been concocted with a view to enabling the appellant to settle permanently in the United Kingdom possibly for educational purposes.
12. The judge then referred to what he said were numerous inconsistencies in the appellant's account which had been rightly highlighted and detailed in the decision letter.
13. At paragraphs 46 and 52 the judge considered the medical reports of Dr Arnold and Dr Kramer, and a letter dated 22 January 2014 from the appellant's course tutor and lecturer. He found that the report from the educationalist had painted a very different picture of the appellant, and he reached the conclusion that the appellant was frankly trying to pull the wool over the doctor's eyes. She might well be anxious about her current immigration status in the United Kingdom, and he could completely understand that. But this did not arise as a result of any events that occurred in Bangladesh, but simply as a result of her uncertain immigration status.

The Application for Permission to Appeal

14. The appellant's legal representatives applied on her behalf for permission to appeal to the Upper Tribunal. Ground 1 was that the judge had misdirected himself in law regarding the assessment of the appellant's credibility. Although she was an adult when she gave evidence before Judge Oakley, she was a child when the events which triggered her protection claim occurred. She was also a child when she entered the UK, and when an application was made for settlement on her behalf, and still a child when she was interviewed by the respondent in connection with her asylum claim. Although she was interviewed in the presence of a responsible adult, the decision of the Secretary of State made no allowances for the fact that the appellant's account was the account of an asylum seeking child.
15. Ground 2 was the judge had erred in assessing the significance of the appellant's delay in claiming asylum. The judge had been wrong to find that the appellant's delay in claiming asylum was totally unexplained. The judge failed to have regard to the appellant's initial witness statement at section B of the respondent's bundle, where she explained that her mother had made her promise not to tell anyone in the UK or Bangladesh about her abduction. The judge also failed to have regard to **JT (Cameroon)**

[2008] EWCA Civ 878 on the proper application of Section 8 of the 2004 Act.

16. Ground 3 was the judge failed to have regard to material matters in assessing the mental health evidence. The judge considered that Dr Arnold, unlike Dr Kramer, had failed to consider whether the appellant's presentation might be attributable to uncertainty over her immigration status. In so concluding, the judge had failed to have regard to the entirety of Dr Arnold's report. Dr Arnold was well aware of the changes in the appellant's presentation over the preceding year. She documented her initial presentation, her improvement through treatment, and the worsening of her condition as the uncertainty of her immigration status increased. There was therefore no contrast between the reports of the two mental health practitioners. Dr Kramer's focus was on the situation in January 2014, whereas Dr Arnold's was on the appellant's presentation throughout her initial assessment and subsequent treatment.

The Eventual Grant of Permission

17. Permission to appeal was refused by the First-tier Tribunal, but on a renewed application to the Upper Tribunal, permission to appeal was granted by Upper Tribunal Judge Rintoul on 1 May 2014 for the following reasons:

It is arguable that First-tier Tribunal Judge Oakley erred in failing to have regard to the appellant's age when assessing her initial statement, and in his approach to Section 8 of the 2004 Act. Permission is granted on all grounds.

The Rule 24 Response

18. On 30 May 2014 a member of the Specialist Appeals Team settled the Rule 24 response opposing the appeal. In summary, the First-tier Tribunal Judge had directed himself appropriately and had made reasonable and sustainable findings that were open to him on the evidence. The judge had given himself the appropriate self-direction concerning the appellant's age and the need to exercise caution when assessing credibility. He had done this at paragraphs 12 and 14 of his determination. The determination was not vitiated by any errors of law capable of having a material impact upon the outcome of the appeal.

The Hearing in the Upper Tribunal

19. At the hearing in the Upper Tribunal there was no appearance by or on behalf of the appellant. In a letter dated 19 January 2015 the appellant's solicitors, Maalik & Co, noted that the appeal was listed for hearing on 21 January 2015, but informed the Upper Tribunal that they were without instructions in relation to the hearing. Accordingly, they would not be attending it.

20. Ms Vidyadharan submitted that the appeal should be dismissed for the reasons given in the Rule 24 response.

Discussion

21. The judge did not expressly remind himself that the appellant was a child under the age of 18 at the various stages referred to in the application for permission to appeal, beginning with the alleged incident in April 2011. But on the particular facts of this case, the absence of such an express self-direction does not translate into a material error of law.
22. In 2012 the appellant gave a detailed and coherent account of her alleged experiences in Bangladesh. She was sufficiently mature and well educated to be able to give such an account, which was in any event capable of corroboration by responsible family members who had direct knowledge of the core claim, such as her father.
23. The credibility challenge as to the reliability of the appellant's account of her experiences in Bangladesh rested on stark inconsistencies between the witness statement and the appellant's performance in interview (by which time she was close to the age of 18); and not upon discrepancies which might reasonably be attributed to the appellant's lack of maturity, either at the date of the incident in 2011 or at the date of the interview in August 2013. Moreover, the stark inconsistencies were not simply between accounts given by the appellant at different times, but also between the account given by the appellant and the account given by her father.
24. Section 8 of the 2004 Act provides that in determining whether to believe a statement made by or on behalf of a person who makes an asylum claim or human rights claim, the deciding authority shall take account, as damaging the claimant's credibility, of any behaviour to which this Section applies. Subparagraph 2 states that the Section applies to any behaviour by the claimant the deciding authority thinks -
- (c) is designed or likely to obstruct or delay the handling or resolution of the claim or the taking of a decision in relation to the claimant.

SubSection 5 states that the Section also applies to a failure by the claimant to make an asylum claim or human rights claim before being notified of an immigration decision, unless the claim relies wholly on matters arising after the notification.

25. The behaviour of the appellant in entering the United Kingdom as a visitor, and not making an asylum claim until some months after her application for settlement had been rejected, plainly falls within the scope of Section 8. The judge was bound to take account of such behaviour as damaging her credibility. The judge correctly directed himself as to Section 8 at paragraph 14 of his decision. He did not add the gloss that he had discretion as to how much *weight* he attached to any behaviour which

came within the scope of Section 8. But the judge was not bound to add this gloss. Moreover, it is apparent from his line of reasoning that the judge did not need to be prompted by Section 8 to find that the appellant's credibility was damaged by her behaviour in not claiming asylum earlier.

26. It is argued on behalf of the appellant that the judge should have given no weight at all to the appellant's delay in claiming asylum because (a) she was at all material times a child; and (b) in her initial witness statement she claimed that her parents told her not to tell anyone about the terrible incident which had occurred in Bangladesh, not even their relatives in Bangladesh or in the United Kingdom.
27. The judge was not bound to make a specific finding on this particular explanation, especially as it was only a partial one. Even if it was taken at its face value, it did not explain why the appellant had disclosed the alleged incident as part of a settlement application, rather than making a claim for asylum.
28. Moreover, by the time of the hearing before the First-tier Tribunal, there was a considerable amount of additional evidence which undermined the explanation. The additional evidence included the fact that there had been initial court hearings in the criminal prosecution of the suspects *before* the appellant had travelled to the United Kingdom on a visit visa. As male members of the appellant's family had assisted in the manhunt, and as the alleged incident had led to criminal proceedings conducted in public in Bangladesh, it is not credible that relatives in the UK would not have been aware of the alleged incident by the time the appellant arrived here.
29. At paragraph 16 of her initial statement the appellant said that when she came to the United Kingdom she was still extremely scared "but my aunties told me that I was finally safe here and no-one was going to kidnap me". This suggests that her relatives in the UK were already aware of the incident before she arrived here.
30. In her substantive asylum interview the appellant did not repeat the explanation that the reason for her not claiming asylum earlier was that she had been sworn to secrecy by her mother.
31. Although Judge Rintoul granted the appellant permission to appeal on all three grounds raised, he did not indicate that he found any intrinsic merit in ground 3.
32. The appellant's argument on ground 3 ignores the fact that the dichotomy upon which the judge placed the greatest weight was not the difference of emphasis in the two medical reports, but the striking contrast between the appellant's demeanour and presentation as reported by, on the one hand, her tutor and, on the other hand, the two doctors. It was open to the judge to find that the appellant had feigned her reported symptoms of PTSD for the reasons he gave.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and the decision stands. This appeal to the Upper Tribunal 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

Date **2 February 2015**

Deputy Upper Tribunal Judge Monson