



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/02303/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 14<sup>th</sup> April 2016**

**Decision & Reasons**

**Promulgated**

**On 29<sup>th</sup> April 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE**

**Between**

**MISS SUNITA SHAH**

(ANONYMITY DIRECTION NOT MADE)

Appellant

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Collins, Counsel instructed by OTS Solicitors

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

**DECISION AND REASONS**  
**EX TEMPORE JUDGMENT**

1. The Appellant contends that there is error in Judge Mailer's decision promulgated on 26<sup>th</sup> August 2015 in which he dismissed her appeal brought on Immigration Rules' grounds in respect of paragraph 276ADE and Appendix FM, Asylum and Articles 2, 3, and 8 ECHR.
2. The grounds contend that the judge has failed to engage with the Appellant's asylum claim or Ground of Appeal as it was raised in relation to Section 120 and that the judge considered that she had made no

application for asylum to the point that he refused to deal with it. The grounds further contended that the judge's approach in respect of Article 8 was inadequate failing to make findings in respect of family life in the context of Kugathas v SSHD [2003] EWCA Civ 31 and Singh and Others v SSHD [2015] EWCA Civ 630 and that the judge failed to follow the structured approach suggested in Razgar v SSHD [2004] UKHL 27.

3. Permission was granted by the First-tier Tribunal and in a notice dated 23<sup>rd</sup> February 2016 Judge Simpson having accurately summarised the Appellant's grounds at paragraph 2 considered the same and at paragraph 3 and 4 of that notice found:

“3. It is clear that the Appellant's Section 120 notice contained claims for humanitarian protection and asylum. Consequently, it is arguable that the judge erred in failing to deal with those claims save for the statement ‘the Appellant had made no application for asylum’.

4. The grounds and decision identify an arguable material error of law.”

4. The first point that I want to deal with is that Mr Collins argued before me that the grounds and the grant were such that it was open to him to argue the permission encompassed the Article 8 issues which had been raised.
5. I disagreed with that position finding that the grant is clearly directed to the issue raised in respect of the asylum claim as set out at paragraph 3 of those grounds and at paragraph 4 when the judge is referring to the arguable material error of law it is quite plainly in the context of a conclusion that reads back to the earlier paragraph.
6. I turn to the issue in respect of the asylum position.
7. In terms of the summary of the Appellant's Grounds of Appeal the judge notes at paragraphs 11 and 12 the inclusion of the international protection grounds which, in summary, represent the full suite of grounds available. At paragraph 20 the judge sets out that the Appellant had, in making her assertion of difficulties in respect of return relating to private and family life which fell for consideration under paragraph 276, asserted matters which the Respondent advised her were international protection matters, requiring further application.
8. In the event the Appellant did not make such an application. That is accurately recorded by the judge at paragraph 185 of the decision where he states:
  - (a) “The Appellant has made no application for asylum.”
9. It is clear that the judge is referring to the factual position in the context of no application having been made historically because paragraph 185 appears in the context of a historical resume of the Appellant's claims and history in the United Kingdom.

10. Further, it is accurate because the Appellant had not made a claim for asylum but raised asylum grounds of appeal by way of a Section 120 notice. The judge has correctly identified elsewhere (including [11] and [12]) that the ground was before him.
11. The judge assesses the context of the Appellant's claim at paragraph 31 when he sets out that she is scared and in fear of her life if returned to Nepal on the basis that she thinks that it would not be safe for a single woman to live alone. Indeed that is the context of the claim which was relied on before me by Mr Collins when he argued that the judge had failed to assess that subjective fear. The final part of the Appellant's asylum or international protection claims argued at the First-tier were that as a result of earthquakes the Appellant would be homeless, or as a result of her own financial position, she would be homeless.
12. At paragraph 70 of the decision the Respondent's contention that the Appellant's fear about being destitute and forced to become a prostitute had not been made out is assessed. The contention was made in the context of the Appellant having family resources and the absence of country information of single women being driven to prostitution. The decision records the Respondent's reminder to the judge that no specific vulnerability had been asserted by the Appellant, that the Appellant had been in Nepal on her own, in the sense of her parents having arrived in the United Kingdom between 2000 and 2007, and that the sisters had gone into a hostel to study, and of the Appellant having a work history here and in Nepal.
13. The judge refers to the matter again at paragraph 218 in the context of the position on return referencing the earthquake, the lack of evidence that it would force problems in terms of reintegration, and the strength of her background in terms of having lived in that country as an adult and being familiar with the context of the country. The judge finds that the Appellant would have the assistance of her parents as well as other relatives in the United Kingdom until she was able to find her feet and obtain employment in Nepal, and that the Appellant would be able to obtain suitable rented accommodation :to the point that she would not be destitute or forced into prostitution.
14. In the context of the decision as a whole I am satisfied that the assertion that the judge has failed to give separate reasoning in respect of the Appellant's fear of living alone in Nepal, acknowledged as a subjective fear, falls far short of showing any material error in respect of the assessment of the Appellant's international protection claim.
15. The judge issued a decision dismissing the appeal. In that context it is clear that the appeal that has been dismissed on all of the grounds that had been put forward by the Appellant. I am satisfied that the reasoning as a whole deals adequately with the case as it was argued by the Appellant on the day, and, whilst specific articulation in respect of dismissal with reference to the asylum grounds would have been helpful, the grounds' contention that the judge refused to deal with it as reflected

by the assertion at 185 that the Appellant has made no claim or no application for asylum is not borne out when the decision is read as a whole.

16. The consideration of the Appellant's appeal and assessment of her fear on return and whether or not there is sufficient to warrant the grant of international protection whether on asylum or Article 3 grounds were matters that stood and fell together.
17. The decision dismissing the appeal encompasses all grounds, reveals no error, and it stands.

**Notice of Decision**

18. The appeal is dismissed.
19. The decision of the First -tier Tribunal judge dismissing the Appellant's appeal reveals no material error of law requiring it to be set aside, and it stands.

Signed

Date

Deputy Upper Tribunal Judge Davidge