



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00810/2017

THE IMMIGRATION ACTS

Heard at Glasgow
On 5 October 2017

Decision & Reasons Promulgated
On 6 October 2017

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

R K

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr J Bryce, Advocate, instructed by Anderson Rizwan, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a decision by First-tier Tribunal Judge S Gillespie, promulgated on 22 June 2017.
2. The grounds are (i) failure to have regard to all the relevant medical evidence (the judge referred to only 1 of 5 medical reports) and (ii) failure to have regard to the *Devaseelan* guidelines (the judge observed only guidelines 1 – 3, and not 4 – 5).
3. Mr Bryce argued as follows:

- i. Judge Gillespie approached the case by examining whether there were reasons to differ from the findings in the determination by Judge Lea promulgated on 1 February 2013.
 - ii. Judge Lea did not accept that the appellant had been persecuted by her family in Pakistan.
 - iii. Among the claims made by the appellant was an incident on 6 March 2011, leading to the conception two weeks before she left Pakistan of her daughter, who was born in the UK.
 - iv. The (alleged) perpetrator of the incident of 6 March 2011 was not a family member, so Judge Lea had made no finding on that issue.
 - v. That issue was at large for Judge Gillespie, a new matter which he was bound to examine in light of all the evidence, including the medical reports which had not been before Judge Lea.
 - vi. Abundant background material had been produced to show that PTSD was a likely outcome of such a traumatic event. The medical evidence was quite powerful, in particular a passage in a report by Dr Moore (p.214 of the appellant's FtT bundle) on the effect on the appellant and on her attitude towards her daughter, a telling point. Judge Gillespie gave no separate consideration to that report. He (correctly) cited authority on the limited role of such evidence in testing the truth of an account, but went on to decide the case only by examining whether there were reasons to differ from the findings in the determination by Judge Lea. She had made no findings on this issue. It should have been resolved, and the bearing thereon of the medical evidence should have been assessed.
 - vii. The error was material, because the country guidance of the respondent (pp. 1 – 40 appellant's FtT bundle, ¶2.4.7 and 2.5.4) supported at least a possibility that if the appellant had proved her circumstances as claimed, she might have been found not returnable to Pakistan.
 - viii. The Judge failed to note that there were factual issues not resolved by the previous determination which he was not only entitled but bound to resolve. This fell closest to *Devaseelan* guideline 3. (The same error of approach was in the respondent's decision.)
4. Mr Bryce accepted my observation that his submissions did not follow the line foreshadowed in the grounds, but he said that the grounds were broad enough to accommodate his argument.
 5. Mr Matthews waived any point about the submissions not arising from the grounds. He said that the matter turned on interpreting the determination of Judge Lea, and argued thus:
 - i. Judge Lea said at ¶37, "In the whole circumstances and given the other inconsistencies as narrated in the reasons for refusal letter, I do not accept that the appellant has been persecuted by her family in Pakistan ...".
 - ii. The question was whether that encompassed the incident of 6 March 2011.
 - iii. The alleged perpetrator was not a family member.

- iv. Nevertheless, the appellant's account was narrated and evaluated as a whole, including that incident.
 - v. The appellant said she had been ill-treated from an early age by her step-mother. She was farmed out as slave labour in the house of a family friend. It was in that house that she was allegedly abused. This was part of the overall claim of persecution in a family context.
 - vi. In the account of the evidence by Judge Lea and in her conclusions, the incident was inextricable.
 - vii. Judge Lea comprehensively explained at ¶34 – 36 why the appellant was not found a credible witness, setting out major inconsistencies and other shortcomings over her circumstances and family situation, all of which were just as adverse to the incident of 6 March 2011, a matter which was not advanced for the appellant in isolation from the rest.
 - viii. No challenge had been made to the decision of Judge Lea on the basis that its adverse findings were incomplete, or otherwise flawed.
 - ix. The appellant's account about any incident on 6 March 2011 had plainly been rejected.
 - x. Judge's Gillespie's decision at ¶19 ("voluminous documentation ... relating, among other things, to the nature of PTSD") and 22 ("the doctors who have examined her", plural) was sufficient, and showed that he was aware there was more than one report. The PTSD diagnosis came after Judge Lea's decision, rejecting the incident of 6 March 2011.
 - xi. The reasons given at ¶24 for holding that the medical evidence took the appellant no further were pithy, but sufficient.
6. Mr Bryce in reply said that the terms of the report by Dr Moore gave cause for careful consideration.
 7. I reserved my decision.
 8. Mr Bryce's interesting and ingenious submission was that the credibility of the alleged incident of 6 March 2011 was for Judge Gillespie to consider for the first time, in light equally of evidence old and new, with no negative starting point. That was arguable on the wording of ¶37 of the determination of Judge Lea, but fully examined, it is unsound.
 9. The determination by Judge Lea was not challenged for being incomplete. It was not suggested that the point now advanced had been stated by the appellant as part of her fresh submissions. It did not occur to the author of the fresh decision. It does not appear in the grounds of appeal to the FtT. It might have been advanced to Judge Gillespie, but was not. If it is in the grounds of appeal to the UT, it is in no more than embryonic form.
 10. Putting ¶37 in context, Judge Lea intended her decision as a rejection of the whole account, including its most serious element. It would have been a major error to make no finding thereon. It has not occurred to any of those who have been

concerned with the case since 1 February 2013 to read her decision any other way, until now.

11. ¶37 comes at the end of a section headed, “My findings of credibility and fact”. It is followed by a section headed, “My conclusions to this appeal”, beginning at ¶38 with the sentence, “I have not accepted the appellant’s account of past persecution in Pakistan”. The Judge did not distinguish between claims of persecution arising within the family and claims outside that context. The alleged incident was encompassed in the finding made.
12. Nothing turns on which of the *Devaseelan* guidelines is most closely in point.
13. The grounds and submissions for the appellant do not show that the making of the decision of Judge Gillespie involved the making of any error on a point of law.
14. The decision of the FtT shall stand.
15. The FtT did not make an anonymity direction. The matter was not addressed in the UT. However, in view of the nature of the case in relation to a young child, I have decided to make such a direction.
16. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her 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.



Upper Tribunal Judge Macleman

6 October 2017