



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/00951/2018

**THE IMMIGRATION ACTS**

Heard at Manchester Civil Justice Centre  
On 4<sup>th</sup> September 2018

Decision & Reasons Promulgated  
On 12<sup>th</sup> September 2018

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**FF**  
(ANONYMITY DIRECTION MADE)

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Miss W Bremang of Counsel, instructed by Buckingham Legal Associates

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against a decision of Judge Raikes (the judge) of the First-tier Tribunal (the FtT) promulgated on 6<sup>th</sup> March 2018.
2. The Appellant is a female citizen of Pakistan born 9<sup>th</sup> December 1979. Her claim for international protection was refused on 17<sup>th</sup> November 2017 and she appealed to the FtT.

3. The appeal was heard on 20<sup>th</sup> February 2018. The Appellant was unrepresented and indicated that she wished the matter to proceed without legal representation. The judge heard evidence from the Appellant and concluded that her claim was incredible. The judge described at paragraph 20 the Appellant's claim as containing inconsistencies, contradictions and implausible statements. The appeal was dismissed on all grounds.
4. The Appellant then instructed legal representatives who applied for permission to appeal to the Upper Tribunal. The grounds are summarised below.
5. It was contended that the hearing had been unfair. The Appellant had sent a fax to the Home Office on 2<sup>nd</sup> February 2018 requesting that she be sent the Home Office bundle. She did not receive this. Her solicitors had ceased to act as she could not afford to pay them, and they refused to provide her with the bundle.
6. It was submitted that because the Appellant did not have access to the documentation relied upon by the Respondent prior to the hearing or at the hearing, this amounted to procedural unfairness. This meant the Appellant was disadvantaged.
7. Reliance was placed upon a judicial review decision by Upper Tribunal Judge Coker, that being R (On the application of Saboun) IJR [2015] UKUT 269 (IAC) in which it was held that a judge had erred in failing to ensure that the reasons for refusal of asylum were properly put to an unrepresented litigant in person.
8. In addition to the challenge as to the fairness of the proceedings, it was submitted that the judge had erred at paragraph 32 in making reference to the "wholly contradictory" nature of the Appellant's claim, and it was submitted that the claim was not wholly contradictory, but the judge had made findings based upon their own perception of plausibility.
9. Permission to appeal was granted by Judge C A Parker of the FtT and I set out below, in part, the grant of permission;

"The grounds allege that the Appellant's representatives stopped acting for her before the hearing; she faxed the Home Office to ask for the HOPO bundle but she had no bundle at the hearing. Her inability to access documents in the HO bundle meant that she did not have an adequate opportunity to address credibility concerns.

The grounds further allege that the judge failed to put credibility issues to the Appellant so that the adverse findings were made in breach of natural justice. A number of the alleged inconsistencies relied upon by the judge were not in fact inconsistencies, the judge required the Appellant to prove a negative and the judge then reasonably found aspects of the Appellant's evidence implausible.

I have carefully considered the decision. There is a duty on the Tribunal to assist unrepresented Appellants and, on the face of it, it was unfair for the Appellant not to have had access to the Respondent's bundle at the hearing.

I have had regard to the decision of the judge, whose credibility findings are detailed and contain reasons. However, there is nothing in the decision to suggest that apparent inconsistencies and implausibilities relied upon were put to the Appellant for comment

or explanation (e.g. findings at paras 22, 23, 24, 25, 27 and 28). Such adverse findings were arguably made in breach of the principles of natural justice and, particularly given that the Appellant was unrepresented, I find this amounts to an arguable error of law. Permission to appeal is granted.”

10. Following the grant of permission the Respondent did not issue a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Directions were subsequently issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision must be set aside.

### **The Upper Tribunal Hearing**

11. Miss Bremang relied upon the grounds together with the grant of permission. It was accepted that the Appellant had agreed to proceed without legal representation, but it was submitted that she was disadvantaged and the hearing was unfair because she had not had an opportunity to consider the documentation contained within the Home Office bundle prior to the hearing or at the hearing. She did not have an opportunity to consider and address the reasons why she had been refused asylum.
12. There was no indication that the alleged inconsistencies found by the judge were put to the Appellant for comment at the hearing.
13. Mr Bates accepted that the fax number on the fax sent by the Appellant on 2<sup>nd</sup> February 2018 was the fax number for the Home Office Presenting Officers’ Unit at Manchester. He confirmed however that the Home Office had no record of receiving the fax. It was confirmed that the Home Office bundle was sent to the Appellant’s representatives on 30<sup>th</sup> January 2018. Mr Bates submitted that paragraph 2 of the FtT decision indicated that the Appellant was aware of the Respondent’s refusal decision and the Appellant was given an opportunity at the hearing to answer questions. If she was telling the truth her answers would have been the same at the hearing as they were in interview. Mr Bates submitted that the FtT decision disclosed no material error of law.
14. In response Miss Bremang submitted that fairness meant that the Appellant should have had an opportunity prior to the hearing to consider the documentation that was to be relied upon by the Respondent before the FtT.
15. At the conclusion of oral submissions I reserved my decision.

### **My Conclusions and Reasons**

16. I am satisfied that the Appellant was initially represented by solicitors, and those solicitors lodged an appeal on her behalf on 19<sup>th</sup> January 2018. I find that the solicitors subsequently ceased acting for the Appellant. The exact date is uncertain, but on 2<sup>nd</sup> February 2018 the Appellant emailed the Tribunal to advise that she was without legal representation. On the same date I am satisfied that the Appellant sent a fax to the Home Office, requesting that she receive the Home Office bundle.
17. I am satisfied that the Appellant did not have the Home Office bundle prior to the hearing of her appeal. There is no indication that this bundle was sent to her by the Tribunal. The Tribunal records indicate that the Tribunal had not received the bundle

by 6<sup>th</sup> February 2018. The Home Office did not send the bundle to the Appellant, as the bundle was sent to her solicitors on 30<sup>th</sup> January 2018.

18. I accept that the solicitors refused to pass the bundle onto the Appellant, on the basis that they required further payment. I note that those solicitors were forced to cease trading by the Solicitors Regulation Authority on 18<sup>th</sup> April 2018.
19. I accept that the Appellant did not request an adjournment of the hearing but agreed to proceed without legal representation. The FtT decision and the Record of Proceedings indicates that the Appellant was then questioned both by the judge, and the Home Office Presenting Officer.
20. At paragraph 20 of the FtT decision, the judge records having compared the Appellant's oral evidence with the written account given in statement and interview form, and "having had that opportunity" did not find the Appellant's claim to be credible.
21. The Appellant had not produced a bundle of documents but had produced what she described as a skeleton argument, which more accurately could be described as a witness statement.
22. The question that I have to decide is whether the hearing was unfair. I am persuaded, given the degree of anxious scrutiny that is necessary when assessing a claim for international protection, and the consequences of refusal of such a claim, that there was unfairness which amounts to a material error of law.
23. I find that the Appellant was disadvantaged by not having access to the Home Office bundle, which contains documentation to be relied upon before the Tribunal, prior to that Tribunal hearing. The Appellant because she was not legally represented may not have appreciated the consequences of proceeding without having had sight of the Home Office bundle.
24. There is no indication that a copy of the Home Office bundle was provided to the Appellant at the hearing. There is no indication that the inconsistencies and contradictions which the judge found, having compared the oral evidence with the evidence given in statement and interview form, was put to the Appellant so that she could have an opportunity to answer the apparent inconsistencies and contradictions.
25. I therefore conclude that the decision of the FtT is unsafe and must be set aside and remade. When I indicated at the error of law hearing that I intended to reserve my decision to reflect upon the submissions that had been made, I canvassed the views of the representatives as to the appropriate course of action if a material error of law was found. The representatives suggested that the appeal must be remitted to the FtT to be heard afresh.
26. Having considered paragraph 7 of the Senior President's Practice Statements, I find that it is appropriate to remit the appeal back to the FtT.

27. The appeal will be heard at the Manchester hearing centre and the parties will be advised of the time and date in due course. The appeal is to be heard by an FtT Judge other than Judge Raikes.

### **Notice of Decision**

The decision of the FtT discloses a material error of law and is set aside. The appeal is allowed to the extent that it is remitted to the FtT with no findings of fact preserved.

### **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 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

Signed

Date 6<sup>th</sup> September 2018

Deputy Upper Tribunal Judge M A Hall

### **TO THE RESPONDENT FEE AWARD**

The Upper Tribunal makes no fee award. The issue of any fee award will need to be considered by the FtT.

Signed

Date 6<sup>th</sup> September 2018

Deputy Upper Tribunal Judge M A Hall