



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

Appeal Number: PA/03799/2017

THE IMMIGRATION ACTS

**Heard at: Columbus House, Decision & Reasons Promulgated
Newport
On: 15 February 2018 On: 9 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

PR

(anonymity direction made)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr J Howard, Counsel instructed by Fountain Solicitors

For the Respondent: Mr I Richards, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Whitcombe in which he dismissed the appeal of the Appellant, a citizen of Cambodia, against the Secretary of State's decision to refuse asylum and issue removal directions.
2. The application under appeal was refused on 5 April 2017. The Appellant exercised her right of appeal to the First-tier Tribunal. This is the appeal

which came before Judge Whitcombe on 16 June 2017 and was dismissed. The Appellant applied for permission to appeal to the Upper Tribunal. The application was granted by First-tier Tribunal Judge Martins on 27 September 2017 in the following terms

“The grounds assert that the judge erred, in not setting out clearly, the evidential basis for rejecting the finding that the significant discrimination the Appellant would encounter, reached the level of persecution or serious harm and that it could cross the threshold from mere discrimination to persecution.

Further it is unclear what the judge meant, when he made the order for Anonymity, that the appellant might suffer harm and might reasonably fear harm, as such a person or persons were not specified.

The assertions made in the grounds are evident on the face of the decision.

They disclose an arguable error of law.”

3. By a rule 24 response dated 8 November 2017 the Respondent opposed the appeal arguing that the Judge directed himself appropriately giving adequate reasons for his decision.

Background

4. The history of this appeal is detailed above. The facts, not challenged, are that the Appellant is a citizen of Cambodia born on 10 May 1985. She is a transgender woman. The Appellant left Cambodia arriving in the United Kingdom on 5 October 2014. She did not have a visa and on arrival was issued with a transit visa valid for 24 hours. The Appellant was encountered on 11 July 2015 and removal directions having been set for 21 July 2015 she claimed asylum on 19 July 2015. The basis of her claim was that she faced persecution in Cambodia as a transgender woman and also feared her father, a person to whom she owed money and traffickers who brought her to the United Kingdom. The Respondent did not accept that the Appellant had a genuine fear of her father or the person to whom she owed money and did not accept that she had been trafficked. The Respondent accepted the Appellant was a transgender woman and that discrimination existed in Cambodia but did not accept that this amounted to persecution.
5. In dismissing the appeal, the Judge found that there was no real risk to the Appellant from her father or the former owner of the salon to whom she owed money. The Judge found her account of being trafficked credible but found that there was no real risk of harm from her traffickers. The Judge found that despite the fact that the Appellant would face significant discrimination existing in Cambodia this did not amount to persecution or a risk of serious harm.

Submissions

6. At the hearing before me Mr Richards appeared to represent the Secretary of State and Mr Howard represented the Appellant. Mr Howard said that the issues were limited. The Judge accepted that the Appellant's account was credible. The issue was whether as a transgender woman the Appellant faced discrimination or persecution. The state authorities are the agents of persecution or are unwilling to provide protection. Mr Howard referred to the expert's report from Dr Tran and Cambodian Centre for Human Rights (CCHR) report in the Appellant's bundle. The CCHR report (page 109 of the Appellant's bundle) shows that in some cases the treatment of transgender women by the police is likely to amount to cruel, inhuman and degrading treatment. The Judge accepts (at paragraph 49-51) that the Appellant is credible throughout. At paragraph 20 of her statement she gives an account of suffering verbal abuse, intimidation and occasional violence. The Judge has not adequately reasoned why the discrimination suffered does not amount to persecution.
7. For the Respondent Mr Richards said this is a detailed determination. The Judge sets out a large amount of the background material considered and comes to a reasoned conclusion. He has not shied away from the fact that there are difficulties. This is dealt with by the Judge at paragraph 63. The Judge does not ignore the difficulties. The Judge directs himself appropriately as to the law. He finds that there is serious discrimination but that it does not reach the level of persecution or serious harm. What is being pleaded is a disagreement as to where the balance should lie. The Judge was fully entitled to reach the conclusion that it does not reach the threshold of persecution.
8. Mr Howard responded to say that the challenge was not just about the reasons given. It should have been clearly shown why the contents of the CCHR report are not accepted. Mr Howard referred to page 100 of the Appellant's bundle. The police and authorities are committing violations of trans women's' rights. There a significant background evidence to show more than mere discrimination.
9. I reserved my decision.

Decision

10. The issues involved in this appeal are limited. The First-tier Tribunal dismissed the appeal finding that the Appellant would not face persecution or serious harm from her father, the person to whom she owed money or her traffickers and that whilst she may face significant discrimination as a transgender woman this would not reach the threshold of persecution or serious harm. The grounds of appeal to the Upper Tribunal (at paragraph 4) specifically limit the appeal to the Upper Tribunal to the last of these findings asserting that the Judge has not given adequate reasons for

finding that the significant discrimination faced by the Appellant as a transgender woman would not amount to persecution or serious harm.

11. I have carefully read the two reports referred to in the grounds of appeal which were relied upon by Mr Howard in his submissions. I have also read the other background evidence contained in the Appellant's bundle. The statement of reasons makes it clear that the First-tier tribunal Judge was alive to and considered these reports and the background evidence.
12. The complaint is that the Judge, having found the Appellant credible and having found that the Appellant as a transgender woman would face significant discrimination on a return to Cambodia found that this discrimination would not reach the threshold of persecution or serious harm. His reasoning is articulated in paragraphs 61-64 by reference to the background evidence. At paragraph 61 the Judge notes the reports but observes "a large majority of transgender women were happy with their lives". This is taken from page 25 of the CCHR Report which shows 86.57% of transgender women surveyed said that they were happy with their current life. Referring to the prevalence of hate crimes against transgender women the Judge noted that the figures came from a study of transgender women involved in the sex industry in Phnom Penh and observed that the Appellant does not propose to work in that industry or to live in that city. This finding is not challenged.
13. The Appellant's account, accepted as credible by the Judge, was not an account of having faced persecution in Cambodia or of having left Cambodia fearing persecution. Having left home the Appellant gave an account of living what appears to have been a moderately settled life for many years and of working in before buying a beauty salon (paragraphs 26-30 of her statement). The only description given by her of harm faced in Cambodia is of suffering verbal abuse, intimidation and occasional violence (paragraph 20 of her statement). There are no specific examples given other than one occasion when the Appellant was slapped in the face and had her hair pulled by a man with whom she declined to dance. I asked Mr Howard if there were any other specific examples when this was raised during submissions he was unable to give any. The Appellant left Cambodia to earn money abroad (paragraph 32 of her statement).
14. In my judgment the First-tier Tribunal has demonstrated that it took the background evidence including the expert's and CCHR reports into account and considered this against the Appellant's personal circumstances including both her account of what had happened in the past and her intentions for the future. Having done so the Judge reached the conclusion that the discrimination that the Appellant was likely to face on a return to Cambodia did not reach the threshold of serious harm and did not amount to persecution. It was a reasoned conclusion that was manifestly open to him and indeed one that was inevitable on the evidence presented. There is in my judgment no error of law.

15. A separate ground of appeal is raised in respect of the First-tier Tribunal's anonymity direction. It is asserted that it is unclear what the judge meant when he referred in the direction to the possibility of the Appellant suffering harm. In my judgement this ground of appeal has no merit. The anonymity direction needs to be read in the context of the appeal as a whole. This is a standard anonymity direction of the kind normally made in protection appeals to which the Judge has added a sentence because of the 'highly personal information' involved.

Summary

16. The decision of the First-tier Tribunal did not involve the making of a material error of law. I dismiss the Appellant's appeal. The decision of the First-tier Tribunal stands.

Signed:

Date: 8 March 2018

A handwritten signature in black ink, appearing to read 'J F W Phillips', written in a cursive style.

J F W Phillips
Deputy Judge of the Upper Tribunal