



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

Appeal Number: PA/03349/2018

THE IMMIGRATION ACTS

**Heard at Cardiff Civil Justice Centre
On 6 June 2019**

Decision & Reasons Promulgated

On 26 June 2019

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**SMA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Meikle, instructed by Bond Adams LLP Solicitors
For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. The appellant is a citizen of Tanzania who was born on 20 March 1988. She arrived in the United Kingdom on 20 August 2017 with a six month business visa.
3. On 15 December 2017, the appellant claimed asylum. The basis of her claim was that she came from a Muslim family and her father was an Imam in the mosque. She had begun a secret relationship with a man, who was a Christian, and as a result of that relationship she had become pregnant. Her parents discovered her pregnancy and, as a consequence, her father considered that she had brought dishonour and shame on to the family and mistreated her. She claimed that, whilst out walking, she was approached by three men and held by them for two or three days when she was raped. She believed that her father was involved. Following her release, she was able, through contact with an old man, to contact her mother who arranged through an agent for her to leave Tanzania. The appellant feared that on return she would be at risk as a lone woman returning fearing an honour killing.
4. On 23 February 2018, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and on human rights grounds.

The Appeal to the First-tier Tribunal.

5. The appellant appealed to the First-tier Tribunal. Her appeal was heard by Judge Suffield-Thompson on 24 April 2018. The appellant was not legally represented and was assisted at the hearing by an interpreter.
6. In her determination, Judge Suffield-Thompson rejected the appellant's account and that, therefore, she was at risk on return to Tanzania.
7. The appellant sought permission to appeal. Permission was initially refused by the First-tier Tribunal but on 18 September 2018 the Upper Tribunal (UTJ Plimmer) granted the appellant permission to appeal.
8. The sole ground upon which permission to appeal was sought and granted was set out in para 2 of UTJ Plimmer's decision as follows:

"It is arguable that the First-tier Tribunal's adverse credibility finding was at least partly based upon an arguably misplaced and irrelevant impression of the appellant's English ability - see [33] of the decision".
9. The respondent did not file a rule 24 response.

The Submissions

10. Mr Meikle, who represented the appellant relied upon a short skeleton argument which he developed in his oral submissions. He submitted that the judge had materially erred in law in reaching her adverse credibility finding by taking into account her impression, based upon the appellant at the hearing, that "her English was of a good standard". In reaching that

conclusion in para 33, Mr Meikle submitted that the judge had no expertise in assessing English and it was improper for her to reach such a finding. Further, that finding had been material to the judge's assessment of the evidence in particular in paras 36 and 39. In para 36, Mr Meikle submitted the judge had rejected the appellant's account of being brought up in a strict Muslim household and had concluded:

"I find it far more likely that the appellant is an educated woman from an educated family who allowed her to study and work, which is why her English is so good and that they paid for her to come to the UK".

11. Mr Meikle submitted that the judge had used her view of the appellant's facility in English to support her rejection of the appellant's account and to make a positive finding that she was "an educated woman from an educated family who allowed her to study and work".
12. As regard para 39, Mr Meikle submitted that the judge had rejected the appellant's evidence that her visa, as a business visitor, had been obtained by an agent found by her mother. It was not the genuine basis for her visit. He submitted that the judge's view in respect of this was tainted by her conclusion that the appellant had a good standard of English.
13. Mr Howells, who represented the Secretary of State accepted that the judge should not in para 33 have found that the appellant spoke a "good standard" of English. He accepted that the judge did not have the expertise to reach such a view. However, he submitted that that error was not material, he submitted that the judge had only referred to the appellant's English being "good" in para 36. The judge had given other reasons for disbelieving the appellant and, in para 39, had not accepted the genuineness of her business visa on the basis that her application would have been checked by an ECO and would have been found to be false.

Discussion

14. The judge dealt with the appellant's facility in the English language at para 33 as follows:

"I turn first to the oral evidence of the Appellant, not only what she said but also how she gave her evidence. The Appellant had asked for the assistance of the Tribunal interpreter but it was clear that she understood much of what was said in English although when asked how good her English was she said it was not very good and she could make basic conversation. I find her English was of a good standard as it was clear she understood most of the questions put to her before the interpreter translated them".

15. It was common ground between the parties that the judge was not entitled to reach this finding. I agree. The judge had no expertise in assessing the appellant's facility in English. The appellant gave her evidence and conducted the proceedings on her behalf through an interpreter. Her

outward demeanour, apparently in understanding questions put to her before the interpreter translated them, was not a proper basis upon which to find that the appellant had a “good standard” of English. It was not a proper basis on which to reject her evidence, presumably given through the interpreter, that her English was “not very good” and that she could make “basic conversation”.

16. That error was, in my judgment, material to the judge’s adverse credibility finding. Although the judge gave a number of reasons for disbelieving the appellant, I am unable to conclude that her adverse credibility finding would necessarily have been the same had she not taken into account her conclusion that the appellant spoke a “good standard” of English.
17. First, at para 36 the judge was influenced in reaching a positive finding contrary to the appellant’s account, in part, self-evidently because of her conclusion as to the appellant’s facility in English. At para 36 the judge said this:

“The Appellant was asked about her education. She told the Tribunal that she had been to senior school leaving in 2012 and that in 2014 she went to college to study hospitality. When asked why there had been a gap she said that her father had been against her studying and then her mother persuaded him to let her go to college. I do not find this plausible. The Appellant comes from, she claims, a very strict Muslim household where her mother makes cakes and her father is an Imam so I do not accept that her father would have allowed her to have gone to college if she really were brought up in the strict household that she claims. I also do not accept that, in a family such as the one she describes, her father would have given in to the mother’s request and allowed her to go to college. I find it far more likely that the Appellant is an educated woman from an educated family who allowed her to study and work, which is why her English is so good and that they paid for her to come to the UK”.

18. Leaving aside whether the judge was entitled, in the absence of supporting background evidence to conclude that in coming from a strict Muslim household her father would have allowed her to go to college, she made a positive finding that is contrary to the appellant’s claimed background in part influenced by the fact that “her English is so good”.
19. Secondly, in para 39, the judge rejected the appellant’s account that her business visa was not one genuinely obtained but was, at the behest of her mother, obtained by an agent in order to facilitate her entry to the UK. The judge’s reasoning was as follows:

“Secondly, on 23 June 2017 the Appellant applied for a visit visa to come to the UK and the application form is in the Respondent’s bundle (page D7-D15). She applied to come to the UK to attend a conference for business for a firm called Katutura Oil and Gas company. She had a passport at that time or she could have not have applied for the visa. She stated that the agent had invented these details and yet wage slips were provided and a letter from her employer and all of these would have been checked by the Entry Clearance Officer and there is

nothing before the Tribunal to say that on checking these details were found to be false”.

20. Whilst the judge does not make specific reference to her finding that the appellant had a “good standard of English” in para 39, I accept Mr Mickle’s submission that the rejection of her account that she had falsely come as a business visitor, was influenced by the fact that the judge considered she was a “educated woman from an educated family” in part based upon the judge’s view as to her facility in English.
21. Finally, I accept Mr Mickle’s submission that in reaching her finding in respect of the appellant’s facility in English in para 33, the judge necessarily rejected the appellant’s evidence as to her claimed standard of English. That was, of course, to make an adverse finding as to her veracity. There was, as was common ground before me, no proper basis for making that adverse finding and therefore calling into question the appellant’s veracity on the issue of her ability to speak English. That was, likewise, inevitably a factor which counted against the appellant in the judge’s overall assessment of her credibility.
22. It was, in my judgment, unfortunate that the judge engaged upon an assessment of the appellant’s ability in the English language. That ‘false start’ to her assessment of the appellant’s credibility upon which, the judge accepted, the appeal “stands and falls” materially contributed to her adverse credibility finding despite her other reasons which are not challenged. It may well be that the judge could have reached her adverse finding without any reference to the issue concerning the appellant’s ability in English. However, I am not persuaded that the outcome was inevitable and that, therefore, I am satisfied that the error was material.
23. As a consequence, the judge’s adverse credibility finding and decision to dismiss the appellant’s appeal cannot stand.

Decision

24. For these reasons, the decision of the First-tier Tribunal to dismiss the appellant’s appeal involved the making of a material error of law. That decision is set aside.
25. Given the nature and extent of fact finding required and having regard to para 7.2 of the Senior President’s Practice Statement, as was accepted by both representatives before me, the proper disposal of this appeal in the light of the material error of law is that it is remitted to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Suffield-Thompson.

Signed

A handwritten signature in black ink, appearing to read "Andrew Grubb", with a horizontal line underneath.

A Grubb
Judge of the Upper Tribunal

24 June 2019