



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

Appeal Number: PA/08553/2019 (P)

THE IMMIGRATION ACTS

**Decided under Rule 34
On 18 June 2020**

**Decision & Reasons Promulgated
On 1st July 2020**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**YA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Dr C Proudman, instructed by Krisinth Solicitors (written submissions)

For the Respondent: Ms H Aboni, Senior Home Office Presenting Officer (written submissions)

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.

Introduction

The appellant is a citizen of India who was born on 18 May 1983. The appellant entered the United Kingdom on 29 April 2015 with a visit visa valid until 27 May 2015. After that date, the appellant remained in the UK as an overstayer.

On 1 March 2018, the appellant claimed asylum. She claimed to fear her husband (who had beaten her in January 2015) and the Indian police who, because of her suspected connections with an LTTE activist in Sri Lanka, had detained her in April 2015 for 3 days and beaten her. On 23 August 2019, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and on human rights grounds.

The appellant appealed to the First-tier Tribunal. In a determination promulgated on 17 December 2019, Judge Wilsher dismissed the appellant's appeal on all grounds.

The appellant sought permission to appeal to the Upper Tribunal which was granted by the First-tier Tribunal (Judge Bristow) on 17 February 2020.

Deciding without a Hearing

In directions dated 20 March 2020, the Upper Tribunal (UTJ Smith) issued directions in the light of the COVID-19 crisis indicating her provisional view that the error of law issue could be decided on the papers without a hearing. The parties were invited to make written submissions on that issue and also on the substantive error of law issue.

In response, the appellant's legal representatives filed, without any further elaboration, a copy of the grounds of appeal upon which permission to appeal had been granted. On behalf of the respondent, Ms Aboni submitted a combined Rule 24 response together with a response to the UT's directions of 20 March 2020.

Both sets of submissions deal with the error of law issue. The submissions made on behalf of the appellant raise no objection to the error of law issue being determined without a hearing. The respondent's submissions specifically invite the Tribunal to determine the error of law issue without a hearing.

Having taken into account the submissions, and in the absence of any objection, I consider it just and fair to determine the error of law issue without a hearing under Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended).

The Appellant's Claim

Before the judge, the appellant claimed to be at risk on two bases.

First, she claimed to be at risk from her husband and his family. She claimed that they had married in September 2003. However, their marriage had not been a happy one and had deteriorated over time. This had culminated in 2014 with the appellant's husband, on a joint visit to the UK, continually accusing her of cheating with a Tamil man ("K") who was active in the LTTE

and with whom she had formed a relationship earlier in her life. When they returned to India on 31 January 2015, the appellant claimed that after an argument her husband beat her and scolded her in very derogatory terms. She left the home and went to live with her mother in her mother's house in Trichy.

The appellant claimed that, after she came to the United Kingdom in April 2015, she and her husband had cut off contact for a number of years. However, in December 2018 and January 2019, she had again spoken to her husband when they had begun to initiate divorce proceedings. She said that although he had initially wanted her to return to the marriage, he changed his mind. Her claim was that, in the village (Trichy) where her mother lived, and where members of her husband's family also lived, his family had spoken badly about the appellant in the temple. She claimed that, although he had not threatened her since she came to the UK, she was afraid and felt that she would be in danger on return.

Secondly, the appellant claimed to fear detention and ill-treatment by the Indian police/authorities. This claim arose because of, she claimed, her perceived involvement with the LTTE. This arose because of her friendship with the young Tamil man, K. She claimed that he had been active in the LTTE. She claimed that, after she returned to India from the UK on 31 January 2015 with her husband, and after she had moved to live with her mother following her husband's assault upon her, she had received information from a friend of K's that he had been arrested by the Sri Lankan police. Realising that she still had a romantic attachment to him, she decided to go and help him and went to Colombo in Sri Lanka. She had tried to locate him but had been unsuccessful. She claimed that on 12 March 2015, she was arrested by the Sri Lankan police while she was staying at her hotel. She was detained, held in a small cell for five days. She claims that she was interrogated about her connections with the LTTE and with K. She claims that during her detention she was seriously ill-treated, including being burnt with an iron rod on her right hand, hurt on her left hand where she still had a scar and she was abused and raped by three police officers. She claims that she was released after a bribe was paid through the involvement of her cousin's brother. She was warned that she should not stay in Colombo and she left immediately.

At the end of March 2015, having spent two weeks in Sri Lanka after her release, the appellant returned to India. She claims that on 4 April 2015 she was arrested by Indian police officers at her family home in Trichy. She says that she was held at a police station for three days and questioned about K. She explained to the police that she had gone to meet one of her cousins in Colombo and not K. However, she says they did not believe her and she was beaten. After three days she says that she was released when a lawyer had attended the police station. She left India at the end of April 2015 using her own passport and with a visit visa to the UK which she obtained.

The appellant fears that if she returns to India she would be at risk of arrest, detention and ill-treatment by the Indian police because of her perceived LTTE connections.

The Judge's Decision

The judge found the appellant to be a credible witness. He accepted her evidence concerning her claimed past ill-treatment by her husband, by the Sri Lankan authorities and by the Indian police.

However, the judge did not accept that the appellant's husband had any continuing interest in her such that she would be at risk on return from him or his family. The judge also did not accept that the Indian police would have any continuing interest in the appellant such that she would be at risk from them on return. In any event, the judge found that, at least as regards any threat from her husband, she could safely internally relocate to another major town in India.

As regards his finding that the appellant's husband would have no interest in her on return the judge's reasoning is found at paras 7 and 8 of his determination. At para 7 the judge said this:

"I find that her husband has not made threats against her because she did not put that in her case. She said that her mother lived in the same village as his family and that bad things were said about the appellant at the temple. That is not the same thing as saying her husband has threatened her. Her mother has not been threatened. I find that her husband has now agreed to a divorce although he was reluctant to do so before that. The divorce process has not yet completed and it is not clear when that would happen. I find however that her husband has not posed a threat to her since her arrival in the UK because there is no evidence of that. Her evidence was that he had in fact been cooperating with her more recently as regards the divorce."

Then, at para 8 the judge said this:

"I find that the appellant does not face a well-founded fear of serious harm in her hometown of Trichy. Her husband has agreed to a divorce and though he was violent on one occasion in January 2015, there was no evidence of a history of domestic violence against the appellant. The appellant's husband has his family in Trichy but again I find there is no evidence from her mother that any threats have been made against her and that she would therefore be able to safely return to Trichy without fear of being attacked. The fact that her husband has now agreed to a divorce suggests that this is now a situation that he has accepted is over and he no longer harbours ill will against her to suggest violence might result."

In relation to the issue of whether the Indian police would have any interest in the appellant the judge's reasoning is found at paras 7 and 10 of his determination. At para 7 he said this:

"I also find that she was detained in India in April 2015 for three days and suffered a beating in respect of her connection with [K]. There was no arrest warrant issued in her case and she was not charged. She was not bailed on condition and I find there is no outstanding interest in her. I say this because there was no evidence from a lawyer to

suggest that the authorities have been looking for her in India and her mother has not provided any evidence to that effect either. I find therefore that this was an isolated arrest that was connected with her trip to Sri Lanka but is not indicative of any broader interest the Indian authorities have in her.”

Then at para 10 the judge considered what, if any risk, the appellant would face on return from the Indian police/authorities:

“I turn to the issue of threats directly from the authorities which was not strongly pressed at the hearing. As I note above the appellant was released without charge upon representations of her lawyer and her mother in April 2015. There is no suggestion that she was on bail or that there have been any further attempts by the Indian police to locate her since her departure. Given the delicate situation with Sri Lanka it is no doubt an interest of the South Indian police authorities in interviewing people who have been to Sri Lanka. However the evidence I have heard and factual findings I have made indicates that the Indian authorities are satisfied that the appellant is not engaged in any serious active support by the LTTE. They would otherwise no doubt have not allowed her to leave the country on her own passport and/or would have followed her up at her mother’s house to ensure that she was not engaged in any further subversive activities. For all these reasons I find that she would be able to return to India without being detained by the authorities on account of her past visit to Sri Lanka and support for the LTTE through provision of storage facilities in her home.”

In the light of these two findings, the judge found that the appellant had failed to establish a real risk of persecution or serious ill-treatment on return.

However, in para 9 the judge went on to consider, on the basis that there would be a risk at least from her husband in the local area, whether internal relocation was an option. He found that it was. His reasons were as follows:

“In any event I find that, even if there were a threat from her husband in the local area, she has an internal relocation alternative in any of the other major towns in India. I find that the appellant has worked as a money transfer agent for a number of years and is relatively educated and middle class. She was married to a wealthy man. She was educated up to college level. The decision of the Upper Tribunal in **AR and NH (lesbians) India CG [2016] UKUT 66 (IAC)** indicates that in such circumstances a woman would be able to relocate to another area in India and take up employment and secure accommodation and services. Although she might have to provide her father’s or husband’s name to access these that itself does not make such relocation unreasonable or unduly harsh. I say this in the light of the fact that I have not found that her husband would cause her serious harm if returned to Trichy. He would not seek her out if she moved away. It is also said by the appellant that her husband had some links to the police in India but that was a matter of pure speculation on her part and there is no evidence to suggest that he has sufficient influence or knowledge to be able to find her in any other part of India. That is the case even if he were looking for her to cause her harm, which I find he is not.”

Accordingly, the judge dismissed the appellant's appeal.

The Grounds of Appeal

The grounds of appeal (replicated in the appellant's submissions in response to the UT's directions) raise three points. Reordering them they are as follows.

First, there is an irreconcilable contradiction in the judge's finding that (a) the appellant's case is credible and as such the appellant has suffered persecution at the hands of state authorities on political grounds and (b) the judge's finding that the Indian authorities are satisfied that the appellant is not engaged in any serious active support for the LTTE and that they would not have allowed her to leave the country and would have followed up with her mother if there was a continued interest in her.

The ground places reliance on para 339K of the Immigration Rules (HC 395 (as amended)) and, that past persecution having been accepted by the judge, that was clearly an indicator that the appellant was at risk in the future.

Secondly, the judge's finding that the appellant could internally relocate wrongly placed reliance on the case of AR and NH as that case was primarily concerned with internal relocation by women who are lesbians whereas the appellant's case is that she would be a single heterosexual woman who might suffer threats from her husband and other people within her community and would be required to live away from her husband and family.

Thirdly, the judge erred in not accepting the appellant's evidence that her husband had links with the police in India and that he would therefore be able to trace her. The judge failed to explain why, having accepted the appellant as credible, he did not accept this part of her evidence also.

The Respondent's Case

In the combined Rule 24 response and submissions made in response to the UT's directions, Ms Aboni on behalf of the Secretary of State contended that the judge's decision was a sound one. She submitted that the judge had given adequate reasons, despite accepting the appellant's account and her credibility, why it was not established (1) that her husband posed any continuing threat to her; (2) that the Indian authorities had no ongoing interest in her; and (3) why, in any event, it would not be unreasonable or unduly harsh to relocate.

Although the case of AR and NH factually concerned relocation by lesbian women in India, Ms Aboni submitted, it applied to whether a lone woman would be able to relocate. The judge had found that the appellant was middle class, relatively educated and had previously worked in India and, on that basis, the finding that it would not be unreasonable or unduly harsh for her to relocate was properly open to the judge.

Discussion

I will take each of the three points raised on behalf of the appellant in turn.

The first is concerned with the claim that the judge irreconcilably contradicted himself by accepting the appellant's credibility, and the fact that she had suffered past persecution at the hands of state authorities, and his finding that the Indian authorities would have no continuing interest in the appellant.

The grounds refer to para 339K of the Immigration Rules which is as follows:

“The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.”

The underlying point, which is a common sense one, set out in para 339K is that if an individual establishes that they have been subject to past persecution that is some indication, unless there are good reasons to contradict it, that the individual will be at risk in the future.

The judge accepted that the appellant had been detained, seriously ill-treated and tortured including being raped whilst in detention in Sri Lanka. The appellant's grounds, in part, rely upon that very serious ill-treatment but it cannot assist the appellant's claim. It is not past persecution by the *Indian authorities* (whom she claims to fear). It cannot be any indication of whether the Indian authorities would have a continuing interest in the appellant and, if so, how they would treat her on return.

The serious ill-treatment that is relevant, as regards the Indian authorities, is the fact that she was detained for five days in April 2015 when she was questioned about her LTTE involvement and beaten. The judge, of course, accepted that had happened. However, he went on to give reasons why, despite that having happened, the appellant would be of no interest to the Indian police on return. His reasons are set out at paras 7 and 10 of his determination and which I quoted above. She was released without charge and not on bail. She was released as a result of representations from her lawyer and mother. She subsequently left India on her passport without any difficulty. There was no evidence that the Indian authorities have shown any interest in her, by for example visiting her mother, since the appellant left India in 2015.

In my judgment, it was open to the judge to find that the appellant had no established that Indian authorities would have any further interest in her and that, following her visit to Sri Lanka shortly before, they were interested in her but had released her for the simple reason that they had accepted her account and that she was not engaged in any serious active support of the LTTE.

The evidence, together with the sustainable findings made on the basis of it, amounted to “good reason” within para 339K such that any implication of future interest of the appellant due to her past persecution by the Indian authorities was displaced. The judge's reasons were adequate and sufficient

for his conclusion that the Indian authorities would have no continuing interest in her and therefore she would not be at risk of being detained and subject to persecution by them on return to India. That finding was, in my judgment, plainly a rational one based upon the evidence.

Turning now to the other points raised by the appellant in her grounds and submissions, these relate to the judge's finding that the appellant could internally relocate to India. In fact, given that the judge's finding that the Indian authorities would have no interest in the appellant (which as I have found is entirely legally sustainable) and that the judge's finding (unchallenged in the grounds) that the appellant's husband has no continuing interest in her, the appellant's asylum and humanitarian protection claims necessarily failed because she had failed to establish a real risk of persecution or serious ill-treatment either from the Indian authorities or from her husband and family. The appeal was inevitably, and correctly, dismissed as a result.

As I noted above, the grounds do not challenge the judge's finding that the appellant had not established that her husband has a continuing interest in her and therefore that she would be at risk from him. I should add that I am unable to see any basis upon which that finding could successfully be challenged. The judge's reasons, which I have set out above, are in paras 7 and 8 of his determination. He properly took into account that the appellant's husband had agreed to a divorce and, although there was some 'badmouthing' of the appellant by the husband's family at the temple in her hometown, there had been no continuing threats from him or his family. The judge found, entirely rationally in my judgment, that there was a single incident of domestic violence and that, in effect, the appellant's husband now, in accepting that he and the appellant should be divorced, no longer harboured any ill will towards her which would suggest any future risk of violence on return to India.

Even though the internal relocation finding was immaterial to the outcome of the appeal, I will, nevertheless, consider the other two points raised in relation to it given that the judge dealt with it at some length in para 9 of his determination and the grounds raise two points in respect of it.

The first point is that the judge was wrong to find that the appellant as a lone woman returning to India- on the assumption that she would be at risk from her husband - could reasonably and without it being unduly harsh relocate to another major city in India. It is said that the judge was wrong to rely on AR and NH which was concerned with internal relocation by a lesbian woman rather than as is the appellant a single heterosexual woman.

Principally, of course, the Upper Tribunal in AR and NH was concerned with internal relocation by a lesbian woman who would otherwise be at risk in her home area in India. The headnote records the Tribunal's guidance on that issue as follows:

"In general, where there is a risk of persecution or serious harm in a lesbian woman's home area, for educated, and therefore 'middle class' women, an internal relocation option is available. They are likely to be able to relocate to one of the major cities in India and are likely to be

able to find employment and support themselves, albeit with difficulty, and to live together openly, should they choose to do so. In general, such relocation will not be unduly harsh.”

The Tribunal’s approach is, however, applicable to a woman relocating within India even if her sexual orientation is not the issue. Of course, that issue may give rise to a risk in itself in the place of proposed relocation. However the Tribunal’s reasoning, that on a fact-sensitive assessment of all the factors, it will generally be reasonable and not unduly harsh for an educated and therefore “middle class” woman to relocate to a major Indian city, because they would be likely to find employment and be able to support themselves, is an approach applicable to the appellant.

The judge found that the appellant had worked as a money transfer agent for a number of years, was relatively well-educated and was middle class. She had been educated up to college level. In those circumstances, absent any risk to her from her husband and his ability to trace her whether through the police or otherwise to her place of relocation, it was open to the judge taking into account the guidance in AR and NH to find that this appellant’s relocation to a major Indian city would be reasonable and not unduly harsh on the evidence before him.

Of course, whether the appellant could safely live in another city turned upon, if the claimed risk was from her husband, whether he would have a continuing interest in her and whether he might be able to find her in her place of relocation.

As regards the latter, the judge found that he was not satisfied that the appellant’s husband (even if he had an interest in the appellant which he found her husband did not) would have the ability, as was claimed, through connections with the police to trace the appellant to her place of relocation. That finding is challenged in the third point raised in the grounds and appellant’s submissions. It is contended that the appellant gave evidence that she feared her husband would trace her and, given the judge’s positive credibility finding, it was not properly open to him to reject her evidence and to reason that it was “a matter of pure speculation on her part and there is no evidence to suggest that he has sufficient influence or knowledge to be able to find her in any other part of India.”

The grounds do not set out the appellant’s evidence which is relied upon, and which it is said that the judge should have accepted given his otherwise positive credibility finding. The appellant raised the issue in her witness statement dated 3 October 2019 (a few days before the Tribunal hearing) in para 9 where she says this:

“I also wish to state that my husband will somehow track me with the help of his friends and also the police and punish me.”

The appellant gave no explanation why that is her belief. Even if the judge accepted that was the appellant’s belief, that did not necessarily establish as a fact that her husband had the ability to trace her to her place of relocation as

she claimed. Without further evidence, the judge was, in my judgment, entitled to conclude that the appellant's belief was "speculation". There is nothing in the evidence, and nothing was drawn to my attention in the grounds and submissions, that provides any evidential basis for the appellant's belief.

In my judgment, even accepting that was the appellant's belief, the judge was entitled to find, for the reasons he gave, that it had not been established that in fact the appellant's husband had connections and the ability to find the appellant which was her belief. Consequently, I reject the contention that the judge failed to give adequate reasons for his finding that it was not established that the appellant's husband would have the ability (through links to the police) to trace the appellant and that his finding was not inconsistent with his acceptance of her credibility.

Decision

For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal did not involve the making of an error of law. That decision, therefore, stands.

Accordingly, the appellant's appeal to the Upper Tribunal is dismissed.

Signed

Andrew Grubb

Judge of the Upper Tribunal
19 June 2020