



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

Appeal Number: HU/02766/2020

THE IMMIGRATION ACTS

**Heard at Field House via MS Decision & Reasons Promulgated
Teams**

On: 15 November 2021

On 22 November 2021

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

RR

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Richardson, counsel instructed by Lawmatic Solicitors

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Norris, promulgated on 2 June 2021. Permission to appeal was granted by First-tier Tribunal Judge Chohan on 12 July 2021.

Anonymity

2. An anonymity direction was made previously and is reiterated below owing to the unproven allegations of domestic violence both by and against the appellant.

Background

3. The appellant entered the UK as a visitor on 9 October 2013. He unsuccessfully applied for asylum and his appeal rights were exhausted on 21 April 2015. The appellant made a human rights' claim on 28 November 2019 on the basis of his family life with his partner. That application was refused in a decision dated 6 February 2020, which is the subject of this appeal. Briefly, the respondent did not accept that the appellant's relationship with his partner qualified under the Rules because they were not married and nor had they been living together in a relationship akin to marriage for at least two years. While it was accepted that his relationship was genuine and subsisting, it was not accepted that there were insurmountable obstacles to family life continuing in Bangladesh. The respondent did not accept that the appellant qualified under any other provision of the Rules or that there were any exceptional circumstances.

The decision of the First-tier Tribunal

4. At the hearing before the First-tier Tribunal, the appellant was no longer relying on his family life with his partner but had alleged that he was a victim of domestic violence at her hands. The appellant also relied upon his mental health as a very significant obstacle to reintegration as well in relation to his Article 3 and 8 rights. Those claims were rejected, on credibility grounds.

The grounds of appeal

5. The grounds of appeal made the point that the judge erred procedurally in failing to raise numerous concerns during the hearing that later formed the basis of her rejection of the appellant's account. It was further argued that the judge, with one exception, did not permit counsel to ask any questions of the appellant or his witness and as such any anticipated concerns could not be dealt with.
6. Permission to appeal was granted on the basis sought.
7. The respondent did not file a Rule 24 response.

The hearing

8. Mr Whitwell indicated that the appeal was opposed. He recognised that the respondent's role in this hearing was limited because she was not represented at the hearing. Furthermore, Mr Whitwell had not seen a transcript of the hearing and nor were there any notes.

9. Mr Richardson readily accepted that he could not address the assertion made in the grounds that counsel was prevented from asking further questions by the First-tier Tribunal judge because he was the counsel concerned. In addition, this line of argument was hampered by the absence of a transcript or record of proceedings. Mr Richardson stated that there was sufficient merit in the remaining ground for him to proceed. Thereafter he relied upon the grounds, with reference to relevant paragraphs of the decision and reasons.
10. In response, Mr Whitwell noted that at [2.8] the appellant had conceded that he could not succeed under either Article 3 health grounds or domestic violence. He argued that there was no support in the decision for the claim that counsel had been prevented from putting questions. He relied on the decision of *MN (Surendran: credibility)* [2004] UKIAT 213, at [28] where on the question of whether a tribunal put matters to the appellant, it was found that it is for the appellant to put forward matters as it was not a dress rehearsal. As for materiality, all the findings related to the question of domestic violence and the appellant's mental health was taken into consideration at [6.19]. The findings relating to domestic violence were not relevant to any very significant obstacles to return to Bangladesh. Mr Whitwell urged me to dismiss the application.
11. In response, Mr Richardson reiterated what he had to say about the judge raising issues only in the decision which had not been put to the appellant. He emphasised that credibility was not in issue in this case prior to the hearing and as such there was no forewarning of what was in the judge's mind. The judge had concluded that the appellant's sister and former partner had colluded to present a scenario to support the appellant's case and because the judge rejected this account she also rejected the appellant's claim to be mentally ill, notwithstanding that it was supported by expert opinion.
12. At the end of the hearing, I reserved my decision as to whether there was a material error of law. Both representatives agreed that if such an error was found the appropriate course would be to remit the matter to the First-tier Tribunal.

Decision on error of law

13. I will not address the concerning allegation that Mr Richardson was prevented from putting questions to the appellant and his witness.
14. Having considered the written arguments and submissions, I find that the remaining ground of appeal is made out. I accept that the judge failed to raise any reservations with the evidence either with the appellant or his representative at the hearing and this amounted to a material error of law. None of the findings listed in the grounds at [11(a)-(g)] were the subject of oral evidence. As Mr Richardson emphasised, this was a case which, hitherto, raised no credibility issues, it being accepted by the respondent that the appellant had a genuine and subsisting relationship.

15. The respondent was not represented before the First-tier Tribunal and consequently was unable to raise concerns with the credibility of the new evidence which had emerged since the decision was made.
16. It is not for the appellant's representative to anticipate the judge's thoughts in the absence of any indications. Indeed, the judge's conclusion that the appellant's former partner contrived with his sister to provide evidence [6.16] is a far from typical finding and ought to have at least been alluded to during the hearing.
17. The judge also made six other findings which were not raised at the hearing, and which are set out in counsel's grounds. This error is material as the judge relied on the negative credibility findings to reject the psychological report, as it was based on what the appellant told the expert, the appellant's case being that there are very significant obstacles to his re-integration in Bangladesh on mental health grounds in that he requires the support of his sister in the UK. I conclude that the appellant was denied a procedurally fair hearing and that the decision is unsafe. I set aside the decision in its entirety.
18. I would add only that the appellant is now on notice that he should expect to address the credibility of his account at the rehearing of his appeal
19. In deciding whether to retain the matter for remaking in the Upper Tribunal, I considered the views of the representatives and was mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010. Taking into consideration the nature and extent of the findings to be made as well as that the appellant has yet to have an adequate consideration of his human rights appeal at the First-tier Tribunal, I reached the conclusion that it would be unfair to deprive him of such consideration.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Hatton Cross, with a time estimate of 3 hours by any judge except First-tier Tribunal Judge Norris.

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

him or any member of their 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 16 November 2021

Upper Tribunal Judge Kamara