



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

Appeal Number: HU/12070/2019

THE IMMIGRATION ACTS

Heard remotely by Skype for Business

**Decision & Reasons
Promulgated**

**On 8 December 2020
Extempore**

On 7 January 2021

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**MISS RAMANDEEP SAINI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Jones, Counsel, instructed by Bhogal Partners Solicitors

For the Respondent: Mr McVeety, Home Office Presenting Officer

DECISION AND REASONS

The Appellant challenges the decision of First-tier Tribunal Judge Moffatt (“the judge”), promulgated on 3 January 2020, by which she dismissed the Appellant’s appeal against the Respondent’s refusal of a human rights claim dated 1 July 2019. Having reviewed the evidence before her and having had regard to a previous decision of the First-tier Tribunal, the judge concluded that there would be no very significant obstacles to the Appellant returning to live in India and that outside the context of the Rules the decision to refuse the

human rights claim was proportionate and therefore lawful. The judge did not specifically refer to Article 3.

The grounds of appeal assert an alleged absence of reasons, relating to, in particular, country information on the position of women in India. The grounds of appeal themselves do not specifically refer to Article 3.

In granting permission Designated First-tier Tribunal Judge Shaerf observed that most of the grounds of appeal were, as he described them, “poorly focussed and inadequately worded”, but nonetheless deemed it to be arguable that the judge had failed to consider a claim based on Article 3. Whilst Judge Shaerf purported to limit the grant of permission, the actual decision made was a grant without any such limitation and in light of Safi & Ors (permission to appeal decisions) [2018] UKUT 388 (IAC) it must be taken that permission was in fact granted on all grounds, a point that I made when issuing a Note and Directions Notice on 14 August 2020.

At the hearing Ms Jones, in my view entirely properly, accepted that she could not properly pursue any challenge relating to the judge’s consideration of Article 8 with reference to paragraph 276ADE(1)(vi) of the Immigration Rules and indeed on a wider proportionality basis. The sole focus of the challenge related to the alleged failure of the judge to consider Article 3. Ms Jones’s case was that Article 3 had indeed been raised with the Respondent at the outset and that the judge was bound to have considered it as a matter of substance.

On behalf of the Secretary of State, Mr McVeety submitted that it had not been raised at any stage and therefore the judge did not err in failing to consider it. Even if it had been raised, it had not in fact been considered by the Secretary of State and would have constituted a “new matter” requiring consent and such consent had not been forthcoming.

I have no hesitation in concluding that the judge has not committed any errors of law. I am quite satisfied that Article 3 was not raised by the Appellant at any stage, whether pre-appeal or during these proceedings. The letter from her solicitors dated 15 February 2019 makes no express reference to Article 3, basing the entirety of fairly lengthy submissions on Article 8 only. The matters set out in the letter had a clear bearing on Article 8, but did not constitute an Article 3 claim, whether express or by necessary implication.

Further, the reasons for refusal letter is abundantly clear: the Appellant had been invited to make a protection claim but had declined to do so and therefore the Respondent did not accept that a protection claim had been made. It is clear from this that even if an Article 3 protection claim had been made it was not the subject of a refusal. I note that the grounds of appeal to the First-tier Tribunal make no reference to Article 3 either.

Whilst Ms Jones has directed me to a number of paragraphs within the judge’s decision, none of these show that Article 3 was specifically being put forward at the hearing itself. In any event, as Mr McVeety rightly points out, if the matter was being raised at that late stage it would undoubtedly have constituted a

“new matter” requiring the consent of the Secretary of State. Quite clearly, no consent had been given and the judge would not have had jurisdiction to deal with Article 3 in any event.

For the sake of completeness, on the facts as found by the judge and in light of the country information, any hypothetical Article 3 claim that might have been considered would in my judgment have been bound to fail in any event.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The appeal to the Upper Tribunal is dismissed and the decision of the First-tier Tribunal stands.

No anonymity direction is made.

Signed H Norton-Taylor

Date: 16 December 2020

Upper Tribunal Judge Norton-Taylor