



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

Appeal Number: PA/05472/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 2 October 2017**

**Decision & Reasons Promulgated
On 9 October 2017**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**NF
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms a Heller, Counsel instructed by John Street Solicitors
For the Respondent: Ms Z Ahmad, Home Office Presenting Officer

DECISION AND REASONS

**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 her or any member of her 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.

1. The Appellant is a citizen of Thailand and her date of birth is [] 1981. She came to the UK in 2013 as a visitor with leave until 11 March 2014. She made an application for asylum and this was refused on 25 May 2017. She appealed and her appeal was dismissed by Judge of the First-tier Tribunal Mitchell in a determination that was promulgated on 7 July 2017, following a hearing on 5 July 2017. Permission was granted to the Appellant by Judge of the First-tier Tribunal Hodgkinson on 1 August 2017.
2. The first ground asserts that the judge erred in respect of the credibility findings and a number of points are raised. The second ground of appeal is that the judge did not assess credibility in the light of the background evidence that was before him. Ms Heller expanded on this ground in oral submissions and did not address me in relation to the first ground of appeal which is set out at considerable length between [2] and [15] of the grounds, but she stated that she relied on both grounds.
3. The Appellant's case before Judge Mitchell was that she attended a New Year's Eve party in Bangkok in December 2011 and that the majority of people who attended the party were police officers. At the party she was introduced to a high ranking member of the police force whose nickname was John. She refused his offer to become his mistress. During her screening interview when she was asked at 2.5 whether she had been subject to exploitation, for example being forced into prostitution, forced labour or whether she has reason to believe that she was exploited, she stated that "Police in Thailand wanted me to sleep with them - this has not actually happened as I ran away - in 2010". At paragraph 4.1 of the screening interview when she was asked to briefly explain all of the reasons why she could not return home to Thailand she stated:-

"I am scared of a policeman - he is a powerful person. He said - 'If I will not be with him - I will not have freedom.' He will find me. If I return I can't do anything - he will find me".
4. The Appellant was interviewed in respect of her claim for asylum and she stated that she had overheard John speaking to another officer, her friend's husband, and John stated to the officer that he had killed a solicitor. John, according to the Appellant, looked shocked when he became aware that the Appellant had heard him. John sent the Appellant a text on 2 January 2012 that said "Since you have turned me down it will cause me to lose face in front of my peers and you know my secret about the solicitor. I will kill you the same way as I killed the solicitor". The judge attached weight to the Appellant having not mentioned the murder in her screening interview, or indeed to the witness, her partner, S. The judge found the evidence was unsupported. The Appellant did not have evidence of the text message and the judge attached weight to this. The judge concluded that it was not likely that a senior officer would make a confession of murder by text. The judge found as follows at [20]:-

“The Secretary of State has raised the valid credibility issue that it does not likely that the senior police officer would send what amounts to a confession to the Appellant by text message which presumably would have been traceable back to him if she had shown the matter to a police officer investigating the alleged death of the solicitor. Any police officer would know this and it does not seem to be a credible claim at all.”

5. The Appellant’s evidence relating to after the incident at the party was that she was threatened on three occasions and she was followed and someone came to the door of her home. She asserted that someone put a note under the door threatening her and telling her that she had better disappear. The judge recorded the Appellant’s evidence that the threatening letter was made after April in May (with reference to question 16 of the asylum interview). However, her evidence was that she had travelled to Singapore in February 2012 for 21 to 25 days and the judge concluded that it was hard to understand why the Appellant returned to her apartment as according to her evidence she had received a death threat and had already fled to another country. The Appellant’s evidence was that when she returned to Bangkok she moved out of her apartment and did not return to her place of work.
6. The judge recorded the Appellant’s oral evidence that she stated her friend’s husband put the note through the door. However, he observed that she had not mentioned this before and when she was asked how she knew that this was the case she stated that she had viewed the CCTV of the security personnel in the place where she lived. Again, the Appellant had not mentioned this previously and the judge concluded that it was a surprising development.
7. The Appellant’s evidence was that she had been followed and there was a police officer outside her building in a civilian car. However, it transpired that this was a marked car with a civilian inside and the judge found that the Appellant has at various times described this as a single police officer in a car and a car full of policemen (see [21]).
8. In oral evidence the Appellant said that the senior police officer came and knocked at the door at 4.00 a.m. and that she did not answer the door and that the knocking continued for ten minutes and she pretended not to be there. However, the judge considered question 15 of the asylum interview where the Appellant had stated that “someone” came to the door of her home and put a piece of paper under the door. At this time she did not mention the senior police officer coming to the door or the prolonged knocking. The judge found that it was surprising that she would not mention this direct threat during her interview.
9. The judge concluded as follows:-

- “23. The appellant has been significantly inconsistent as to when these events occurred. It was highlighted to me that the Thai calendar is approximately 543 years ahead of the European calendar. This may explain why the appellant one point (sic) in the interview (question 19) was trying to convert the Thai year to an English year. However, the appellant has claimed in her screening interview that the party occurred *since* December 2009. The appellant in her statement said that she started to *see some men following (me) and became frightened and decided to leave and go to Singapore I think in August 2011*; that would mean that the New Year’s party occurred in December 2010. In her evidence, she said that she left Thailand six months after the party and threats. Since she left after August 2013 that would have meant that the party was in December 2012.
24. I sought clarification of this during the hearing as it was extremely unclear what the appellant was saying at various times. It was eventually clarified, somewhat unsatisfactorily, that the New Year’s party occurred at the end of December 2011.
25. The appellant left Thailand in September 2013 to come to the United Kingdom. In the intervening period, the appellant says that she travelled to Singapore on four occasions to get away from the senior police officer. She could only spend up to 25 days on each occasion in Singapore before having to return to Thailand. Her evidence was that she had spent two periods of 21 days and two periods of 25 days in Singapore; less than 100 days in total. The first time she travelled there was in February 2012 and the last time was in November 2012. The appellant therefore spent at least 15 months back in Thailand. The appellant in her interview was asked when she had left Thailand. She said at question 25 in August 2011 I do not remember the month (sic). She said at question 28 that she had only spent 20 days in Singapore. She did not mention the number of time (sic) she had travelled to Singapore. The appellant confirmed its (sic) question 38 that she could only stay in Singapore for 25 days with her Visa. Fundamentally the appellant spent at least 18 months after the event either in Singapore or in Thailand. The maximum period of time she would have been outside of Thailand would have been 100 days.
26. The appellant in her oral evidence said that she had travelled to Phuket and remained there. In her interview and statement she did not mention moving to Phuket. She did not say where she had been living but was given the opportunity to explain where she had been living and she said that she had live daughter-in-law Bangkok (question 44). It is unclear whether that meant she lived in Bangkok when she returned from Singapore or she lived there generally before the party.

27. The appellant was able to remain in Thailand for a significant period of time before she travelled to the United Kingdom. Her story has grown and has been embellished as inconsistencies have been highlighted to her in the reasons for decision letter and earlier.”

10. The judge again considered the timing issue at [31] and stated as follows:-

“The appellant has claimed that there were police officers outside the place where she resided. The appellant described this as being a single police officer in a marked police car. The story she told [S] was that there were lots of police officers in a car outside the accommodation. The appellant has claimed that there would be police officers outside her accommodation undertaking *surveillance*. The appellant implies that all of this happened between the New Year’s party and her first departure for Singapore in February 2012. If the police officers knew where the appellant was and wished to cause harm they could have easily done so during that time. The fact that there were no other threats made to the appellant subsequently and that she was able to leave the country on her own passport on several occasions is indicative that senior police officer (sic) does not have any power or has no real interest in the appellant.”

11. The judge found that the Appellant had been remarkably vague about the name and rank of the police officer and that she had had opportunity to ascertain his name and identity:

“13. The appellant has been unclear as regards the rank of this police officer and he has been at various times referred to as a Colonel, a Major, a Major General, a secret agent, a senior police officer, and finally a Superintendent. The appellant clearly has no idea as to the rank of this officer but assumes that he is a senior officer as he is the superior to her friend’s husband, Oout.

...

32. The appellant has been remarkably vague about the name and rank of the police officer involved. She has had opportunities to ascertain his correct name and his identity.”

12. The judge made the following findings:-

“33. The appellant remained in Thailand for a significant period of time. The appellant clearly had a viable option of internal relocation within that country. She lived in that country for a significant period of time before travelling to the United Kingdom. The appellant once in the United Kingdom did not return to her home country or claim asylum upon arrival.

34. There is no evidence of any enquiries being made with regards to the appellant. No charges have been laid against her. The appellant has never been attacked or directly threatened by the senior police officer or any of his men. The claimed events occurred many years ago.
35. The Secretary of State considers that the appellant's credibility has been adversely affected as she failed to claim asylum until she was arrested 10 April 2017 or upon arrival in the United Kingdom on 28 November 2013 as she claimed she was fleeing problems in her country Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. The appellant only claimed asylum on 24 April 2017 some two weeks after she had been encountered by the immigration officers. The appellant's claim that she was unaware of the issue of asylum is not credible. She has passed through several immigration controls in Singapore and Thailand. The appellant travelled to the United Kingdom to escape but did not claim asylum upon arrival. She passed through UK immigration control. She speaks English well and is clearly not unsophisticated or unworldly. It is simply not credible that she did not know about the issue of asylum.
36. Having considered the evidence, I conclude that the appellant has fabricated her claim. Her credibility has been adversely affected. She has been inconsistent as regards key elements of her story and remarkably vague as regards other elements. The appellant has no credibility about her claim to be in fear of return to Thailand. In reaching that assessment I have applied the low standard required in these proceedings.
37. The appellant has not shown that there is a convention reason under the refugee convention. **I therefore dismiss the appellant's appeal under the refugee convention as there is no convention reason."**
13. The judge took into account that the Appellant came to the UK in 2013 but she failed to make an asylum claim until she was arrested on 10 April 2017. The judge found at [41] that the Secretary of State clearly set out in the Reasons for Refusal Letter why the authorities in Thailand would be able to offer protection to the Appellant and "that has not been challenged in any material way by the respondent (sic) or her representatives" and the judge went on to conclude that the Appellant could seek the protection of the authorities in Thailand and/or has a viable option of living elsewhere in Thailand as she did do for a considerable period of time.

The Grounds of Appeal

14. The grounds argue that the judge erred in concluding that the Appellant had been remarkably vague about the name and rank of the police officer

involved and that she had had opportunities to ascertain his correct name and identity. The judge erred because he made no reference to the interpreter having had difficulty in translating the police officer's rank in the course of the hearing. He did not refer to the appellant's evidence, following a break in the hearing with the judge's permission, which gave her the opportunity to look up the English equivalent for the Thai ranks within the police force. Having done this, her evidence was, ultimately, that the police officer was a Superintendent and that her friend's husband was a Deputy Superintendent.

15. First, the grounds as conceded by Ms Heller misquote the decision of the judge by making reference to "multiple" opportunities, whilst in fact the judge stated that the Appellant had had opportunities to ascertain the police officer's correct name and rank. Secondly; there, is no mention at the hearing of an adjournment, but in my view the issue is not material. The judge was entitled to conclude that the Appellant had been unclear and inconsistent in her evidence. The grounds argue that the Appellant would not risk alerting her friend in Bangkok who is married to the subordinate police officer as to her whereabouts in order to find out the rank of the officers and that her parents who live elsewhere in Thailand would not have access to such information. However, the judge did not expect her to make such enquiries. The Appellant had plenty of opportunity before the hearing to confirm her evidence in relation to the police officer's rank by looking up the English equivalent, as she did at the hearing, presumably by way of an online dictionary, instead of leaving this to the eleventh hour. I observe that the Appellant's evidence in her witness statement is that she did not know the officer's rank and she had not been able to ascertain his rank when she was interviewed in relation to her asylum claim.
16. The grounds argue that the judge erred because he attached weight to the Appellant failure to mention a significant aspect of her claim during her screening interview. The grounds argue that the nature of a screening interview is that it is not apt for a detailed description of the Appellant's claim. However, the judge was entitled to attach weight to the omission by the Appellant to mention that she had overheard the senior officer saying that he had killed a solicitor and that this and the fact that she had turned him down led to him making a threat to kill her. It is not a matter of the Appellant failing to give details of her claim. She failed to mention a significant aspect of her claim and the judge was entitled to conclude that this was a material omission.
17. It is argued in the grounds that the judge did not take into account the submissions raised in the Appellant's skeleton argument, namely that in the Appellant's screening interview there was no interpreter present and it was argued that any discrepancies between the screening interview and later accounts could not be relied on. The judge also did not mention the Appellant's claim in oral evidence when questioned about the lack of detail

about the policeman that the Thai interpreter present at her substantive interview “was not very efficient”.

18. It is my view that the judge was entitled to attach weight to the screening interview. Whilst there may have been no interpreter present it is inconceivable, having read the screening interview, that the Appellant did not understand the questions asked. Whilst it was conducted in English, there was no suggestion at the time that she was unable to understand the questions and it is simply not supported by the answers that she gave, despite her request for an interpreter during the substantive interview.
19. In respect of any problem the Appellant claims to have experienced with interpretation at the substantive interview stage, she made no mention of it in her witness statement. It is not entirely clear what evidence was before the judge in this respect; however, she signed the record of the interview and she had not made any challenge to it prior to the hearing. The argument raised in the submissions was not supported by the evidence and if the judge did not engage with it, it was not material to the outcome.
20. The grounds argue that the judge erred in relation to the evidence of S (the Appellant’s partner). He gave evidence and the judge stated the following at [28] in relation to this:-

“The appellant did not mention the fact that she had overheard the senior police officer saying that he had killed a solicitor or that he would kill her because she had overheard that conversation in her screening interview. This is reinforced by the fact that [S] came to give evidence to the tribunal and his evidence related only to the fact that the senior police officer had been rebuffed in his sexual advances to the appellant and there was no mention of the murder of the solicitor at all. [S] did not know about the alleged murder of the solicitor whatsoever. He had been told this story at the outset of their relationship before the appellant had been detained. The appellant had recited the story about being rejecting (sic) the senior police officer’s advances to him and then she repeated that in the screening interview that occurred on 28 April 2017. She had never ever mentioned the murder of the solicitor previously. The murder was only mentioned later at the Asylum Interview (AI).”

21. The grounds argue that the judge omitted to record that S stated evidence that “he was appalled at what (the Appellant) said, (he) did not want to ask any further questions.” However, in my view the judge drew reasonable inferences from the evidence that the Appellant had not told him of a material piece of evidence that formed part of her claim. This was considered in the context of the evidence as a whole and the grounds fail to establish error in the approach of the judge.

22. It is argued in the grounds that the judge erred at [30] with reference to the Appellant having not produced a copy of the letter/note or text that was allegedly sent to her. The ground is misconceived. It was a matter for the judge what weight to attach to the evidence or lack of it.
23. The judge was wholly entitled to take into account the Appellant's evidence that she gave at the hearing which she had failed to mention previously, including the CCTV evidence and the note having been pushed under her door. The judge was entitled to conclude that this was a key element in the story.
24. The grounds assert that the Appellant answered all the questions asked in the interview and cannot be blamed for failing to mention matters that she had not been asked about. However, this wholly misunderstands the burden of proof and the opportunity that the Appellant had post-interview to make reference to material matters, for example, in her witness statement which she failed to do. I have taken into account the Appellant's witness statement which is, considering the issues, lacking in detail. It may be that the appellant was poorly served by her representatives, but I cannot speculate.
25. The grounds assert that the judge at [31] was wrong to expect the Appellant to go behind the thinking of police officers. The judge found that if the police officers knew where the Appellant was and wished to cause harm to her that they could easily have done so during the period between New Year and her first departure for Singapore in February 2012. What weight to attach to this evidence was again a matter for the judge and [31] discloses no error of law.
26. The grounds argue that the judge erred at [34] because he concluded that there was no evidence of enquiries having been made with regards to the Appellant, however this did not take into account her oral evidence where the Appellant stated that she knew her friend was trying to get in touch because her husband had told her to find her through Facebook and social media and that all of her friends were asked the same question to try and find her. However, the grounds ignore the conclusions of the judge. He did not accept the evidence of the appellant. He did not find her to be credible.
27. The background evidence that was before the judge was a report entitled "Royal Thai Police" from Wikipedia and the document is four pages and establishes that there is corruption in the Thai Police. Specific reference was made by Ms Heller to a particular paragraph on the second page, fifth bullet point, which reads:-

"As a condition of being appointed to the National Legislative Council (NLC), prospective members were required to reveal their assets and liabilities. The disclosures by would-be NLC members of their assets shocked many Thais. 'Police Chief Somyos Poompanmuang and his

wife's net worth was revealed to about 355.8 million baht (roughly \$11 million) [sic], raising questions about how a lifelong career in the public service could have made him a millionaire many times over'."

28. Ms Heller also referred to the skeleton argument that was before the First-tier Tribunal and the reference in it to "sufficiency of protection and the US State Department Report" of which she did not have a copy, but the quote in the skeleton argument reads as follows:-

"Few complaints resulted in punishment of alleged offenders, and there were numerous examples of investigations lasting years without resolution of alleged security force abuses. Human rights groups criticized the 'superficial nature' of police and judicial investigations into incidents of alleged torture and other mistreatment by security officers."

The report, according to the skeleton argument, went on to consider complaints of police abuse and noted "There were reports police abused prisoners and detainees, generally with impunity". Reference is made to "Trial procedures" and the following is quoted:-

"Several NGOs expressed concern about the lack of adequate protection for witnesses, particularly in cases involving alleged police wrongdoing".

It was asserted in the skeleton argument before the First-tier Tribunal that the Appellant's subjective fear is corroborated by country materials.

29. Whilst Ms Heller did not make oral submissions, she indicated that the Appellant relied on ground 1. Therefore I have engaged with the issues raised therein. However, ground 1 is an extensive list of disagreements with a selection of findings of the judge. They wholly disregard the significant problems in the account given by the Appellant and they do not properly engage with the judge's findings.
30. In respect of ground 2, sufficiency of protection as a discrete issue was not material to the outcome of this appeal because the judge found that the Appellant was not at risk on return. I understand that in order to reach that conclusion the judge should have taken into account the background evidence that was before him in respect of police corruption. A proper reading of that background evidence reveals that there is corruption within the police force in Thailand. However, there were many problems with the Appellant's account, including that she had delayed making a claim and the rejection of her explanation that she was not aware of the "issue of asylum." The judge made extensive adverse credibility findings, many of which are unchallenged in respect of her claim to be at risk on return. I am not satisfied that the judge did not take the background evidence into account. My view is that he concluded that it was not material and I agree with this. Whilst the evidence establishes

