



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

Appeal Number: PA099342016

THE IMMIGRATION ACTS

**Heard at Field House
On 11 May 2017**

**Decision & Reasons Promulgated
On 26 May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

**MRS FARJANA AKTER EMA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Symes, Counsel

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

DECISION AND REASONS

Background

1. The appellant in this case is a citizen of Bangladesh born on 15 January 1988. The appellant claimed asylum on 2 February 2016 having arrived in the UK on 16 August 2011. That claim was refused by the respondent in a decision dated 6 September 2016. In decisions and reasons promulgated on 1 December 2016 following a hearing on 19 October 2016, Judge of the

First-tier Tribunal J K Swane dismissed the appellant's appeal on protection and human rights grounds.

2. The appellant appealed to the Upper Tribunal with permission granted by a Judge of the Upper Tribunal on the following grounds:

Ground 1 - failure to engage with material evidence in the case;

Ground 2 - flawed assessment of the evidence and basis of the claim.

Error of Law Hearing

3. At the hearing before me Mr Symes made a Rule 15A application to admit into evidence the respondent's position in relation to internal relocation and state protection in the form of a copy of the respondent's country information and guidance - Bangladesh: Background Information, including actors of protection and internal relocation dated 28 November 2014. Mr Kotas had no specific objection to the admission of this evidence. He did not dispute that the respondent had a duty to put this material into evidence before the First-tier Tribunal, **EB (Sri Lanka) [2007] EWCA Civ 85** applied.
4. In any event such was ultimately unnecessary as the same guidance was already included in the appellant's bundle at paragraphs 109 to 137.
5. Mr Symes referred me to the appellant's bundle at pages 42 and 43 where the appellant's uncle's written evidence was set out including that during a trip back to Bangladesh on 8 January 2005 he met with the appellant's father. Mr Symes submitted this was one piece of evidence which was overlooked and in addition, at pages 48 to 52 of the appellant's bundle, the witness statement of the appellant's sister Miss AAS was set out. Mr Symes submitted that this statement was in relation to primary fact and not just retelling of the appellant's account. At page 48 paragraph 3, the appellant's sister set out that the appellant's husband had tortured her; at page 49 paragraph 4 the appellant's sister recounted the complaint made by the appellant's father to the Union Council Chairman; at page 49 paragraph 7 she recounted threats made by the appellant's then husband after she went to London and at page 50 paragraph 9, the appellant's sister stated that leaders of the Awami League arranged a meeting which insulted the appellant's father and that the appellant's father was involved in BNP politics. At page 51, paragraph 12 the outstanding case against the appellant's brother was set out and page 50 paragraph 10, set out that her father was falsely implicated.
6. Mr Symes submitted that the First-tier Tribunal overlooked this evidence. At paragraphs 27 and 28 the judge set out the live evidence of the appellant's uncle although not that which was in his witness statement but made no findings. It was submitted that most of the appellant's problems were asserted to have arisen after her divorce on 3 December 2012 and

that the judge did not reject credibility specifically and that the judge had overlooked the evidence which was a material error of law.

7. It was submitted that this was relevant in assessing whether protection was available to the appellant. The respondent's own country information and guidance confirmed at paragraph 1.2.3 and paragraph 1.2.7 that a fact-sensitive assessment must be made as to whether effective protection would be available in the particular circumstances of the person and that past persecution and past lack of effective protection may indicate that effective protection would not be available and that careful consideration had to be made in relation to the relevance and reasonableness of internal relocation on a case by case basis taking full account of the individual circumstances of the particular person. It was submitted that it was not the Home Office case that these cases can never succeed and therefore the particular circumstances must be considered very carefully. It was further submitted that the error was not cured by the judge's findings at paragraph 44 and following, that even if the appellant could not return to her home she and her husband could relocate within Bangladesh.
8. Mr Kotas submitted that the judge had undertaken a very comprehensive and careful consideration of the evidence in relation to the information that it was alleged was missed. The judge recorded the oral evidence of the appellant's uncle at paragraph 27 and the witness statement confirms that the uncle was not saying anything further to what the appellant said. The judge recorded at 28 that the appellant's uncle confirmed that "aside from what happened what happened at his meeting with the appellant's father, everything he knows about the appellant or her family is what the appellant has told him." In relation to the statement from the appellant's sister Mr Kotas submitted that this did no more than confirm that the appellant had problems with her father and with her former husband and stepbrother. Mr Kotas further submitted that there were numerous credibility issues in the appellant's case and that the best the judge could have done, in respect of the sister's statement, was consider this in the round. Mr Kotas referred to the fact that at [12] in the decision the appellant stated that her fears started one week after she arrived and then that she replied to cross-examination that when she arrived she did not have a fear. The judge also took into consideration the appellant's delay in claiming asylum at [40] where the judge found the appellant's account in relation to a delay of some five and a half years to be unlikely and that she has not given a cogent reason for her failure to claim asylum. Mr Kotas noted that this was not challenged in the grounds of appeal.
9. Mr Kotas outlined that at [14] of the decision the judge recorded the inconsistencies including that the appellant stated that her stepbrothers and ex-husband and his brother were threatening her father but then stated that her father had not been threatened with harm. This completely contradicted paragraph 62 of her witness statement, at page 37 of the appellant's bundle, where she stated that her father had been threatened. At paragraph [15] of the decision and reasons the appellant

was unable to say why she had not provided any evidence as to her husband or his family's influence in the Awami League and the judge noted the inconsistency between her oral evidence where she said she knew they were supporters but did not know their positions whereas in her written evidence she had said that they were influential members. At [18] the judge noted the inconsistency in the evidence in relation to the names of her brothers and at [19] the judge noted that the appellant was asked why her brother would have acted as a witness in the divorce if he supported her father and was unable to provide any explanation other than the divorce had to be properly witnessed and that it was true. At [20] the appellant indicated that her siblings were too busy to give evidence and could not get time off but that her uncle had come. At [23] a further discrepancy in the names of the appellant's brothers was noted in the evidence of the appellant's husband. At [25] the judge noted that the appellant's husband did not find it contradictory that the appellant would be both forced to marry another man and be stoned to death.

10. In any event Mr Kotas submitted that none of these issues were material as in effect the judge accepted the appellant's case including that she was the victim of domestic violence from her first marriage at [39] which was consistent with the steps taken by her father, to report her ex-husband and when that failed, to act as a witness in the divorce. Mr Kotas submitted that the appellant feared non-state actors. She feared her in-laws. The judge made findings that her own family would not have any further interest in her. The judge found at 43 that "it is likely her siblings would be willing to support her if she returned to Bangladesh given her evidence that they have forgiven her". The judge also noted that the circumstances had changed in relation to her own family as her father is deceased and her sisters and brother have forgiven her.
11. Taking the case at its highest Mr Kotas submitted that even if it were accepted the most that the appellant has is a problem with her in-laws. The appellant would return as a family unit with her husband and daughter as recorded by the judge at [43]. There was nothing to contradict the finding that the appellant could go home to her home area. However even if the judge was wrong in this Mr Kotas submitted that internal relocation was a viable option and that the additional information from her uncle and her sister did not change the position.
12. Mr Symes in reply relied on his central submission that the judge had overlooked evidence of post-divorce animosity held by the appellant's ex-husband's family and that the appellant's sister's witness statement was not just historic but spoke to the one-sided arbitration between the families in September 2016 and involving the Awami League.

Discussion

13. The First-tier Tribunal Judge, as noted, accepted that the appellant was a victim of domestic violence. The judge did not accept the appellant's explanation for her delay in claiming asylum until some five and a half

years after she claims her fear arose. There was no substantive challenge to the judge's findings that the appellant's risk from her own family was no longer an issue given that her father had died and that their main problem was the fact that it was suspected she was having a relationship outside of marriage after she divorced her husband and had brought shame on the family and now she was married to the man she was accused of having a relationship and her father had died and her siblings had forgiven her.

14. The appellant challenges the judge's findings primarily in relation to her ex-husband's family. The judge finds that her ex-husband's main motivation appears to have been money and that the fact that the appellant's father is now deceased means that the main source of funds that the appellant gave to her ex-husband has gone. The judge therefore found, at [41], to the lower standard that the appellant's ex-husband no longer had any ongoing interest in her following the death of her father and her remarriage of the decision. There was nothing in either the witness statement or oral evidence of the appellant's uncle or the witness statement of the appellant's sister (who was not present before the First-tier Tribunal) which spoke to any of these issues or could substantially challenge the judge's findings that there would no longer be any ongoing interest following the death of her father on her remarriage.
15. There was nothing in any of the evidence which the judge is said to have overlooked which substantively challenges the judge's findings at [42] that her ex-husband's family and stepbrothers were not influential within the Awami League as claimed by the appellant. Neither the appellant's uncle nor the appellant's sister provided any evidence over and above that provided by the appellant and her husband in relation to the claims that they are influential. The judge's primary finding on this was that the appellant and her husband had made assertions but had provided no evidence to support these assertions. The appellant's sister's statement recounts the appellant's claimed version of events in Bangladesh but provides no additional information to support the claim that they were influential.
16. I have also considered that whilst the judge discussed the evidence she did not specifically in her reasoning make findings on the uncle's evidence or the sister's witness statement, the uncle's evidence was summarised at [27] and [28] and the judge at paragraph [8] of the decision and reasons set out the documentary evidence before her including the appellant's bundle (which included the sister's statement). There is nothing in the sister's witness statement that could cure the inconsistencies of the appellant's and her husband's evidence in relation to the claimed influence of the appellant's ex-husband's family in the Awami League.
17. The judge also made a "catch-all" finding at [42] that she could "see no reason why the appellant's stepbrothers would have any interest in her" and went on to relate why this was including that they were not related by blood and that there was no credible reason advanced as to why they would maintain any interest in the appellant following the death of her

father. I am satisfied considering the judge's decision in its entirety that this encompassed a consideration of all the evidence before her. Even if it did not, any error is not material as nothing in that evidence speaks to challenging the judge's findings that there was no credible reason for any interest in the appellant now that her father is deceased, even though it was asserted that he was a political opponent of her ex-family. The judge also found that the appellant herself was not active politically and had only helped her father in a minor capacity.

18. The judge gave careful consideration to the evidence and provided cogent reasons for finding that the appellant would not be at risk on return and that there would be no ongoing interest in the appellant. Those findings were properly open to her and are not undermined by any alleged failure to take into consideration the appellant's uncle's and sister's evidence.
19. In addition the judge made alternative findings at [42] that internal relocation was open to the appellant particularly given that her ex-husband's family do not have reach or influence at [44].
20. There is no merit in the submission that the judge failed to fully consider the background country information which I am satisfied was before the judge and her decision discloses consideration thereof including at [45] that she considered the background evidence which was not in dispute and noted that there was no background evidence that related specifically to the appellant or her particular circumstances and that the background evidence did not add anything in the light of her findings about the likelihood that she would face risk from her ex-husband, his family or her stepbrothers. As I have already noted, that background evidence included the evidence which the appellant's representative purported to introduce before me.
21. The judge made adequate findings which were properly open to her and it was not properly suggested that those findings were irrational. I am satisfied that they were not.
22. The decision of the First-tier Tribunal does not disclose a material error of law such that it should be set aside.

No anonymity direction was sought or is made

Signed

Dated: 24 May 2017

Deputy Upper Tribunal Judge Hutchinson