



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/02224/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 15 March 2018**

**Decision & Reasons Promulgated
On 1 May 2018**

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

MRS T M
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Popal
For the Respondent: Mr Nath

DECISION AND REASONS

1. The appellant is a citizen of India born in 1982. She appealed against a decision of the Secretary of State made on 16 February 2017 to refuse her application for asylum.
2. The basis of her claim is that she fears she will be killed by her ex-husband who wished to gain custody of her son born in 2006. He has connections throughout her home region of Tamil Nadu. She was seriously assaulted in 2009. Members of her family were threatened and assaulted.
3. Her claim was not believed. In summary, there was no evidence such as statements and medical reports to support the claim of the assaults. It was not credible had she been under surveillance as she claimed that she

would have been able to travel to live with relatives elsewhere in Tamil Nadu without her ex-husband knowing of it. Also, she was able to live there for a time untroubled and her child continued to do so. Her claim, having come to the UK, that she had moved address and abandoned her studies because she had been told her address in London had been discovered by her ex-husband was also not believed.

4. Further, she had delayed for several years before claiming asylum. Her claim that she had been given bad advice by her then legal representative was not believed.
5. She appealed.

First tier hearing

6. Following a hearing at Hatton Cross on 2 October 2017 at which the appellant and another witness gave oral evidence, Judge of the First-Tier Oliver dismissed the appeal on asylum and human rights grounds.
7. His findings are at paragraphs 32-35. He did not believe the account. In summary, no supporting documents or statements had been submitted from family members; her ex-husband having, she claimed, been able to find her address in east London it was surprising he was not able to find the address she moved to in west London; he had also been unable to locate her son in India. Further, it was not credible she would have left her son in India if she feared he would be discovered by him, particularly if he had powerful connections, a matter which she had not provided evidence of.
8. In addition there was no reason to believe that if her ex-husband's main interest was to have an heir he would not have used his power and resources to find another partner to provide that need.
9. The judge found that the appellant would not be a lone woman on return. She has family support.
10. Finally, in brief consideration of human rights the judge found that the appellant had not established family life here sufficient to engage article 8. Also he placed little weight on any private life established while her immigration status was precarious.
11. The appellant sought permission to appeal which was granted on 29 December 2017.

Error of law hearing

12. At the error of law hearing before me Miss Popal's point was that the judge had made no reference to a psychiatric report dated 28 March 2017 from a Consultant Psychiatrist which indicated that the appellant suffers from a severe depressive illness and that if she faced removal "the risk of suicide will increase dramatically." The medical evidence gave support to

her claim to have been a victim of domestic violence and the effect that traumatic experience is making on her mental state.

13. Mr Nath's response was that the judge had given sound reasons for finding the account not credible and that she would not be a lone woman if returned. He questioned whether consideration of the medical evidence could have made any difference.

Consideration

14. In considering this matter I find that the decision shows material error of law.
15. The judge in his analysis of the asylum and human right claim gave no consideration to the medical evidence that was before him. Indeed, he made no reference to it whatsoever in his decision.
16. The main item is by Dr Adefope who is described as "Specialty Dr to Dr S Nauroze, Consultant Psychiatrist", Ealing Crisis Assessment and Treatment Team, West London Mental Health NHS Trust (28 March 2017). It is headed "Confidential Psychiatric Report" but is more a letter than a report.
17. Criticisms can be made of the letter. It is not indicated what the writer's qualifications and experience are. Nor whether he has personally seen the appellant or been involved in her treatment. The normal diagnostic criteria have not been shown.
18. Nevertheless, the letter does indicate that the appellant has been treated for many months for a depressive illness by her GP and had been referred for specialist treatment "*due to the lack of significant improvement in her mental health*".
19. She is being treated with "*high dose anti-depressant medication*".
20. The doctor states that her illness has been "*precipitated by her asylum and immigration issue*". He states "*She remains very frightened to return to India because she remains convinced that her ex-husband will find her and kill her.*" The doctor gives the opinion that she is "*suffering from a severe depressive illness from which she is making limited recovery because of her fear of being deported back to India*". The doctor adds that he is "*very concerned*" that if her appeal fails and "*the threat of deportation becomes real, she will suffer a significant deterioration in her mood and the risk of suicide will increase dramatically*". He ends by stating that it is of "*vital importance that her mental health situation is strongly considered in any decision making about her asylum application appeal.*"
21. In failing to give consideration to material evidence and give it what weight he considered appropriate, the judge erred. Such should have included in the context of the asylum claim, as Ms Popal submitted,

whether the medical letter was capable of supporting the appellant's claim of past events.

22. I would add that the appellant is a "vulnerable adult" as defined in the Joint Presidential Guidance Note No. 2 of 2010. Such may also have relevance as to how her evidence given at the hearing was assessed.
23. Nowhere is it recorded in the decision that the judge was alert to the fact that the appellant was vulnerable (per para 15 of the Guidance).
24. I note also ***AM (Afghanistan)*** [2017] EWCA Civ 1123 in which the court stated (at [30]) that failure to follow the guidance (and the Practice Direction "First-Tier and Upper Tribunal Child, Vulnerable Adult and Sensitive Witnesses" issued by the Senior President in 2008) "*will most likely be a material error of law.*"
25. In light of the errors the decision cannot stand and the case requires to be heard again.

Notice of Decision

The decision of the First-Tier Tribunal is set aside. The nature of the case is such that it is appropriate in terms of section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and of Practice Statement 7.2 to remit the case for an entirely fresh hearing before a judge other than Judge M R Oliver. No findings stand.

Direction Regarding Anonymity

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 members of their family. The 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

Upper Tribunal Judge Conway