



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04216/2017

THE IMMIGRATION ACTS

Heard at Centre City Tower, Birmingham
On 21st May 2018

Decision & Reasons Promulgated
On 24th May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

F
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No legal representation

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appealed against a decision of Judge E M M Smith promulgated on 15th June 2017.
2. The Appellant is a female citizen of Pakistan born 4th September 1969.

3. On 11th January 2017 further submissions were made on behalf of the Appellant and her adult daughter born 2nd June 1991. It was submitted that the further submissions should be accepted as a fresh asylum claim. The asylum claim was based upon membership of a particular social group.
4. The Respondent accepted the submissions as a fresh claim but refused the claim on 20th April 2017. The Appellant appealed to the FtT. After hearing evidence from the Appellant the appeal was dismissed, the judge finding that the Appellant was not entitled to a grant of asylum or humanitarian protection, and her removal from the UK to Pakistan would not breach any of her human rights protected by the 1950 European Convention on Human Rights (the 1950 Convention).
5. The Appellant applied for permission to appeal to the Upper Tribunal. The grounds are summarised below.
6. It was submitted that the judge had been unclear and contradictory in relation to the admissibility or relevance of evidence relating to the Appellant's daughter. At paragraph 17 it is recorded that medical evidence in relation to the daughter is relevant to the Appellant's case but at paragraph 37 the judge decided he could assess the issues of risk on return and internal relocation "in the absence of any issues relating to her adult daughter who is capable of making her own application for leave to remain". It was submitted that this is a contradiction of the position set out at paragraph 17.
7. At paragraph 40, despite the apparent agreement in paragraph 17 to acknowledge the relevance of the daughter's medical evidence to the Appellant's case, the judge declines to consider medical evidence about the difficulty for the Appellant of obtaining medical treatment for her daughter. At paragraphs 51 - 57 the judge concludes that the daughter has psychological problems but fails to develop this point in relation to issues affecting the Appellant.
8. Permission to appeal was granted by Judge Adio in the following terms;

"The Appellant seeks permission to appeal in time against the decision of the First-tier Tribunal (Judge E M M Smith) who in a decision promulgated on 15th June 2017 dismissed the Appellant's appeal against the Respondent's decision to refuse asylum and humanitarian protection. To be granted permission to appeal, the Appellant must show that there is an arguable case that the judge made an error of law, or conducted the appeal with procedural unfairness. Not only must there be such an arguable error, but it must be material to the decision. The judge acknowledged, as rightly pointed out in the grounds for application for permission to appeal that the medical evidence in relation to the daughter is relevant to the Appellant's case. It is arguable that this is a relevant issue when dealing with the issue of risk on return and internal relocation. It is an error of law on the part of the judge to state that the Appellant's daughter can make another application and not deal with the medical evidence as it applies currently. The fact remains that the Appellant would have to relocate with her daughter.

The decision contains an error of law as set out in the grounds for permission to appeal.”

9. Following the grant of permission, the Respondent submitted a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. It was contended in summary that it was agreed at the hearing that the Appellant’s daughter was not a dependant in the appeal and had no appeal proceedings before the Tribunal. Therefore it was accepted that the asylum claim could only be assessed from the Appellant’s perspective but that the medical evidence in relation to the daughter was relevant to the Article 8 consideration.
10. It was contended that the judge gave full consideration to the asylum claim and gave adequate reasons for finding the Appellant would not be at risk of persecution on return to Pakistan as a divorced woman or the mother of a child who has been raped. It was submitted that the judge dealt appropriately with the evidence when considering Article 8 and gave adequate reasons for concluding that the evidence was insufficient to indicate that the Appellant’s daughter was unable to return to Pakistan.
11. Directions were issued making provision for there to be a hearing before the Upper Tribunal to ascertain whether the FtT decision contained an error of law such that it should be set aside.

The Upper Tribunal Hearing

12. The Appellant attended the hearing without legal representation but she was assisted by Mr Forbes of Lifeline Options CIC, a registered charity. Mr Mills had no objection to Mr Forbes speaking on behalf of the Appellant. The Appellant had submitted an application to introduce further evidence. This amounted to an addendum psychiatric report in relation to her daughter dated 20th September 2017. I declined to admit this report into evidence on the basis that it was not relevant to the error of law consideration. The addendum psychiatric report had been prepared after the FtT hearing.
13. I pointed out to Mr Mills that the Home Office had accepted the Appellant’s daughter as a dependant in the Appellant’s asylum claim. This is confirmed in a Home Office letter dated 20th April 2017.
14. Mr Mills explained that he was unaware of this letter, and indicated that in view of the Home Office concession that the Appellant is a dependant, the judge materially erred in law in not treating her as a dependant in the asylum claim. It was accepted that the decision of the FtT was flawed because of this error in approach, and the decision should be set aside and remitted to the FtT to be heard again with no findings preserved.

My Conclusions and Reasons

15. In my view, the concession by Mr Mills was rightly made. It is clear that the application made by way of further submissions, was made on behalf of both the Appellant and her adult daughter. The application was made by Hope Projects and dated 11th January 2017. Both the Appellant and her daughter are referred to in the heading of the application as being the subject of the further submissions.
16. The refusal decision dated 20th April 2017 is addressed to the Appellant, but there is extensive consideration within that decision of the daughter's medical condition. That consideration is contained at paragraphs 48 – 68.
17. The daughter attempted to appeal against that refusal at the same time as the Appellant. It was held by a duty judge at Arnhem House that no decision had been taken in relation to the daughter, and therefore she did not have a right of appeal. This was based upon the Home Office letter dated 20th April 2017, in which it is specifically accepted that the daughter is a dependant in her mother's application.
18. The judge erred in paragraph 12 in recording that the Appellant's daughter had not lodged a further application to remain in the UK and as an adult she is not dependent upon this appeal. The Home Office letter dated 20th April 2017 contradicts that finding.
19. There is a further error at paragraph 17 in which the legal representative for the Appellant is recorded as accepting that the daughter was not an appellant and not a dependant. In my view the representative was incorrect in accepting that the daughter was not a dependant. This led to the judge finding, in paragraph 17, that he could only assess the asylum claim from the Appellant's perspective, although the medical evidence in relation to the daughter might be relevant in relation to Article 8 outside the Immigration Rules.
20. The judge erred at paragraph 37 in finding that he must assess the issue in relation to the international protection claim, in the absence of any issues relating to the adult daughter.
21. It was accepted by the Respondent at the hearing before me, that the judge erred in his approach by not recognising that it had been accepted by the Respondent that the daughter is a dependant in her mother's appeal. It does not appear that the judge was assisted by the representatives who appeared before him.
22. The error of approach means that the decision is unsafe and must therefore be set aside.
23. The decision needs to be remade. No findings can be preserved. I have taken into account paragraph 7.2 of the Senior President's Practice Statements, and because there is substantial fact finding to be undertaken, it is appropriate to remit this appeal back to the FtT to be decided afresh.

24. The parties will be advised of the time and date of hearing in due course. The appeal will be heard at the Birmingham Hearing Centre by an FtT Judge other than Judge E M M Smith.

Notice of Decision

The decision of the FtT disclosed a material error of law and is set aside. The appeal is allowed to the extent that it is remitted to FtT with no findings of fact preserved.

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.

Signed

Date 21st May 2018

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

No fee award is made by the Upper Tribunal. The issue of any fee award will need to be considered by the FtT.

Signed

Date 21st May 2018

Deputy Upper Tribunal Judge M A Hall