



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

Appeal Number: PA/06779/2016

THE IMMIGRATION ACTS

**Heard at Bradford
On 26 January 2018**

**Decision and Reasons Promulgated
On 07 February 2018**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

RAMANDEEP [S]

(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Davison (Solicitor)
For the Respondent: Mrs R Petterson (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal, brought with the permission of a Judge of the Upper Tribunal, from a decision of the First-tier Tribunal (hereinafter "the tribunal") which it sent to the parties on 13 April 2017, whereupon it dismissed her appeal against the Secretary of State's decision of 10 June 2016 refusing to grant her international protection. For the reasons set out below I have decided to set aside the tribunal's decision and to remit to the First-tier Tribunal for a complete rehearing.

2. By way of brief background, the claimant is a national of India and she was born on [] 1984. She came to the United Kingdom on 5 November 2009 as a student. She received extensions on that basis but, according to the Secretary of State, her leave as a student was curtailed on 6 August 2012 albeit that she had been granted an extension of leave to remain in that capacity until 28 June 2014. There may or may not be an ongoing dispute between the parties as to whether her leave was curtailed at that point or not but, if there is, it has not been a relevant consideration for me.

3. The claimant says that, having come to the United Kingdom, she entered into a relationship with one Surinder [S] and that the two have a daughter [PK] who was born on 26 November 2012. However, the relationship between the claimant and Surinder [S] has ended. The Secretary of State, in a lengthy decision letter of 10 June 2016 described the child as being “an Indian national”. I am not clear on the material before me as to whether she might or might not, in fact, be a British Citizen. That might depend upon the immigration status of Surinder [S]. Be that as it may, the basis of the claimant’s claim for international protection was that she had upset her father through refusing to enter into a marriage which he had arranged for her with an Indian national who was resident in India. She said that her father had subsequently made threats to kill her. She asserted that, in consequence, she could not return to her home area in India. She also said that it would be unduly harsh to expect her to relocate to a different part of India with her child. The Secretary of State, however, did not accept that the claimant had given a truthful account of events but also thought that, even if she had told the truth with the consequence that she was at risk in her home area, she would be able to relocate.

4. The tribunal heard the appeal on 30 March 2017. Both parties had legal representation. The claimant gave oral evidence with the assistance of a Punjabi speaking interpreter. One witness, a Mr Dharamjeet [S], was called to give evidence on her behalf. His evidence was of potential importance if accepted because he had said he had visited the claimant’s parents in India, in a bid to assist her, but that he had been “verbally attacked” by her father who had threatened to complain to the police in India about him. So his evidence, again if accepted, was capable of providing some corroborative support for the claimant’s contention that she would be at risk at the hands of her father and possibly other family members upon return to her home area.

5. The tribunal accepted that, if the claimant’s account was a truthful one she could not be expected to relocate. So, it proceeded on the basis that the outcome of the appeal would turn upon credibility. It then conducted an assessment as to credibility, as it was required to do, and which appears from paragraph 25 to 49 of its written decision. Those paragraphs encompass credibility assessments with respect to the claimant herself and with respect to her witness. An adverse conclusion with respect to each of them was reached. So, on that basis, it was decided that she would not face any risk upon return at the hands of her family.

6. Permission to appeal to the Upper Tribunal was sought. The grounds, which were prepared by the claimant herself (I know not whether she was assisted) assert, in summary, that the tribunal wrongly identified the point at which she ceased to have leave to remain in the United Kingdom; failed to take into account medical evidence capable of suggesting that due to mental health concerns she might be prone to inconsistency; failed to properly enquire into an issue relating to some gold jewellery which had been said to have been given to her by her father as a preparatory step for the proposed arranged marriage; wrongly concluded that it was implausible or incredible that she would have made attempts to reconcile with her father as she had asserted she had; confused two different individuals being Dharamjeet [S] and one Ranjeet [S] (the latter being her

landlord) with the consequence that it wrongly took a credibility point against the former; and in general terms had impermissibly speculated as to a range of matters.

7. Permission having been granted there was a hearing before the Upper Tribunal (before me) so that it could be considered whether the tribunal had erred in law and, if it had, what should flow from that. Representation at that hearing was as stated above and I am grateful to each representative. Mr Davison, in his submissions, focused primarily upon the suggested errors with respect to the medical evidence, the jewellery and in particular the alleged confusion on the part of the tribunal between the witness and the claimant's landlord. Mrs Petterson, whilst not agreeing with Mr Davison's contention that in general terms the decision was "sloppy" did strike a conciliatory note with respect to the confusion between the witness and the landlord and accepted that such placed her in difficulty. She did not, therefore, seek to persuade me on behalf of the Secretary of State that the Judge's decision should stand.

8. I do not accept all of Mr Davison's criticisms regarding all of the tribunal's credibility assessment and of course I bear in mind that generally speaking an assessment of credibility is one for the tribunal to make. I absolutely reject the contention that the decision can be characterised as "sloppy". But it is right to say that the tribunal reached an adverse credibility conclusion with respect to Dharamjeet [S]. It did so for a number of reasons but, in my judgment, the reasons it gives from paragraph 41 to 43 are not, of themselves, especially forceful. But the tribunal then said this:

"44. I have carefully read the letter from the Sandwell MBC dated 21 January 2016 and the letter from the appellant at HOB2 seeking financial assistance. The appellant states in her letter that she lives in West Bromwich from December 2009 to December 2015 and that her friends helped her financially from September 2015 when her relationship ended. They helped her pay her rent and living expenses but they needed to be paid back. She goes on to state that she was staying with friends at the date of the letter, namely, 6 January 2016 and that she had no means of supporting herself.

45. I infer that in response to what they regarded as her 'destitution letter' Sandwell MBC spoke to Mr Ranjeet [S]. I note here that Mr Dharamjeet [S], when referring to the appellant, shortened her name from Ramandeep to Raman and that Ranjeet, I infer, is a shortening of Dharamjeet notwithstanding the slight difference in the spelling. Mr Dharamjeet [S] refers to knowing the appellant in West Bromwich. I also note that the appellant is referred to as Ramandeep [K] in that letter.

46. The Sandwell MBC spoke to Ranjeet [S] by telephone on the basis that he was the appellant's private landlord when she lived at 10 Constance Avenue in West Bromwich as they wished to obtain a 'destitution letter' from him and that he refused to co-operate with them and supply such a letter to assist the appellant and put the telephone down. I conclude this lack of assistance to be inconsistent with Mr [S]'s claim to have visited the appellant's parents in India in order to help her."

9. So, the tribunal was deciding that Ranjeet [S] and Dharamjeet [S] are one and the same. It was also deciding that there was inconsistency in his not assisting the claimant in her application for local authority funding yet being prepared to go so far as to visit the her parents (whilst he was in India visiting others) on her behalf.

10. I would accept that if the tribunal is right in concluding that the two are one and the same, that such would amount to an adverse credibility point of real substance. The claimant, though, says that they are different individuals. I would observe that if the tribunal had identified this as an issue

at the hearing it could have easily sought to clarify the matter. If, on the other hand, the point was only realised after the hearing (and it is expecting too much to say that a tribunal should always realise each and every relevant matter of concern during a hearing) it had the alternative of either inviting written submissions on the point, reconvening the hearing or assessing credibility without taking that unexplored point into account. But it did not do any of those things. Further, it appears to have concluded that Ranjeet must be an abbreviation for Dharamjeet simply because Ramandeep had been shortened to Raman. But it seems to me that that simply does not follow at all. I do not have to go so far as to decide whether that part of the reasoning is irrational because I accept that the conclusion that they are one and the same has been inadequately reasoned. Since I cannot say the tribunal would inevitably have reached the same view as to his evidence absent the point about lack of support for the local authority application, I have concluded that the adverse credibility assessment with respect to Dharamjeet [S] is unsafe.

11. My analysis, though, has not stopped there. That is because I have considered whether the points identified by the tribunal and which caused it to disbelieve the claimant on the basis of her own evidence were such that the supportive witness evidence was incapable of impacting upon the outcome. However, as indicated, the evidence of Dharamjeet [S], if accepted, was capable of assisting the claimant. The tribunal did make some points of seeming significance when asking itself whether the claimant was telling the truth or not although I would accept, as is almost inevitable with such a consideration, that some of its reasons were better than others. Certainly, for example, what it said at paragraph 29 about the claimant having offered an unpersuasive explanation for her failure to seek asylum earlier and what it said about the apparent inconsistency in her evidence as to when she had first told her parents about her relationship with Surinder [S] (see paragraphs 34 to 36 of the Decision) might from one perspective at least have force. But a positive credibility finding with respect to Dharamjeet [S], in my judgment, was capable of tipping the scales with respect to credibility in the claimant's favour. So, I cannot say that the error I have identified in the tribunal's decision was immaterial.

12. In light of all of the above, therefore, and bearing in mind Mrs Petterson's appropriately conciliatory stance, I have decided that the tribunal's decision, careful though it is in many respects, has to be set aside.

13. Both representatives were of the view, my having stated in open court I would set aside the decision, that the appeal should be remitted to the First-tier Tribunal for a complete rehearing. I agree. That is the proper place for a comprehensive credibility assessment. There are facts to be found and the First-tier Tribunal is an expert fact-finding body. Accordingly, I have issued some brief directions which may well have to be supplemented at some point but which will, hopefully, afford some assistance with respect to the remaking process:

Directions

- (a) There will be a complete rehearing of the appeal before a differently constituted First-tier Tribunal (in other words before a different judge).
- (b) The time estimate for the hearing shall be three hours. The hearing shall take place at the Bradford Hearing Centre. The claimant is to be provided with a Punjabi speaking interpreter.
- (c) Nothing shall be preserved from the previous decision of the First-tier Tribunal.

(d) These directions may be varied, replaced or supplemented at any time by any Salaried Judge of the First-tier Tribunal.

Decision

The decision of the First-tier Tribunal involved the making of an error of law. Accordingly, that decision is set aside.

The case is remitted to the First-tier Tribunal for a complete rehearing.

No anonymity direction is made.

Signed:

Date: 5 February 2018

Upper Tribunal Judge Hemingway

**TO THE REDSPONDENT
FEE AWARD**

I make no fee award.

Signed:

Date: 5 February 2018

Upper Tribunal Judge Hemingway