



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

Appeal Number: PA/01261/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 24 July 2019**

**Decision & Reasons Promulgated
On 2 August 2019**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

HIRUL [H]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr M. Hashim instructed by MBM Solicitors

For the respondent: Mr E. Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 14 January 2019 to refuse a protection and human rights claim.
2. First-tier Tribunal Judge K. Swinnerton ("the judge") dismissed the appeal on human rights grounds. Having heard from the appellant and her partner, he did not accept that they produced sufficient reliable evidence to be satisfied that the relationship was genuine and subsisting. In his

reasoning, he pointed out a number of discrepancies between the evidence given by the appellant and her partner.

3. Rule 40 of The Tribunal Procedure (Upper Tribunal) Rules 2008 allows the Upper Tribunal to give a decision orally at a hearing. Rule 40(3) states that the Upper Tribunal must provide written reasons with a decision notice to each party as soon as reasonably practicable after making a decision which finally disposes of all issues in the proceedings. Rule 40(3) provides exceptions to the rule if the decision is made with the consent of the parties or the parties have consented to the Upper Tribunal not giving written reasons. In this case both parties consented to the decision at the hearing so it is not necessary to give detailed reasons.
4. In summary, the judge referred in general terms to the evidence contained in the appellant's bundle, which included a psychiatric report diagnosing the appellant with Post-traumatic Stress Disorder (PTSD) and medical correspondence relating to fertility treatment, both of which mentioned her partner. Although he referred to the evidence in the appellant's bundle at [17] it was agreed that the judge failed to conduct an evaluative assessment of the evidence, which was relevant to a proper assessment of the appellant's ability to give evidence and was capable of supporting her claim to be in a genuine and subsisting relationship.
5. At the hearing, some discussion ensued as to whether the error in assessing the genuine nature of the relationship was material given that the evidence, even if taken at its highest, had not been prepared in a way that would address all the relevant legal issues. For example, despite the fact that she was legally represented, the witness statements were inadequate and failed to deal with the central issue of whether there were insurmountable obstacles to the couple continuing their family life outside the UK. Mr Tufan recognised that it would be important to have a proper finding on the nature of the relationship even if the outcome might not have been any different because it might affect future applications for entry clearance or leave to remain.
6. In addition, Mr Hashim expressed concerns about the fact that the appellant's protection claim was not advanced before the First-tier Tribunal even though relevant documents, including an arrest warrant, were prepared in support of the appeal. After consultation with his client in conference he took a different view to counsel who represented the appellant at the First-tier Tribunal hearing. Although the appellant has had more than sufficient time to put forward her protection claim, and it was not argued before the First-tier Tribunal, I reluctantly agreed that it was appropriate to remit the matter to the First-tier Tribunal for a fresh hearing. Given the importance of the issues involved in a protection claim, and the relevance that it might have to whether there are 'insurmountable obstacles' to the couple continuing their family life outside the UK for the purpose of Article 8, it is not appropriate to make findings relating to the protection claim for the first time in the Upper Tribunal. However, the

appellant should be aware that the best evidence should be produced in support of the protection and human rights claims in good time for the next hearing. If, after this, the appellant does not advance the protection claim, the Tribunal may draw an appropriate inference from the fact and take it into account in assessing her overall credibility.

7. The First-tier Tribunal decision involved the making of an error on a point of law. The decision is set aside and is remitted to the First-tier Tribunal for a fresh hearing.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The appeal is remitted to the First-tier Tribunal for a fresh hearing.

Signed  Date 24 July 2019
Upper Tribunal Judge Canavan