



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

Appeal Number: PA/02646/2019

THE IMMIGRATION ACTS

**Heard at Field House
On July 31, 2019**

**Decision & Reasons Promulgated
On August 7, 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MISS Y C
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Trumpington, Counsel, instructed by Howe & Co Solicitors

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

The appellant is a Chinese national who came to the United Kingdom in March 2015 and, after notifying the Asylum Department in December, 2015 formally claimed asylum on January 12, 2016. This application was refused by the respondent on March 1, 2019.

On March 21, 2019 the appellant appealed this decision under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 and her appeal came before Judge of the First-tier Tribunal Oliver, who in a decision promulgated on May 29, 2019, dismissed the appellant's appeal on all grounds.

The appellant lodged grounds of appeal against that decision and permission to appeal was granted by Designated First-tier Tribunal Judge McCarthy on June 27, 2019 on the basis that the First-tier Tribunal Judge arguably failed to take into account the principles of paragraph 339L HC 395 or the guidance given by the Tribunal in KB & AH (credibility - structured approach) [2017] UKUT 491.

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.

SUBMISSIONS

Mr Trumpington relied on the grounds of appeal and submitted that the decision should be set aside, and the matter remitted back to the First-tier Tribunal. He argued that findings referred to in paragraphs 3(i), (iii), 4 and 5 were strong reasons for an error in law.

Mr Trumpington submitted that in finding the appellant was an unreliable witness, the Judge had failed to give adequate reasons for that finding. The Judge's finding that she had travelled on her own passport was not a finding that should have been made because she had stated snakeheads had arranged a passport, with her photograph but not her details, and the respondent had failed to demonstrate the appellant had used her own passport. The finding at paragraph 39 that the appellant had travelled on her own documents amounted to an error in law.

Whilst acknowledging paragraph 3(ii) of the grounds of appeal was not necessarily the strongest ground, Mr Trumpington submitted the Judge had erred by making no reference to the country evidence when assessing her credibility.

The account provided by the appellant explained why the authorities considered she was a leader and the absence of any injury did not undermine her claim to have been beaten. The approach by the Judge, in paragraph 37 of the decision, lacked structure and did not take into account the guidance given in KB & AH. The Judge had failed to enquire why she had used an agent when making an adverse finding in paragraph 36 and failed to give any weight to how she had funded her trip.

Any delay in applying for asylum should have been dealt with under paragraph 339L and not Section 8 of the 2004 Act. The Judge failed to give any weight to her explanation that she had not applied for asylum because she was under the control of a snakehead and only made her claim once her mother had secured her release.

Mr Lindsay opposed the application and submitted whilst the Judge's reasons were brief, they were adequate. The Judge rejected her core claim that she had come to the attention of the authorities and the reasons provided were not perverse and stemmed from the reasons provided in the decision letter. The Judge had rejected her claim that she had come on a false passport and concluded, following the decision letter, that she had entered the United Kingdom using her own passport details. Those findings were open to the Judge and were the cornerstone of his decision.

The guidance in KB & AH are indicators and not conditions integral to a decision and credibility was fact sensitive. The law does not require the case itself to be stated and as long as the Judge considered what is relevant and gave reasons for rejecting the claim, then there was no error in law.

Having heard these submissions, I reserved my decision.

ASSESSMENT OF EVIDENCE AND FINDINGS ON ERROR IN LAW

The appellant had entered the United Kingdom in March 2015 but did not claim asylum in the United Kingdom until January 2016 although an indication that she wished to claim asylum was made in December 2015. This delay was a matter the Judge took into account when rejecting the claim.

This matter came before the First-tier Tribunal and while Mr Trumpington argued the Judge had not provided full details of her account, it is clear that this information was provided between paragraphs 11 and 23 and thereafter the Judge set out her oral evidence between paragraphs 29 and 34. The Judge clearly was aware of her claim.

The Judge also set out between paragraphs 24 and 26 the Respondent's view on the matter and developed those arguments when giving reasons for dismissing the appeal.

The grant of permission criticises the failure to follow the guidance in KB & AH or the approach in paragraph 339L HC 395.

Paragraph 339L HC 395 concerns the procedure whereby a person should claim protection. It states that it is the responsibility of the appellant to substantiate their claim and corroboration is not necessarily needed if the conditions set out in subparagraphs (i) - (v) are met.

The Tribunal in KB & AH provided guidance as to how an appeal should be approached when credibility was at issue. It is said that if a structured approach was followed it would help Judges avoid the temptation to look at the evidence in a one-dimensional way or to focus in an ad hoc way solely on whichever indicator or factor appears foremost or opportune. The advice continues that the indicators are indicators and not conditions and that the assessment of credibility was a highly fact-sensitive affair and that the use of indicators did not negate the requirement to consider the evidence as a whole or in the round.

The Judge's consideration of the evidence must be looked at in the round and against the background of the whole decision.

The Judge made an adverse finding about how she came to this country. At paragraph 36, the Judge found that a false document was used and Mr Lindsay referred me to paragraph 56 of the decision, which recorded that the passport used in a visa application had contained the appellant's own personal details. The Judge criticised the appellant with regard to her explanation as to how her parents were able to raise funds to pay for two different false passports as well as an earlier bribe to secure her release from the police. The Judge found those matters troubling.

The Judge also rejected her explanation why she would be at risk when she was an employee with limited responsibility as a secretary. The Judge made several findings in paragraph 37 and rejected her claim, even taking her case at its highest, that she was one of the first to shout out.

Mr Trumpington argued that the Judge erred by finding that she suffered no injury when she had previously claimed she had suffered a bloody nose. The Judge found her account of injury was inconsistent with the mistreatment she claimed she had been subjected to and that was a point made by the Judge in the decision. It was said there was a wanted poster and the Judge criticised her for not sending some form of evidence to the Tribunal on the basis it would have been a simple task for her parents to take a picture of the poster and forward the same to the appellant. The findings on both these issues were open to the Judge who had the opportunity to listen to cross-examination.

Mr Trumpington's submission is that this was a scattergun approach to the case and did not follow the guidelines set out in KB & AH. Mr Lindsay submitted that those findings were based on the content of the decision letter and ultimately were findings open to the Judge.

At paragraph 39 the Judge found she was an unreliable witness, having rejected her claim to have used false documents. The Judge also rejected her claim that she had a prominent role in an anti-government demonstration or that her picture had been on a wanted poster. These findings were, in my view, open to the Judge and reasons for rejecting the same had been given.

Mr Trumpington submitted that the Judge should have properly considered the case under paragraph 339L HC 395 and not Section 8 of the 2004 Act. Whilst her failure to claim asylum was just an additional factor in refusing the claim but it was a finding made at the end of the decision and made after all the other adverse findings. If there was an error in approach on that issue, I find it was not material in this Judge's decision.

There is no error of law in this decision. The findings were open to the Judge and that whilst the decision could perhaps have been better structured, it does contain all the necessary information and findings that were required and poor structure does not amount to an error in law.

DECISION

There is no error of law. I uphold the original decision.

Signed

Date

1 August 2019



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

No fee award as I have dismissed the appeal.

Signed

Date

1 August 2019



Deputy Upper Tribunal Judge Alis