



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

Appeal Number: PA/05177/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 3rd April 2019**

**Decision & Reasons Promulgated
On 01st May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**M N B S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Smith instructed by L T & P Solicitors

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

DECISION AND REASONS

1. The Appellant, a national of Tunisia, appealed to the First-tier Tribunal against a decision of the Secretary of State made on 5th April 2018 to refuse her application for asylum and humanitarian protection in the UK. First-tier Tribunal Judge Housego dismissed the appeal in a decision promulgated on 31st January 2019.
2. The background to this appeal is that the Appellant left Tunisia and arrived in the UK on 21st September 2017 by plane, she claimed asylum on 10th October 2017. In summary the basis of her claim is that she is at risk of violence from her former husband and his family. She also claims to fear her maternal grandfather's extended family because her mother reported

the abuse she suffered at the hands of her father as a child to the authorities. The Appellant's mother and siblings were granted asylum in the UK on the latter basis.

3. There are four Grounds of Appeal challenging the First-tier Tribunal Judge's decision. It is contended in the first ground that the judge did not give adequate reasons for finding that the Appellant was not a victim of domestic violence as claimed. It is contended in the second ground that the judge erred in finding that the Appellant had delayed in raising her claim about the risk from her maternal relations as a result of her mother's allegation of sexual abuse against her father. The third ground contends that the judge erred in his approach to the previous decision of First-tier Tribunal Judge Harris promulgated on 9th March 2018 who allowed the appeal of the Appellant's mother and siblings and failed to give adequate reason for departing from those findings given the overlapping issues in this case. It is contended in the fourth ground that the judge's approach to Article 8 was flawed in that he found that the Appellant and her minor children do not have a private or family life in the UK.
4. The judge's findings in relation to the allegations of domestic violence are found in paragraphs 69 and 80. At paragraph 69 the judge said;

“The claimant's marriage was unhappy, with a controlling husband and interfering parents-in-law. She lived in a flat above them at one point. There were rows with her husband and her mother-in-law physically ill-treated the children. Her husband did not physically assault her or the children. There has been no threat to her from her husband or his family since she came to the UK. She speaks to the children on the telephone from time to time”.

5. The judge found at paragraph 80

“The first claim for asylum is untenable. The Appellant had an unhappy marriage. There was no reason why she could not leave him and live on her own. Divorce in Tunisia is a commonplace and the objective evidence is that women seek divorce as often as do men. The husband of the Appellant may well have been unreasonable, in controlling behaviour and in his conduct towards her and the children. That is not a reason to grant asylum or humanitarian protection in another country. It is no more and no less than a reason to leave him. The chronology supplied (A1:2) refers to an attempt by the husband to strangle in her November 2015. No details are given of this and I do not find (even to the lower standard) that this is reasonably likely to have occurred. The translations of transcripts show only rows, and in one of them it is the husband telling the Appellant to go away. Those in unhappy marriages have rows. Then they get divorced. That is the picture painted by the very long witness statement of the Appellant (and why I have set out what it said, in brief). There was no domestic violence.”

6. In her Grounds of Appeal and in oral submissions Ms Smith pointed to evidence before the judge in relation to domestic violence. She pointed to evidence in the screening interview, the asylum interview and the witness statements dealing with allegations of domestic violence. She also pointed to photographs of the children's injuries and the medical report of the clinical psychologist Dr Agnew Davies who assessed the Appellant's psychological presentation in the context of her allegations of domestic violence. The judge considered that report at paragraph 97 where he said "it is not a history of domestic violence". However at paragraph 4.2.1 Dr Agnew Davies referred to the Appellant's history and presentation and said that;

"It is highly consistent with her accounts of prolonged, escalating domestic violence after a childhood marred by exposure to domestic abuse and more recent rejection and threats by some relatives, in the context of having socialised into a culture which values so-called family honour".

7. Ms Smith also referred to evidence from Home Start in Liverpool dated 27th November 2017 and the principal of one of the children's school in Rochdale dated 3rd May 2018.
8. It would of course have been open to the judge to reject the account of domestic violence put before him. However, in my view, it is not clear from the decision that the judge engaged with the evidence in the Appellant's screening interview, asylum interview and witness statements as to the allegations of domestic violence before reaching the conclusion at paragraph 69 that the Appellant's husband did not physically assault her or the children and at paragraph 80 that there was no domestic violence. The judge's conclusion that there was no domestic violence [80] has not been adequately reasoned.
9. I have considered Mr Tufan's submission that, even if the judge failed to take account of all of the evidence and the findings on domestic violence were not sound, any error was not material because the domestic violence was not likely to recur and would not lead to a grant of asylum under the Refugee Convention in any event. He also referred to evidence about contact between the father and the children. However, I accept Ms Smith's submission that it is not possible to say with certainty that the inadequacies in relation to the finding as to domestic violence could not affect the rest of the decision. I accept that there had to be adequate findings on this matter before any proper assessment could be made as to risk on return, sufficiency of protection and internal relocation if required. I accept also that any finding on this matter would be relevant to an assessment under Article 8.
10. The second and third Grounds of Appeal go to how the judge treated the allegations of risk on return from the Appellant's maternal family and the treatment of Judge Harris' decision. In light of my finding above I do not need to make any separate findings in relation to this matter. I would

observe however that it does appear that First-tier Tribunal Judge Housego may have made a factual error at paragraph 87 in relation to the restraining order which he found applied to the Appellant's siblings whereas it applied to the Appellant's mother and other family members.

11. I also observe that the factual findings made by Judge Harris in the appeals of the Appellant's mother and siblings could form the starting point for an assessment of the Appellant's claim. However I accept Mr Tufan's submission that the assessment of risk on return and internal relocation made by Judge Harris may not have direct application to this Appellant.
12. In any event in my view the error I have identified in the findings as to domestic violence cannot be separated from the rest of the decision. For this reason I consider it appropriate to set aside the decision of the First-tier Tribunal in its entirety.
13. I agree with the view of both parties that, in light of the Presidential Practice Statements the nature or extent of the judicial fact finding which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008, it is appropriate to remit the asylum appeal to the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law and I set it aside in its entirety.

The appeal is remitted to the First-tier Tribunal.

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 him or any member of their 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: 25th April 2019

A Grimes

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

No fee is payable therefore there is no fee award.

Signed

Date: 25th April 2019

A Grimes

Deputy Upper Tribunal Judge Grimes