



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

Appeal Number: PA/07178/2019 (P)

THE IMMIGRATION ACTS

Determined on the papers

**Decision & Reasons Promulgated
On 7 August 2020**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

**M H
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Submissions received:

For the Appellant: Mr A Safiullah, Law Dale Solicitors dated 15th July 2020

For the Respondent: Mr S Kotas, Senior Presenting Officer dated 1st July 2020

DECISION AND REASONS

**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 owing to the sensitive matters within the decision. No report of these proceedings shall directly or indirectly identify him or any member of his 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.

I have had regard to the Pilot Practice Direction: Contingency arrangements in the First-tier Tribunal and the Upper Tribunal 2020 and the Presidential Guidance Note No. 1 2020.

The Tribunal may pursuant to Rules 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) (“the Upper Tribunal Procedure Rules”) make decisions in appeals without a hearing. The Upper Tribunal gave the provisional direction owing to the Covid-19 pandemic that the decision on the error of law in this matter could be determined on the papers and invited submissions from both parties. I have had regard to the views of both parties pursuant to rule 34(2) of The Upper Tribunal Procedure Rules.

Further, I bear in mind the principles established in **Osborn v The Parole Board** [2013] UKSC 61. I have concluded that the matter although complex factually does not require, in the interests of justice and fairness, a hearing to determine the matters on the error of law. Both parties are legally represented, and issues have been clearly explained and their views on the grounds fully set out.

The appellant appealed with permission against the decision of First-tier Tribunal Judge Talbot promulgated on 17th February 2020 which dismissed the appellant’s appeal on protection and human rights grounds.

The appellant is a Bangladesh national and feared return because his daughter was said to have been trafficked and he would be at risk from the traffickers in Bangladesh. The daughter has been diagnosed with a Personality Disorder and Schizophrenia.

The grounds of appeal set out that there was no doubt that the appellant was Ms K’s father as demonstrated by the entries in her passport and she was a victim of human trafficking. The letters issued by the Home Office dated 13th November 2015 and 16th July 2017 concluded that she was the victim of trafficking. The Judge failed to consider this evidence, failed to identify the appellant did make an attempt at regularising his stay in the United Kingdom and failed to consider the appellant was entitled to acquire a derivative right to remain based on his care for her (MS Malaysia v SSHD [2019] EWCA Civ 580. Those were errors of law.

Upper Tribunal Judge Rintoul extended time for the appeal and granted permission in the following terms:

‘It is arguable that the First-tier Tribunal judge erred in concluding that the appellant is (sic)[not] the father of NMK given the entries in her passports, which state her father’s name and which do not appear to have been considered.

It is also arguable that the judge erred in his assessment of whether NMK had been the victim of modern slavery given her testimony combined with the reasonable grounds letter.

It is arguable that these errors are material notwithstanding the finding at [28] the findings made there in the alternative being insubstantial'.

On 1st July 2020 the Secretary of State conceded that there was an error of law and conceded further that the appeal would be conducted on the basis that it is accepted that NMK is the biological daughter of the appellant.

The respondent accepted that the Judge erred in proceeding on the basis that the appellant's daughter was not the victim of trafficking. It was unclear why the Conclusive Grounds letter had not been produced at the hearing. However, it was accepted that the respondent was represented and 'a reasonably competent presenting officer could and should have checked the appellant's daughter's CID records which would have disclosed the decision in question'. It was noted however that counsel represented the Home Office at the First-tier Tribunal. The judge's rejection of the appellant's daughter's claim to have been a victim of trafficking was inextricably linked to his findings on credibility and risk and thus, Mr Kotas sensibly conceded, that this error was unquestionably material.

In the light of the concessions made above there was indeed a material error of law and the decision is set aside with no findings preserved. The concessions by the Home Office in the submissions of 1st July 2020 should be noted for the forthcoming appeal.

Both parties agreed the matter should be remitted to the First-tier Tribunal for rehearing.

Notice of Decision

The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal for redetermination.

Direction

The appellant's solicitors have objected to a remote hearing on the basis of the vulnerability of the appellant's daughter. The matter should be considered for listing for a face to face hearing and set down for a case management review hearing following transfer to the First-tier Tribunal.

Signed Helen Rimington

Date 30th July 2020

Upper Tribunal Judge Rimington