



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-004292

First-tier Tribunal No: PA/01086/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 26 April 2023

Before

UPPER TRIBUNAL JUDGE BLUNDELL
DEPUTY UPPER TRIBUNAL JUDGE HARIA

Between

SKN (Nepal)
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Fazli of Counsel instructed by Dean Manson Solicitors LLP

For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 27 March 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge P J S White (“the Judge”) promulgated on 2 February 2022 dismissing her appeal against a decision of the respondent dated 8 July 2021 to refuse her application for asylum and humanitarian protection made on 24 October 2019.

Background

2. The appellant is a national of Nepal born on 28 March 1976. She arrived in the UK on 31 March 2011 as the dependent of her husband RJM also a Nepalese national who had entered the UK on 14 January 2011 on a Tier 4 Student visa. Her leave to enter in that capacity was valid until 20 May 2013 but was subsequently extended until 10 April 2015.

In March 2015, however, the appellant and her husband were served with notices which brought their leave to an end on the basis that her husband’s leave had been obtained by deception. He was alleged to have used a proxy to have taken an English language test which was necessary to secure further leave to remain. After his attempts to challenge that decision had ultimately provided unsuccessful, the appellant claimed asylum.

3. The appellant and her husband have two children in Nepal. Their children now live with their grandmother in Nepal. Prior to entering the UK, the appellant’s husband used to work as an independent journalist in Kathmandu, Nepal. The appellant used to work as bookkeeper, also in Kathmandu city.
4. In essence, the appellant’s protection claim involved the following issues:
 - a. Whether the appellant has a well-founded fear of persecution in Nepal from a police officer and two other men who raped her in 2010 and the police generally,
 - b. Whether the appellant has a well-founded fear of persecution in Nepal on the basis of her political opinion on account of her membership of the Biplav party and the authorship of two books which are critical of the Nepalese authorities.
5. The respondent accepted the appellant’s nationality, her identity and that in August 2010 she was raped by three men. The claim that one of the men was a police officer was not accepted.
6. The respondent did not accept the appellant’s claim to be a member of the Biplav party or an author of anti-government material.

The First-tier Tribunal Decision

7. The Judge accepted that in 2010 the appellant was a victim of a serious assault but was not satisfied that the other elements of her account were reliable. The Judge found the following to be later embellishments:
 - a. the appellant's claim that a police officer of some seniority was involved,
 - b. that the perpetrators have continued to look for her and
 - c. that she subsequently got involved in politics and thus became of adverse interest to the government.
8. The Judge was not satisfied that the appellant is at risk from the government, the police, the police officer, or her previous attackers as claimed or at all. Furthermore, the Judge found that if he had been satisfied that there was any risk from her previous attackers internal relocation and sufficiency of protection were both available to her. [33]
9. The Judge dismissed the appellant's claim for asylum, humanitarian protection and articles 2 and 3 claims. There was no claim under article 3 medical grounds. [34]
10. As to article 8, the Judge notes that this was not the subject of significant evidence or submissions and upon consideration of the evidence the Judge finds in relation to 276ADE(1)(vi) of the Immigration Rules that there would not be very significant obstacles to the appellant's reintegration into Nepal. [35]
11. The Judge finds that there are no exceptional circumstances making removal unduly harsh, and that return to Nepal will reunite her with her children. Upon considering section 117B, the Judge finds there are no factors in her favour. The Judge concludes that her return will not breach her rights under article 8. [36].
12. The appellant appealed to the Upper Tribunal.

Permission to appeal

13. The appellant relies on four grounds of appeal. We set out only three of the four grounds as at the hearing, Mr Fazli who appeared for the appellant stated that he was not pursuing the fourth ground. The remaining three grounds can be summarised as follows:
 - a. Ground 1: asserts the Judge made inadequately reasoned findings in particular as to whether a named police officer was one of the three people that raped the appellant and whether the two other people are connected to the police or are otherwise able to cause harm to the appellant on return.
 - b. Ground 2: asserts the Judge failed to consider adequately the following material evidence:

- i. the contents of two emails [27-28],
 - ii. two books the appellant claims to have published [29], and
 - iii. objective evidence referred to in the appellant's skeleton argument [21].
- c. Ground 3: asserts the Judge considering the very significant obstacles test under paragraph 276ADE(1)(vi) of the Immigration Rules, failed to afford sufficient weight to the appellant's mental health conditions on return to Nepal; the impact on her of the rape; and her lengthy residence in the UK [35-37].
14. Permission to appeal was refused on 3 May 2022 in the first instance by First-tier Tribunal Judge Chowdhury, who in summary, considered the grounds to be an attempt to re-argue the facts before the Judge and disclosed no arguable material error of law.
15. The appellant renewed the application for permission at the Upper Tribunal and on 16 January 2023, Upper Tribunal Judge Stephen Smith granted permission primarily in relation to ground 3 on the basis that it is arguable that the Judge should have expressly addressed the prospective impact of the appellant's (accepted) status as the victim of a horrific rape in Nepal on her ability fully to integrate upon her return, in the course of his finding that she would not face "very significant obstacles". Upper Tribunal Judge Stephen Smith considered the remaining grounds to be of less merit as he considered those grounds to be disagreements of fact and weight but he did not restrict the grant of permission.

Rule 24 Response

16. The respondent in a Rule 24 response opposed the appeal on the basis that there was no material error of law. The respondent agreed with the view of Upper Tribunal Judge Stephen Smith that other than ground three the remainder of the grounds amount to no more than a disagreement of fact and weight. In relation to the third ground, the respondent submits, the Judge was plainly aware of the appellant's status as an accepted victim of a very serious sexual assault and the consideration of very significant obstacles at paragraph [35] of the determination is wholly sustainable. The respondent points out that the Judge notes that article 8 was not pursued in any significant way [35]. The evidence of the appellant's mental health was very limited and the Judge found that internal relocation would be available to the appellant on return.

Upper Tribunal hearing

17. Both representatives made detailed oral submissions.
18. Mr Fazli on behalf of the appellant adopted the grounds seeking permission and maintained all grounds except ground four. Mr Fazli

withdraw the fourth ground on the basis that it was a generic ground. Mr Fazli elaborated on his grounds.

19. Ms Ahmed on behalf of the respondent relied on the rule 24 response and submitted the Judge had directed himself appropriately, he had identified all the evidence including the submissions and the decision should be read as whole. Ms Ahmed submitted on a holistic reading of the decision, the Judge had given clear and cogent reasons for finding the account of the appellant's account to be less than credible.
20. Ground One: Mr Fazli submitted that there are a number of difficulties with the Judge's main findings of fact set out at [21]. Firstly, the appellant had not stated that the media outlet/reporter informed her that they would not mention that a police officer was involved but rather that they would not mention the name of the police officer involved.
21. Secondly, the appellant's case was that the reporter did not wish to name the police officer involved and not that he was scared of mentioning the police generally. The Judge's observation that the reporter was not scared of mentioning police complicity appears to have focused on a matter of little relevance.
22. Ms Ahmed concurred with Mr Fazli's submission that the Judge at [21] gives an inaccurate summary of the appellant's account of what she told the reporter as he states ".....only one would touch the story, and then on the basis that it did not mention the involvement of a police officer. Whereas the appellant at paragraph 11 of her witness statement states "...One reporter agreed to publish rape incident in his newspaper without mentioning the name of the police officer ..". However, Ms Ahmed submitted that this error is minor and immaterial. Ms Ahmed submitted that the Judge gives sound and detailed reasons and there is no error of law.
23. Thirdly, Mr Fazli submitted that the appellant had stated that she visited reporters in August 2010 so the date of the newspaper report being 10 August 2010, a day after the incident does not necessarily undermine her account. Furthermore, Mr Fazli submitted that contrary to the Judge's observations, the appellant told the reporter which officer was involved in the rape, it was the reporter who chose not to include the name in the report.
24. In relation to the date of the newspaper report being one day after the incident undermining the appellant's evidence, the respondent's position is that the Judge gives adequate and sound reasons for his findings.
25. Mr Fazli submitted that it was not implausible that the officer had gone to look for the appellant several times since the incident. Mr Fazli asserts that the Judge in so finding had speculated and failed to have sufficient regard to the fact that the appellant reported the incident to the police and that the incident was published by a reporter.

26. Mr Fazli asserted that the Judge in finding that “it is difficult to understand the absence of an immediate response ...” from the police officer, was not alive to the fact that a possible explanation for an absence of an immediate response from the officer and his men is that the reporter did not mention the officer’s name and the Judge did not factor in the appellant claims that she went into hiding as the officer and his men visited her sisters house looking for the appellant.
27. Mr Fazli submitted that the Judge failed to give sufficient reasons for finding that the appellant is not at risk from the other two men who raped her [33].
28. In response to the various challenges to the Judge’s findings detailed at paragraphs 24- 28 above, Ms Ahmed submitted that these are no more than disagreements with the findings of the Judge and that paragraphs 21 and 22 of the decision should be read together.
29. In relation to the assertion that the Judge failed to provide sufficient reasons as to whether the appellant was at risk from the two other men who raped her, Ms Ahmed submitted that the Judge made clear why he did not accept the appellant’s evidence.
30. Ground Two: Mr Fazli elaborated on the grounds and submitted that the Judge did not engage with the contents of or factor in the tone of the two books authored and published by the appellant and erred in finding them unreliable.
31. In relation to the findings as to the two books, Ms Ahmed submitted that the Judge had assessed the evidence in accordance with the principles set out in Tanveer Ahmed [2002] UKIAT 439, that it is for the appellant to show that a document on which she seeks to rely can be relied on. Ms Ahmed submitted that it was wrong of Mr Fazli to suggest that there was no need to translate the whole book in order to place reliance on it and the cost of doing so was irrelevant. Ms Ahmed submitted that the assertion the Judge failed to engage with the contents of the book is erroneous as the Judge could not engage with the contents of the book when he only had pieces of paper before him and not whole books. Ms Ahmed submitted the Judge gave sound and detailed reasons as to why he found the books to be unreliable [29]. Ms Ahmed submitted that the Judge’s reasons tie in with paragraphs 39, 49-51 of the Respondent’s refusal.
32. In summary, Ms Ahmed submitted that grounds 1 and 2 disclose nothing more than a disagreement with the Judge’s findings.
33. Ground Three: Mr Fazli withdrew the parts of this ground that assert the Judge did not consider the length of the appellant’s residence in the UK and the ground relying on a failure to take into account section 117B as it was pointed out that these areas are covered by the Judge [35 & 36].
34. Mr Fazli accepted that Nepal is a large country and relocation is an option.

35. Mr Fazli also accepted that past events without more cannot amount to very significant obstacles to integration but submitted that the Judge did not engage with or give sufficient regard to the rape and the impact on the appellant.
36. Ms Ahmed pointed out that the appellant did not pursue a claim on article 3 medical grounds [34], this is relevant to the point about the impact of the rape on the appellant. Ms Ahmed relied on GS (India) & Ors v The Secretary of State for the Home Department [2015] EWCA Civ 40 in support. Ms Ahmed referred to the brief submissions on article 8 in the skeleton argument that was before the Judge which made no reference to paragraph 276ADE(1) and submitted that accordingly the Judge made succinct findings covering relevant considerations.
37. Disposal: As to disposal of the appeal in the event we find there to be an error of law, the representatives were invited to give their views but they made no submissions as to whether the appeal should be remitted to the First-tier Tribunal.
38. At the end of the hearing we reserved our decision.

The Law

39. Sufficient reasons for decision must be given; mere statements that a witness was not believed are unlikely to be sufficient MK (duty to give reasons) Pakistan [2013] UKUT 641 (IAC). The Upper Tribunal in MK gives the following guidance:
 - “(1) It is axiomatic that a determination discloses clearly the reasons for a tribunal's decision.
 - (2) If a tribunal finds oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it is necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight is unlikely to satisfy the requirement to give reasons.”
40. Henry LJ in Court of Appeal in Flannery - v - Halifax Estate Agencies [2000] 1 All ER 373 made the following general comments on the duty to give reasons:
 - “(1) The duty is a function of due process and therefore of justice. Its rationale has two principal aspects. The first is that fairness surely requires that the parties - especially the losing party - should be left in no doubt why they have won or lost. This is especially so since without reasons the losing party will not know whether the court has misdirected itself and thus whether he may have an available appeal on the substance of the case. The second is that a requirement to give reasons concentrates the

mind; if it is fulfilled, the resulting decision is much more likely to be soundly based on the evidence than if it is not”

Decision on error of law

41. Before proceeding to consider the grounds in detail, we remind ourselves of the many authorities on the approach an appellate court or tribunal should take when considering findings of fact reached by a first instance judge. A recent summary of the well settled principles can be found in Volpi & Anor v Volpi [2022] EWCA Civ 464 at [2] where Lewison LJ stated:

“i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.

ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.

iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.

iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.

vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract.”

42. We appreciate that judicial restraint should be exercised when examining the reasons given by the First-tier Tribunal Judge for his decision and that we should not assume too readily that the Judge misdirected himself just because not every step in his reasoning is fully set out. This is the

guidance given by the Court of Appeal at paragraph [77] of KM v SSHD [2021] EWCA Civ 693.

Ground One:

43. We have looked with great care at the decision of the Judge. An error of law based on findings of fact is one which the Upper Tribunal should be slow to make.
44. The first issue is in relation to the Judge's findings regarding the naming of the police officer in the newspaper article. The Judge clearly understood the police officer was not named in the news report as he states, "..... the report does not mention a police officer as a perpetrator but it describes another rape and murder, within the past month and says a police officer was involved....."[21]. We find that although it is arguable that Judge's the findings in this regard may be imprecise and do not expressly state why the police officer was not named in the report, nothing turns on this and as such it is not material.
45. The submission that it is difficult to understand the Judge's observation that the reporter was not scared of mentioning police complicity is not made out as the Judge clearly had in mind the news report described a rape and murder and alleged that the police were involved. We find that the Judge gave adequate reasons for such a finding.
46. The grounds challenge the Judge's finding that it was remarkable the report in the newspaper of the incident is dated one day after the attack. The Judge gives full and adequate reasons for this finding based on the appellant's own evidence as he states:

"Most remarkable of all, the paper is dated 10th August 2010, one day after the attack, meaning that the appellant was giving details to the press almost immediately, despite her apparent (and understandable) reluctance to talk to anyone about it, and her account in interview that she did not. Moreover, if she only learned later that one of the criminals was a police officer it is hard to see how she could have told this reporter that, in which case he could not have refused to include it." [21]
47. The Judge's findings that it was unclear why the criminals had gone back to look for the appellant several times since the incident are adequately reasoned as he states:

"If, as she says in her interview, the police threatened her if she were to report it, and she thereafter told no-one but her close family, she would have been acting as they wanted and they would have no reason to pursue her." [22]
48. The further challenges raised at paragraph 9 of the grounds that the Judge does not factor into his findings the appellant's evidence that the officer and his friends went to look for her are also not made out as

reading the decision as a whole it is clear the Judge was alive to the appellant's claim that the officer and his men came to look for her albeit not immediately [22], then in 2014 when she had returned to visit her ill father [24] and again in 2020 [28].

49. Contrary to what is asserted at paragraph 9 of the grounds, the Judge does not fail to have sufficient regard to the fact that the appellant reported the incident to the police and the incident was published by the reporter as the Judge specifically considers this in the alternative as he states:

"If, as her statement says, she promptly told the press who published details, that would be a different matter, but in that case it is difficult to understand the absence of an immediate response from them." [22]

50. Paragraph 11 of the grounds assert that the Judge failed to provide sufficient reasons as to whether the appellant is at risk from the two other men who raped her and the Judge does not sufficiently explain why he found the appellant is not at risk from the other two men. The Judge undertakes a full and proper assessment in accordance with section 8 Asylum and Immigration (Treatment of Claimants etc) Act 2004 [32] and finds the prolonged delay in making the asylum claim damages the appellant's credibility. Reading the decision as a whole it is apparent that the Judge had the benefit of "a sea of evidence" (to adopt the terminology of Fage UK Ltd v Chobani UK Ltd [2014] EWCA Civ 5 at [114]) upon which he found the appellant's claimed risk of harm if returned to Nepal not credible. The assessment of credibility is obviously a matter for the First tier Tribunal Judge and any appellate body will be slow to interfere with that assessment. The Judge having undertaken a thorough examination of the facts concludes his findings and states:

"I am not satisfied, even to the low standard required, that the other elements of her account are reliable. I find that the claims that a police officer, of some seniority, was involved, that the perpetrators have continued to look for her, and that she has subsequently got involved in politics and thus become of adverse interest to the government, are later embellishments. I am not therefore satisfied that she is at risk from the government, or the police, or Mr Amatya, or her previous attackers, as claimed or at all. If I considered there were any risk from her former attackers I should also be satisfied, for the reasons set out in the refusal, that internal relocation and sufficiency of protection were both available to her." [33]

51. In this case, the First-tier Judge has given cogent, intelligible and sufficient reasons for reaching the conclusions which he did on credibility. For the reasons given we find ground one amounts to no more than a disagreement with the findings of the Judge.

Ground Two

52. Ground two, raises three points. First, it is asserted that the Judge speculates when considering the contents of two emails [27-28] on the basis that the fact that the appellant is outside of her country does not render the claim that the police have visited her home and are looking for her as unreliable. This ground misconstrues the Judge's findings. The Judge undertakes a full consideration of the emails and gives adequate reasons as to why he views the emails with circumspection [27-28]. In assessing the email of 9 November 2020 the Judge questions why the police are continuing to search for the appellant and states "Why they should keep visiting when they are presumably told she is abroad I do not know".
53. Second, the ground asserts the Judge erred by finding that the two books the appellant claims to have published are not reliable [29].
54. The Judge notes what was produced had a limited degree of translation and he had "... typed or word- processed sheets of paper, with marks of hole punching visible on the copies, rather than a printed and bound book ...".
55. The Judge gives four reasons for finding the books unreliable. In addition the Judge takes into account the respondent's comments about the books. Ms Ahmed clarified that these comments are at paragraphs 39, 49-51 of the respondent's decision which assesses the contents and states that each section only shows a summary of each chapter and notes that it is unclear why full copies of the books have not been submitted.
56. Mr Fazli accepted it would have been better to have a translation of the whole of each book but he said there were cost implications. He agreed the absence of a hard copy of each book was of concern and stated that he did not have knowledge of or instructions as to why hard copies were not produced. Mr Fazli stated that the general point being made was that the appellant would be at risk on return to Nepal as she was critical of the government.
57. We accept Ms Ahmed's submission that the onus is on the appellant to show that a document on which she seeks to rely can be relied on. Mr Fazli could not explain why a full copy of each book was not produced, he said this was of concern but he had no instructions on the point. The submission that it is costly to translate a whole book fails to have regard to the procedure rules of the First - tier Tribunal (Rule 12(5) (b) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014) which requires that if a document provided to the Tribunal is not written in English it must be accompanied by an English Translation.
58. We find that Ms Ahmed's point is well made that the Judge could not fully engage with the contents of the books as he only had pieces of paper before him and not whole books. The Judge nevertheless understood the appellant's claim to be critical of the government and appreciated the appellant's reliance on the two books as one reason why the government

were said to be hostile to her be hostile. Mr Fazli accepted that the Judge had the hostility of the government in mind and that a further assessment of the contents of the books would not have assisted the appellant. The Judge gives sound and sufficiently detailed reasons as to why he found the books to be unreliable [29]. This ground is not made out.

59. Third, the grounds assert the Judge failed to have regard to the objective evidence set out at paragraph 40 of the appellant's skeleton argument in not accepting the appellant's account of reporting the rape to a news reporter who published an article on the rape and that she was threatened by the police after she reported the incident [21]. Although the Judge does not refer specifically to the objective evidence the Judge was clearly aware of and took into account the contents of the skeleton argument as he refers to it [5]. It is trite law that judges do not have to rehearse each and every item of evidence before them and decisions need not be a counsel in perfection. We are conscious that it is not necessary for a judge to recite all elements of evidence before them, provided they consider matters in the round. The Judge explicitly states that he has considered all the evidence with care and in the round [33]. This ground discloses no error of law.

Ground Three:

60. This ground asserts that the Judge in assessing the appellant's rights under article 8 in particular with reference to the very significant obstacle test under 276ADE(1)(vi) failed to afford sufficient weight to the rape and the impact on the appellant. [35]
61. It is well established that a submission that too much or too little weight has been given to a particular evidence does not raise an arguable point of law, the weight to be attached to evidence is a matter for the Judge.
62. The Judge clearly accepted the account of the rape as he refers to it earlier in the decision [33]. The Judge in considering the very significant obstacles test expressly refers to the appellant's mental health stating, "... She is prescribed sertraline, but I have no evidence of significant mental ill-health, or of the availability or otherwise of any treatment she may need."
63. Reasons can of course be brief and need not be detailed, the ultimate test is obviously whether the reasons enable the losing party to understand the basis on which they have lost.
64. Ground three is not made out for the reasons given.
65. We conclude that there are no errors of law in the Judge's decision, such that it is appropriate to set his decision aside. Therefore, the appellant's appeal against the Judge's decision fails.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the First-tier Tribunal's decision should be set aside.

No anonymity direction is made.

N Haria

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 April 2023