



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003705

First-tier Tribunal No: PA/51003/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 23 October 2024

Before

UPPER TRIBUNAL JUDGE BULPITT

Between

A G
(ANONYMITY DIRECTION MADE)

and

Secretary of State for the Home Department

Applicant

Respondent

Representation:

For the Appellant: Mr A Chakmakjian - Counsel instructed by Kilby Solicitors
For the Respondent: Mr S Walker - Senior Home Office Presenting Officer

Heard at Field House on 18 October 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant her partner and children are 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, her partner or her children. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge G J Ferguson (the Judge) which followed a hearing that took place on 22 August 2023 but was promulgated on 27 November 2023. Permission to bring this appeal was granted on limited grounds by First-tier Tribunal Judge Scott on 8 August 2024.

2. On behalf of the respondent, Mr Walker conceded that, for the reasons set out in the appellant's grounds of appeal, the Judge's decision contained an error of law such that it should be set aside and the appeal be remitted to the First-tier Tribunal for a fresh hearing. Having heard from both Mr Walker and Mr Chakmakjian on behalf of the appellant, who relied on his grounds of appeal and also invited me to set the decision aside and remit the matter for a fresh hearing, I am satisfied that Mr Walker was correct to make his concession. My reasons for this conclusion and directions for the future management of this appeal follow.

The Background

3. The appellant's case before the Judge was that she had fled Albania together with her partner XC after experiencing domestic violence from her father. Having done so she and XC travelled from Italy to Belgium where they stayed for three days with Albanians who unbeknownst to XC, forced the appellant into prostitution. The appellant escaped from the Albanians in Belgium and with the assistance of someone she had met in Belgium travelled to the United Kingdom hidden in a lorry, arriving on 1 May 2019. Later that month she claimed asylum and two months after she arrived in the United Kingdom she was joined by XC who had also entered the country clandestinely. The appellant and XC have been living together in the United Kingdom since then and have had three children, the oldest of whom was four years old at the time of the hearing before the Judge.
4. The appellant asserted that she was at risk of persecution or serious harm in Albania at the hands of her father and her extended family who disapproved of her relationship with XC. She also asserted that, as a victim of trafficking, she was at risk of being re-trafficked if she were returned to Albania. For these reasons she argued the respondent's decision to refuse her protection claim breached the United Kingdom's obligations under the Refugee Convention and the obligation to provide her with humanitarian protection. She also made a human rights claim.
5. While her claim for asylum was being considered the appellant was also referred to the National Referral Mechanism (NRM) as a possible victim of trafficking as a result of her experiences in Belgium. The NRM concluded that the appellant was a victim of trafficking during those three days in Belgium and the respondent conceded this point in the hearing before the Judge.
6. Having heard evidence from the appellant and XC, the Judge comprehensively rejected the appellant's case finding that the appellant and XC had manufactured their account of suffering domestic violence in Albania as a reason to claim asylum ([57] of the Judge's decision), fabricated their account of fleeing Albania ([53] of the decision) and that they travelled to the United Kingdom not to avoid persecution but for material prosperity ([54] of the decision). The Judge reached this conclusion at least in part because of internal inconsistencies in the appellant's account (e.g.[53] of the Judge's decision) and inconsistencies between the account she gave and that of XC (e.g. [52] and [53] of the decision).
7. Permission to appeal against the Judge's decision was granted on the basis that (1) it was arguable that the Judge failed to give adequate reasons for his rejection of the credibility of the appellant and XC; and (2) failed to treat the appellant as a vulnerable witness as required by the Joint Presidential Guidance Note, No 2 of 2010 and the guidance provided by the Court of Appeal in AM (Afghanistan) v SSHD [2017] EWCA Civ 1123. The appellant was not granted permission to appeal on two other proposed grounds of appeal.

The Error of Law

8. Part of the evidence considered by the Judge was a report about the appellant written by Dr A Hameed. In that report Dr Hameed noted the appellant's history of being forced to work as a prostitute in Belgium and diagnosed her as presenting with symptoms in-keeping with an Adjustment Disorder and symptoms of Post-Traumatic Stress disorder ([7.2] of the report). Dr Hameed gave the opinion that, while she was fit to give evidence in the appeal proceedings, the appellant *"might become distressed by the experience under questioning to the extent that the accuracy of her testimony may be affected by her current psychological state of mind"* (see [7.28] of the report). Dr Hammed described the appellant as a "vulnerable woman" (see [9.3] of the report).
9. Relying on the report from Dr Hameed, it was argued on behalf of the appellant at the hearing before the Judge, that she should be treated as a vulnerable witness and that the Joint Presidential Guidance Note, No 2 of 2010 and the guidance provided by the Court of Appeal in AM (Afghanistan) were relevant both to how the appellant gave her evidence in the hearing, and also how that evidence was to be assessed by the Judge (see [7] and [8] of the Appeal Skeleton Argument produced for that hearing).
10. Although the Judge expressed reservations about Dr Hameed's report, noting that Dr Hameed had been provided with limited information and appeared to be based on an unquestioning acceptance of the truth of the appellant's account, he did recognise that the appellant's mental health was "a factor to be considered". The Judge also acknowledged that the appellant's agreed history of trafficking in Belgium was still relevant for her diagnosis and presentation (see [62] of the decision).
11. Having recognised the appellant's diagnosis and history, the parties agree that the Judge fell into error when he then gave no indication as to whether he consequently treated the appellant as a vulnerable witness and if so what impact that vulnerability i.e. her mental health diagnosis and past traumatic experiences, had on the credibility of her evidence. This was especially important given the reference by Dr Hameed to the possibility of the accuracy of the appellants testimony being affected by her current psychological state of mind.
12. As headnotes 2 and 3 to the Upper Tribunal's decision in SB (vulnerable adult: credibility) Ghana [2019] UKUT 00398 (IAC) make clear, for a decision to adequately comply with the Joint Presidential Guidance, it is necessary for an appellant's vulnerability to be taken into account by the Judge when assessing the credibility of their evidence and when doing so it is for the Judge to determine the relationship between the appellant's vulnerability and the evidence adduced.
13. The decision in this case however provides no indication that this happened. In particular, there is no apparent consideration of whether the appellant's vulnerability including her agreed traumatic history, provided an explanation for the inconsistencies in her evidence. As AM (Afghanistan) makes clear, this needed to happen as part of a holistic assessment of the appellant's evidence, and the medical evidence of a possible explanation for inaccuracies in her evidence needed to be part of the credibility assessment not an "add-on" to it.
14. As the credibility of the appellant goes to the heart of this appeal it was agreed by both parties the error of law identified was material and that the decision must be set aside. It was also agreed by both parties that in view of the error

there could be no preserved findings and that a fresh hearing in the First -tier Tribunal was required.

Case Management

15. The appeal will accordingly be remitted for a fresh hearing in the First-tier Tribunal. When doing so, it is necessary for me to record failings by the appellant's representatives to apply the appropriate degree of procedural rigour in this appeal. This important both to ensure this failing is not repeated in other cases and to enable a fair and just re-hearing.
16. When the appeal was in the First-tier Tribunal directions were issued as to the service of evidence by the appellant's representatives. Those directions were not followed and evidence was served piecemeal and out of time, with the last evidence being uploaded onto MYHMCTS the day before the hearing. This not only caused problems during the hearing at the First-tier but it also led to difficulties in these proceedings as the key medical report was omitted from the evidence as a result of it not being part of any of the indexed bundles of evidence.
17. The appellant's representatives failure to comply with Tribunal directions was repeated in the Upper Tribunal, where standard directions were issued requiring the service of a consolidated bundle. These directions were not followed. As a result Mr Chakmakjian was left having to compile an bundle that complied with the directions on the morning of the hearing and the Tribunal's valuable time was wasted while he did so. Even when a bundle was produced it was still missing the key medical report which had to be obtained and filed separately.
18. These failings are contrary to the interests of justice and do not reflect the parties duty under the Procedure Rules of both the First-tier Tribunal and the Upper Tribunal to help the Tribunal further the overriding objective and to co-operate with the Upper Tribunal generally. They should not be repeated.
19. To ensure a fair and just hearing takes place now I direct that by no later than 4pm on 29 November 2024 the appellant serves a consolidated, indexed and paginated PDF bundle containing all the evidence on which she wishes to rely in support of her appeal.
20. A fresh hearing of the appeal will then be held at Taylor House before a Judge other than Judge G J Ferguson.

Notice of Decision

The decision of the First-tier Judge involved the making of an error on a point of law and is set aside.

The appeal is remitted to be reheard at Taylor House by a Judge of the First-tier Tribunal other than Judge G J Ferguson.

Luke Bulpitt
Upper Tribunal Judge Bulpitt

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 October 2024