



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

Appeal Number: PA/10227/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5 June 2017**

**Decision & Reasons Promulgated  
On 21 June 2017**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**J S  
(anonymity direction made)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Sharma instructed by Londonium Solicitors

For the Respondent: Mr Tarlow Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against a decision of First-tier Tribunal Judge Wyman ('the Judge') promulgated on 23 November 2016 in which the Judge dismissed the appellant's appeal on asylum and human rights grounds.
2. Permission to appeal was refused by another judge for the First-tier Tribunal but granted on a renewed application to the Upper Tribunal. The operative section of the grant being in the following terms:

1. the Appellant is a national of Bangladesh, born on 1.8.75. She appealed to the First-tier Tribunal against a decision by the Respondent dated 12.9.16. Her appeal came before First-tier Tribunal Judge Wyman for hearing on 26.10.16. In a decision promulgated on 23.11.16 the Judge dismissed the appeal.
2. The grounds in support of the application for permission to appeal, which was made in time, assert that the Judge erred materially in law: (i) in her assessment of the credibility of the Appellant; (ii) in her conclusions concerning the risk to the Appellant of persecution in light of the positive evidence of domestic violence; (iii) in her findings on internal relocation, which contradicted her own observations at [64]; (iv) in failing to take account of the reasons for the delay in claiming asylum.
3. The Judge rejected the Appellant's asylum claim essentially on the basis that no evidence had been provided to support her assertions. However, it would appear that she accepted that the Appellant could be at risk from her husband or his family in her home area, but that there would be sufficiency of protection available and she would not be at risk if she relocated at [65]-[67].
4. In light of the lack of clarity as to which aspects of the Appellants evidence the Judge accepted and which she rejected, permission to appeal is granted on the basis that it is arguable that the Judge erred in this respect. It is further arguable that in considering the viability of internal relocation, the Judge failed to correctly direct herself as to whether or not in all the circumstances it would be unduly harsh for the Appellant to internally relocate and that she failed to give reasons for finding that there would be sufficiency of protection for the Appellant on return.
5. Permission to appeal is granted. All grounds may be argued.

### **Error of law**

3. On behalf of the appellant, Mr Sharma asserted three issues arose in relation to the decision. The first of these related to [64] - [66] in which the Judge recognised when considering the situation of women in Bangladesh generally that it is a patriarchal society in which women without a male protector can be vulnerable to abuse and isolation. The Judge noted at [65 - 66]:
  65. Weighing up all the other evidence, I find that there would be sufficiency of protection for the appellant if she returns to Bangladesh. The appellant could choose to return to Dhaka and live with her mother, and have the advantage of her siblings (including brothers) living either with or close to her. She would therefore have the advantage of a male protector from within the family network.
  66. Alternatively, there is an internal relocation alternative available for the appellant. There is freedom of movement within the country. The appellant has shown that she can live independently having travelled to the United Kingdom and lived here for five years, a country to which she had never previously travelled. By contrast moving within Bangladesh should be a simple process as she is familiar with the language and culture of Bangladesh. There are certainly good employment opportunities for a person with the appellants skills, including education, work experience and language skills in other towns such as Chittagong, which is now seen as the commercial centre of Bangladesh.

4. Mr Sharma asserted that although there is no challenge to the Judge's findings regarding the availability of the appellant's brother per se, the Judge fails to deal with whether such protection would be available to the appellant if she was forced to internally relocate away from her home area.
5. The finding in relation to internal flight is clearly expressed by the Judge has a finding in the alternative. It is therefore necessary to consider the Judge's primary finding which is summarised in [65] above.
6. The appellants claim is that she cannot return to Bangladesh as she fears persecution from her husband on return. It is not disputed that the appellant married her husband on 30 May 1996 and that there are two daughters from the marriage both of whom currently live with the appellant's mother in Bangladesh. It is not disputed that prior to coming to the United Kingdom the appellant worked as an Assistant Officer before being promoted to a Senior Officer in a bank in Bangladesh. In relation to the core element of the appellants claim the Judge made the following findings:
  59. The appellant has claimed asylum stating that she fears persecution from her husband. I note that this is a non—Convention reason. Accordingly, I have gone on to consider whether or not she faces a real risk of suffering serious harm on return from the UK.
  60. The appellant stated that she has been beaten and abused on numerous occasions by her husband, until she decided that she could no longer tolerate the abuse and returned to her parents home. The appellant has not submitted any medical evidence of this in the form of a GP report or evidence from a hospital in Bangladesh. Nor has the appellant provided supportive evidence in the form of a letter confirming the domestic violence from her mother or adult brothers. Nor has the appellant provided any evidence from any domestic violence charities in the United Kingdom, confirming that the appellant has been receiving support and counselling from them regarding her experiences in Bangladesh. Nor has the appellant provided any explanation as to why she has not obtained this evidence (either from Bangladesh or the United Kingdom) despite having plenty of time to do so.
  61. I note the appellant has chosen not to divorce her husband, despite her stating that she has had a very unhappy marriage of some 20 years, and also despite the fact that she has lived in the UK for the past five years (and therefore is not in current fear of him and what he could do if he receives a divorce petition). The appellant speaks English and so has had every opportunity to obtain legal advice from a qualified solicitor regarding divorce proceedings. I note that there are also many Bangladeshi speaking qualified solicitors in the United Kingdom that the appellant could have approached. This therefore reduces her credibility as she has had the opportunity to take advice regarding her marriage and issue divorce proceedings over the past five years, but has clearly chosen not to do so. The fact that she has clearly chosen to remain married to her husband, despite making serious allegations against him, is a factor that I have taken into account, and weighs against her credibility.
  62. Whilst the appellant has stated that her husband has links with the Awami League and/or the police, as explained above, no evidence what so ever has been provided of any of these links whatsoever. The appellant stated that her husband arrived with the police at her mother's home. Yet there is no affidavit

from her mother confirming these details, or any document from the police or warrant explaining that she is under arrest. The appellant has stated that her husband has links with high-ranking officials from the Awami League. Yet the appellant has not provided evidence such as photographs of the appellant's husband together with the police officers or newspaper articles. The burden of proof is on the appellant that she has failed to put forward any evidence of these matters.

63. Turning to consider the situation of women in Bangladesh generally, it is not in dispute that education and employment opportunities have significantly increased the women in Bangladesh over the past twenty years. Indeed, this can be seen by the appellant some positive educational and employment history.
7. The finding by the Judge that the appellant had failed to adduce sufficient evidence to enable her to discharge the burden of proof, even to the lower standard, to show that the core of her claim was credible, both in relation to the threat faced by her husband and alleged lack of sufficiency of protection as a result of her husband's connections, is a finding reasonably open to the Judge on the basis of the evidence made available. In addition to the failure of the appellant to establish the credibility of core aspects of her claim, there was insufficient evidence to show the appellant would be at risk per se on return or that the fact she could return to the capital and live with her mother and other family members would not suffice. Finding there is a sufficiency of protection both within the law and family unit has not been shown to be a finding infected by arguable legal error.
8. As this primary finding must stand, any failure to consider the prospect of male protection if the appellant internally relocates is not material. The country material shows that women without male protectors in some parts of the country can be vulnerable to abuse and isolation. The Judge was clearly finding that the appellant's employment skills and ability would enable her to relocate to towns such as Chittagong, the commercial centre of Bangladesh, rather than a remote rural and perhaps more traditional area. The country material does not say that no single woman can return to Bangladesh.
9. I find that as the primary finding of the Judge has not been shown to be infected by arguable legal error, any finding in the alternative is that, namely in the alternative. Arguable legal error is made out.
10. Mr Sharma thereafter challenge the conclusion at [68] submitting that the finding of the Judge is factually incorrect. In this paragraph of the decision the Judge found :
  68. I also note that the appellant has chosen not to extend her student Visa (at the end of 2015). Had she feared returning to Bangladesh, this could have been one way of extending her time perfectly legally in the United Kingdom. Yet she chose not to do so.
11. It is submitted the Judge erred in inferring that the applicant's stay in the United Kingdom was not lawful. It accepted the appellant entered the United Kingdom as a student lawfully 14 July 2011 with leave extended to 16 April 2017. On 29 September 2014 it is said the

- appellants leave was curtailed with no right of appeal yet the appellant failed to claim asylum until 12 September 2016.
12. Had the appellants leave remained valid to 16 April 2017 the asylum application would have been made during a period of extant leave which would be extended by virtue of Section 3C of the Immigration Act. If the leave had been curtailed the appellant would have no extant leave and would therefore have remained in the United Kingdom unlawfully.
  13. The assertion the error, if made, is material has no arguable merit. Even if the appellant had remained in the United Kingdom lawfully she fails to make out how this would have any material impact upon the assessment of country conditions. The appeal was dismissed because the Judge found the appellant had failed to discharge the burden of proof upon her as she had failed to provide sufficient evidence.
  14. The third challenge is to the Judge's assessment in relation to the evidence the appellant provided. It is argued on the appellant's behalf that there was material before the Judge as recognised in [11] of the decision where it is written:
    11. The appellant's case, as set out in the screening interview dated 23 March 2016, her substantive interview dated 23 June 2016, her initial witness statement dated 15 April 2016 and in her updated witness statement dated 21 October 2016, in essence is as follows.
  15. At [52] the Judge also writes:
    52. The appellant's bundle provided an updated witness statement, a complaint made by the appellant's mother to deputy director Violence Against Women, an affidavit by the appellant's brother and an affidavit made by the appellants (elder) daughter.
  16. The assertion the Judge was saying there is no evidence from the sources is not arguably correct, as the Judge was clearly aware that some evidence had been provided which was considered as part of the assessment process. What the Judge finds is that the evidence that was provided was not sufficient when taken with all the other material to enable the appellant to establish a case.
  17. The weight to be given to the evidence was a matter for the Judge provided the Judge considered that evidence with the required degree of anxious scrutiny and has given adequate reasons for the findings made. Whilst there is reference to difficulties the appellant experienced in Bangladesh from these sources, it has not been made out that the Judge failed to engage with the material or arrived at an arguably irrational conclusion.
  18. In any event, the core findings by the Judge is that there is a sufficiency of protection available for the reasons set out in the decision. It has not been made out that the core finding regarding the ability of the appellant to return and to live safely in Bangladesh within her family unit is infected to any material extent.
  19. The assertion the Judge's treatment of the evidence is affected by lack of reasoning is not arguably made out. Nor it is made out in terms of

establishing an arguable material legal error that the Judges conclusions are unsafe, as a result of any mistake that may have been made in [68].

20. There is also no arguable material error made out in relation to [69] in which it was noted that the appellant, even if she decided she could not return to Bangladesh in October 2015, failed to claim asylum for a further period of five months and having been given an opportunity at the hearing to explain any delay regarding the asylum claim did not put forward an answer.
21. Although there may be a concern made out in relation to [68], having considered the remaining aspects of the case as a whole, together with the evidence made available to the Judge, no arguable legal error material to the decision to dismiss the appeal has been made out.

**Decision**

- 22. There is no material error of law in the First-tier Tribunal Judge’s decision. The determination shall stand.**

Anonymity.

23. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated the 20 June 2017