



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

Appeal Number: AA/05866/2015

THE IMMIGRATION ACTS

**Heard at Taylor House
On 8 October 2015**

**Decision & Reasons Promulgated
On 9 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

**TAHIRA ILYAS
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Janjua of Counsel

For the Respondent: Mr Nath a Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Respondent notified the Appellant of her decision to refuse to grant asylum or ancillary protection on 20 March 2015. Her appeal against that decision was dismissed by First-tier Tribunal Judge Butler ("the Judge") following a hearing on 15 July 2015. This is an appeal against that decision.

2. First-tier Tribunal Judge Grant-Hutchinson granted permission to appeal (24 August 2015) on the ground that

“... it is arguable that the Judge has misdirected himself in not addressing why the Appellant was not able to freely practice her Ahmadi faith in light of HJ (Iran) principles [HJ (Iran) v SSHD; HT (Cameroon) v SSHD [2010] UKSC 31] and finding inconsistencies on matters such as how she practised her faith which arguably could be material to the outcome.”

The Judge's decision

3. The relevant evidence can be summarised in this way.
4. The Appellant is an Ahmadi [53 of the Judge's decision] whose husband was killed in 2010 during an attack on the Mosque. It was accepted by Mr Nath and Mr Janjua that these finding should be preserved.
5. The Appellant claims [5 and 16-18] to have received threats then and [30] subsequently, [20 and 22] was precluded from practising her faith openly, [26] did not claim asylum on a visit in 2011 as she hoped matters would improve, [23] delayed claiming asylum by 4 days when she arrived in 2012 as she had high blood pressure and a severe headache and wanted to take legal advice, and [24] had practised her faith openly since being here. The sale of her house the day she arrived here [30] was unconnected to her claim. Her son and sister have both been granted refugee status here [19].
6. The Judge found that [54] she did not practise her faith in Pakistan as there was an inconsistency in her evidence that she did not practise her faith openly due to a lack of religious freedom and her statement that she attended her own Mosque. The Judge notes that [54] there are discrepancies between her evidence and that of the Ahmadi Muslim Association over whether she practices it in public or private. Therefore [55] little weight was attached to the Ahmadi Muslim Association letter.
7. The Judge [56] did not find it credible she would return to Pakistan in 2011 if she had been threatened prior to that.
8. The Judge found [57] that the sale of her house the day she arrived suggested she had no intention of returning to Pakistan.
9. The Judge found [58] that the claim she was unwell when she arrived in 2012 lacked credibility and the fact her son was at the airport to collect her on arrival indicated she had no intention of applying for asylum when she arrived.

The hearing before me

10. I raised with the representatives at the outset whether the decision could stand, apart from anything else, given the possible lack of

consideration as to whether, given her claim to be the widow (and consequently family member) of a prominent local preacher and community leader who had been murdered in the Mosque, the Judge should have considered whether her possible membership of a particular social group had adequately been considered separately to her claim based on her own religious activity. That is particularly so where it was claimed that her son and sister had been granted refugee status here. To me this was a “Robinson obvious” point (Robinson v SSHD and IAT [1997] EWCA Civ 3090 [37 and 39]).

11. Mr Nath accepted that this was a valid concern. He submitted that the inconsistencies identified by the Judge and the Appellant’s actions in not applying in 2011 or when she arrived in 2012 were relevant and that HJ (Iran) was implicitly considered without it being spelt out. He submitted that there may be errors but they are not material. He submitted it was not an easy matter to consider. He noted that there were 2 or 3 years between her husband’s death and her application.
12. Mr Janjua relied on the application.

Discussion

13. The Judge is correct to say that the delay in claiming asylum adversely affects her credibility. The Judge was entitled to find that the lack of evidence of her medical problems undermined her claim that this was a reason for her delaying claiming asylum. I agree with Mr Nath that these are relevant.
14. The Judge was entitled to find that the house sale indicated that she did not intend to return to Pakistan. I do not see how this is relevant as if she was fleeing persecution she may well not intend to return to Pakistan.
15. I do not agree with Mr Nath that HJ (Iran) was implicitly considered without it being spelt out, or that the matters I set out below [16 and 17] are not material or cannot be core matters of relevance requiring a specific finding and an assessment of what impact they may have on either her own religious activity or her membership of a particular social group either of which could found a valid asylum claim.
16. The Judge made no finding on whether the Appellant’s husband was a prominent member of the local Ahmadi Mosque or a regular preacher and the President of the community in the area. The Judge made no finding on whether the Appellant’s son or sister had been granted refugee status here. The Judge made no finding on what the impact her being the wife and family member of a (possibly) prominent local leader who was killed in a Mosque may have on her ability or desire to practise her faith openly.

17. In relation to the apparent discrepancy between her evidence and that of the Ahmadi Community Association it was unclear to me that the Judge considered how her attendance at the Mosque could be perceived by onlookers with an adverse interest in her family as anything other than open practise of her faith whatever she did when she was there. It is not readily apparent that the Judge gave consideration to why she would not support her husband in his endeavours (if he had the local prominence claimed) or why she, who was accepted as being an Ahmadi, would not be perceived by those with an adverse interest in him as practicing her faith, whatever she did publicly, if he was so active and prominent.
18. In my judgement there was therefore a material error of law in the decision and I set aside the decision. As I have stated, the preserved findings are those referred to in the Judges decision [53].
19. I therefore determined that, given the lack of core findings and consideration of a potentially relevant ground for granting refugee status, it was in the interest of justice to;
 - (1) Remit the matter to the First-tier Tribunal to remake the decision,
 - (2) To list the matter before a Judge other than Judge Butler, and
 - (3) Relist the matter on the 1st available date with a time estimate of 3 hours and an Urdu interpreter being required.

Decision:

The making of the decision of the First-tier Tribunal did involve the making of a material error on a point of law.

I set aside the decision.

I remit the matter to the First-tier Tribunal on the terms identified in paragraph 19 above.

Signed:
Deputy Upper Tribunal Judge Saffer
9 October 2015