



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

Appeal Number: AA/09647/2014

THE IMMIGRATION ACTS

**Heard at Field House, London
On 1 September 2015**

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

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

**MS
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Richardson, instructed by Wick & Co, Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

Preliminary

1. The First-tier Tribunal made an anonymity direction in relation to the appellant because of the nature of the case. I consider it appropriate to make a similar order in the Upper Tribunal under Procedure Rule 14(1) to prohibit the disclosure or publication of any matter likely to lead members of the public to identify the appellant. To give effect to this order the appellant is to be referred to as MS.

Background to the appeal

2. The appellant was born on 20 September 1996 and is an Iranian citizen. She arrived in the UK on 31 December 2013 and claimed asylum on arrival. The appellant underwent a screening interview on arrival and as she was under 18 she was given a self-completion form to return by 28 January 2014, which she did. Attached to that form was the appellant's first statement. On 17 March 2014, the appellant attended an interview through a Farsi interpreter and on 1 April 2014 her solicitors made further written submissions on her behalf.
3. The Home Office considered the appellant's evidence and on 30 October 2014 decided that she was not a refugee or a person otherwise in need of international protection and that removing her from the UK would not violate the UK's obligations under the human rights convention, focusing on Articles 2, 3 and 8. The Home Office also took into account the appellant's age but found that the proposed removal would not be contrary to the wellbeing of a child and therefore s.55 of the UK Borders, Citizenship and Immigration Act 2009 was not engaged because the appellant would be able to return to her family in Iran and would be entitled to the services of the Iranian authorities.
4. On 31 October 2014 the Home Office issued a notice refusing the appellant leave to enter and it is against this immigration decision that the appellant appealed as she was entitled to do under s.82(1) of the Nationality, Immigration and Asylum Act 2002.
5. The appeal was heard and dismissed by Judge Walker in her decision and reasons statement of First-tier Tribunal Judge Walker that was promulgated on 11 June 2015. Judge Walker found that the appellant was not a refugee or that the immigration decision would violate the UK's obligations under the human rights convention.
6. On 6 July 2015, the appellant was granted permission to appeal to the Upper Tribunal against Judge Walker's decision.

Grounds of appeal to the Upper Tribunal

7. Although the appellant relied on seven pages of grounds of application, when granting permission to appeal First-tier Tribunal Judge Kelly rejected all but the first. The appellant did not apply to the Upper Tribunal for the rejected grounds to be admitted and as I explained at the hearing I do not have jurisdiction to entertain any such application at the hearing.
8. Mr Richardson objected to the restriction I imposed on the grounds of appeal. He reminded me of the guidance given in Ferrer (limited appeal grounds; Alvi) [2012] UKUT 00304 (IAC) but in light of the clarification given in MR (permission to appeal: Tribunal's approach) Brazil [2015] UKUT 00029 (IAC) I see no force in his argument.
9. Therefore, the only ground available to the appellant in the Upper Tribunal

relates to whether Judge Walker overlooked material evidence in relation to the appellant's refugee claim. In the words of Judge Kelly:

"Paragraph 1 of the application does however raise matters of some concern. It appears that the Tribunal may have overlooked the signed statement (with translation) of [anonymised: SS - the appellant's boyfriend] [pages 28 to 30 of the appellant's bundle] and what were said to be an exchange of emails between him and the appellant [pages 32 and 33 of the appellant's bundle]. Whilst the Tribunal may still have attached little weight to these documents in the absence of oral testimony from SS at the hearing [see paragraph 45 of the decision] it is nevertheless arguable that the judge's finding that the appellant had failed to provide any evidence of her claimed romantic relation with him [paragraph 46 of the decision] was unsustainable and material to the outcome of the appeal."

10. Mr Avery relied on the somewhat unusual rule 24 response. I describe it as unusual because although settled by Mr Avery himself it admits that the appellant's appeal to the Upper Tribunal was opposed even though the Home Office file was not available to him at the time of making the response. Mr Avery confirmed that having seen the papers he continued to oppose the appeal, being satisfied that the judge had considered all relevant evidence.

Decision on error of law

11. Having heard from Mr Richardson and Mr Avery, I am satisfied Judge Walker's decision is free from legal error.
12. The challenge is mounted in relation to paragraphs 45, 46 and 49 of the decision and reasons statement and I acknowledge that when taken out of context it is arguable that Judge Walker's comments contain errors because they appear to misrepresent the evidence or to impose a requirement for certain corroborative evidence.
13. In particular, in paragraph 45 Judge Walker said the appellant relied "on an unsigned email from [SS]." This appears to be at odds with what she recorded in paragraphs 29 and 35, where she describes the appellant as relying on a statement from SS. In paragraph 46, Judge Walker appears to ignore the email evidence between the appellant and SS when she stated that the appellant had "not filed any emails or phone records". At paragraph 49, Judge Walker comments that the appellant did not provide any evidence of her marriage such as photographs of her wedding which no doubt would have been taken. Judge Walker identified that the appellant was in regular contact with her mother in Iran by mobile phone and SMS messaging.
14. However, as I have indicated, these arguments take Judge Walker's comments out of context. When examined in context there is no legal error.
15. With regard to the contents of paragraph 45, the appellant provided in evidence an email which contained the email address of SS but which was

unsigned. Separately, the appellant provided a printout of the contents of that email but without the email header together with a translation. The printout was signed and dated. In order to link the statement to SS, the appellant relied on the document containing the email heading. That document was unsigned.

16. Judge Walker was clearly concerned about the reliability of the appellant's core account. In paragraphs 42, 43 and 44 she had examined the appellant's own accounts and found them to be inconsistent and unreliable. She then considered what other evidence was available and turned to the three documents (the unsigned email, the signed statement and the translation). She only had the appellant's word that the account contained in these documents came from her boyfriend but Judge Walker had found that the appellant was not a reliable witness. It is implicit in this context that Judge Walker was concerned about the reliability of the evidence attributed to SS.
17. Fortifying me that this is the right understanding of paragraph 45 is the fact that Judge Walker goes on to find that the appellant's account as to why SS did not attend the hearing was beyond belief. The appellant's evidence was that SS was willing to attend the hearing but her solicitor had told her not to bother bringing him to the hearing. If this is true, then it would be remarkable advice from a solicitor, particularly an experienced solicitor such as those representing the appellant because it would be tantamount to them advising the appellant not to provide supporting evidence. In such circumstances, it was open to Judge Walker to find that the reliability of the evidence from SS was undermined.
18. Turning to the content of paragraph 46, the criticism again takes the judge's comments out of context. Judge Walker was not saying that the appellant had not filed any emails or phone records. Judge Walker recorded in paragraph 29 that there had been email exchanges between the appellant and SS but that they were "entirely focussed on establishing contact between them." The full text of paragraph 46 reads, "The appellant claims to have been in a romantic relationship with SS since she came to the UK but she has not filed any emails or phone records which would lend credibility to this assertion." Having read those emails, that finding was open to her even though there are some terms of endearment in those messages. The emails did not, in the eyes of Judge Walker, lend any credibility to the romantic relationship because of the lack of detail.
19. The final criticism relates to paragraph 49 and whether Judge Walker was imposing a requirement for corroboration. Again, in context, it is clear that Judge Walker is merely identifying that she has no independent evidence to sustain the appellant's account, an account she had found unreliable and therefore which could not stand on its own. Judge Walker is merely considering alternatives to ensure she has not overlooked anything and in so doing identified that the appellant might have been able to obtain supporting evidence through her mother. I am satisfied that Judge Walker was not expecting the appellant to provide photographs of her wedding

but was finding that the appellant had no evidence to corroborate her account that she was married and her account on its own was unreliable. In context, I find nothing objectionable or unlawful in Judge Walker's observations.

20. In light of the above, I find there is no legal error in the decision and reasons statement, and it is upheld.

Decision

The decision and reasons statement of Judge Walker does not contain an error on a point of law and is upheld.

Signed

Date

Judge McCarthy
Deputy Judge of the Upper Tribunal