



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

Appeal Number: AA/10048/2014

THE IMMIGRATION ACTS

**Heard at North Shields
On 10 June 2015
Prepared on 10 June 2015**

**Decision & Reasons Promulgated
On 15 June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HOLMES

Between

**S N
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Rogers, Immigration Advice Centre Ltd
For the Respondent: Mr Mangion, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iran. She entered the UK on 3 September 2013 illegally, hidden in a lorry and claimed asylum by telephoning the police.
2. On 6 November 2014 the Respondent refused her asylum claim, and made a decision to remove her to Iran. The Appellant's appeal against the removal decision was heard on 16 January 2015, and was dismissed in a Decision promulgated on 30 January 2015 by First Tier

Tribunal Judge Hands. In the course of that Determination the Judge made a series of adverse findings of fact, rejecting as untrue the Appellant's account of her experiences.

3. First Tier Tribunal Judge Simpson granted the Appellant permission to appeal the decision on 25 February 2015.
4. The Respondent has filed a Rule 24 Notice dated 11 March 2015, opposing the appeal on the basis there was no error of law in the Judge's approach to the evidence.
5. Thus the matter comes before me.

Error of law?

6. The Judge's decision is probably another illustration of the dangers of the failure to properly proof read a draft. It is quite clear that paragraph 29 has no place in any decision upon this Appellant's circumstances. She did not enter the UK by air using a forged passport, and she did not mislead Immigration Officers upon entry. There has never been any evidence before the Tribunal to suggest that she did. The Judge's apparent reliance upon this mistaken account as damaging the Appellant's general credibility as a witness, and her reference to s8 of the 2004 Act as being engaged by this conduct, is in my judgement a clear error of law that goes to the heart of her adverse credibility findings.
7. There is a similar problem with paragraph 30 of the decision. This refers to the Appellant as having claimed that her uncle has been responsible for the issue of a court order against her, and the Judge makes a finding to the effect that this element of the account is not credible. No such claim was ever part of this Appellant's account.
8. There is also a further problem with the approach taken by the Judge to the weight to be given to the evidence of the Appellant. In paragraph 25 the Judge comments adversely upon the failure of the Appellant to provide corroboration of her account. Having noted that she was "*presented with the Appellant's testimony and nothing more*" the Judge found the Appellant had not made a genuine effort to substantiate her claim. It is however very far from clear what issue, or element of her account, that the Judge was expecting the Appellant to corroborate, or how she was expected by the Judge to do so. The Appellant had offered an explanation for having no identity documents in her possession, which turned upon her account of having been separated forcibly from her husband by traffickers during the course of her journey. If the Judge is to be taken to be rejecting that account in the course of paragraph 25 of the decision then she gives no reasons for doing so, and it is far from clear that she made any such finding. The Judge identifies no other documents that she finds the Appellant could reasonably be expected to have accessed

and supplied using friends or family in Iran, and no issue of disputed fact that they could have been relevant to.

9. There are other criticisms of the Judge's approach, but these three criticisms are well made out, and they go to the core of the Judge's analysis of the weight to give to the Appellant's evidence. I am satisfied that whether viewed individually, or cumulatively, they are such as to render the decision unsafe. In these circumstances the Appellant can have little confidence that her appeal was properly and fairly considered.
10. I have in these circumstances considered whether or not to remit the appeal to the First Tier Tribunal for it to be reheard, as requested by the Appellant. In the circumstances of the appeal I am satisfied that this is the correct approach, and I note Mr Mangion does not seek to suggest otherwise. In circumstances where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the Appellant of the opportunity for his case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 25 September 2012. Moreover the extent of the judicial fact finding exercise is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 25 September 2012.
11. Having reached that conclusion, with the agreement of the parties I make the following directions;
 - i) The decision upon the appeal is set aside and the appeal is remitted to the First Tier Tribunal for rehearing. No findings of fact are preserved. The appeal is not to be listed before Judge Hands.
 - ii) An Kurdish Sorani interpreter is required for the hearing of the appeal.
 - iii) The Anonymity Direction previously made by the First Tier Tribunal is preserved.

Decision

12. The decision promulgated on 6 August 2014 did involve the making of an error of law sufficient to require it to be set aside and the appeal to be reheard. Accordingly the decision upon the appeal is set aside and the appeal is remitted to the First Tier Tribunal with the following directions;
 - i) The decision upon the appeal is set aside and the appeal is remitted to the First Tier Tribunal for rehearing. No findings of fact are preserved. The appeal is not to be listed before Judge Hands.

- ii) An Kurdish Sorani interpreter is required for the hearing of the appeal.
- iii) The Anonymity Direction previously made by the First Tier Tribunal is preserved.

Deputy Judge of the Upper Tribunal JM Holmes
Dated 10 June 2015