



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00235/2018

THE IMMIGRATION ACTS

Heard at Field House
On 28th August 2018

Decision & Reasons Promulgated
On 17th September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MS P.A.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Gayle, Solicitor

For the Respondent: Miss J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iran born on 17th July 1989. The Appellant arrived in the United Kingdom in December 2008. Some two years later her application to remain as a Tier 4 (General) Student was refused. On appeal that was successful and leave was granted until 30th November 2014. On 5th February 2013 her leave was curtailed. The Appellant submitted an asylum claim on 8th July 2014 which was refused on 28th October 2014 that appeal went before Judge of the First-tier Tribunal Greasley in January 2015. That appeal was dismissed as was an appeal before the Upper Tribunal in August 2015. A further application was submitted based on the Appellant

contending she had a well-founded fear of persecution in Iran on the basis of her religion and conversion to Christianity. That application was refused by Notice of Refusal dated 14th October 2017.

2. The Appellant lodged Grounds of Appeal and the appeal came before Judge of the First-tier Tribunal Talbot sitting at Hatton Cross on 2nd February 2018. In a decision and reasons promulgated on 22nd February 2018, the Appellant's appeal was dismissed.
3. Grounds of Appeal were lodged to the Upper Tribunal on 22nd February 2018 those grounds contended that the analysis of the First-tier Tribunal Judge was fatally undermined by a failure to provide sufficient, or sustainable, reasons for making adverse credibility findings.
4. On 22nd March 2018 First-tier Tribunal Judge Ford refused permission to appeal finding there to be no arguable material error of law. Renewed Grounds of Appeal were thereafter lodged to the Upper Tribunal on 26th April 2018. Those grounds contended inter alia, contrary to Judge Ford's assertions, that there was no justification for Judge Talbot finding that the Appellant would be happy to follow her faith discreetly in Iran and that contrary to paragraph 2(c) the Appellant set out in detail her reliance on Article 8 and that a video of her engagement was shown in support of her Article 8 claim.
5. On 13th June 2018 Upper Tribunal Judge McWilliam granted permission to appeal. Judge McWilliam merely stated that it was arguable that the Appellant raised Article 8 as a Grounds of Appeal and the judge did not determine this.
6. There does not appear to be any Rule 24 response lodged by the Secretary of State. It is against that extensive history that the matter comes before me to determine whether or not there is a material error of law. The Appellant appears by her instructed solicitor Mr Gayle. Mr Gayle is familiar with this matter having appeared before the First-tier Tribunal and is I believe the author of the Grounds of Appeal and renewed Grounds of Appeal. The Secretary of State appears by her Home Office Presenting Officer Miss Isherwood. I note that First-tier Tribunal Judge Talbot granted the Appellant anonymity. No application is made to vary that order and the anonymity direction will remain in place.

Preliminary Issue

7. As a preliminary issue I am asked to give due consideration for the reasons given for permission to appeal by Upper Tribunal Judge McWilliam. Both sides acknowledge that the grant of permission is brief in the extreme and merely points out that Article 8 was not determined by the First-tier Tribunal Judge. There is no reference whatsoever in the grant of permission to the other Grounds of Appeal. In such circumstances the correct approach for the Upper Tribunal to take to find that as there has not been a finding that there is no potential material error of law as set out on the other Grounds of Appeal, that those grounds remain arguable and I have advised the parties that the appeal will proceed on that basis.

Submissions/Discussion

8. Mr Gayle starts by merely addressing the Ground of Appeal accepted and addressed by Judge McWilliam namely is there an appeal under Article 8. He points out that it was referred to in the skeleton argument and that it has been relied upon and that the Appellant's fiancé gave evidence before the First-tier Tribunal. He takes me to paragraph 22 of Judge Talbot's decision. He points out that within that paragraph, Judge Talbot contends there is no Article 8 claim and that this is completely wrong. He contends in such circumstances that a major factor in this appeal has not been addressed by the judge and that that constitutes a material error of law. He reminds me that the issue was extant before the First-tier Tribunal Judge taking me to his skeleton argument before the First-tier Tribunal which states specifically:

"The Article 8 claim is based on the Appellant's family and private life in the UK. The Appellant's mother and three siblings are in the UK. She has no close relatives left in Iran. She also relies on her relationship with her fiancé, who is a British citizen."

9. Turning to the asylum claim he refers me to paragraphs 35 and 36 of the judge's decision pointing out that there was evidence before the judge that the Appellant had been evangelised and that she had not been discreet about practising of her faith in the UK. Based on that he submits that the finding of the judge is one that shows an error of law and that the suggestion at paragraph 27 that the judge makes a conclusion placing a reliance on an absence of evidence in making his decision, is in itself an error.
10. He noticed at paragraph 29 the First-tier Tribunal Judge has raised concerns about the authenticity of court documents and submits that the judge failed to follow the guidelines laid down in *Tanveer Ahmed [2002] UKIAT 00439* which states:

"It is only rarely that there will be a need to make an allegation of forgery of evidence strong and have to support it. The allegation should not be made without such evidence."

11. He submits that no evidence was present at the hearing of this appeal and that the judge's decision to place no weight on the documents is a material error of law.
12. Further, he takes me to paragraph 28 of the judge's findings where he has made an adverse credibility finding on an inconsistency in the Appellant's evidence of when she received legal documents from Iran. The Appellant he points out initially stated that she received the documentation in May 2016 but in re-examination confirms that it was in May 2017. Given that English is not the Appellant's first language and that the Gregorian is not her first calendar, he submits that the First-tier Tribunal Judge is unduly harsh in his analysis. He reminds me the Appellant spotted the obvious mistake she had made and corrected it. Finally, he takes me to the finding by the First-tier Judge at paragraph 30 that it is not credible that the Appellant's Facebook postings about Christianity were public rather than private. He submits that the judge should have been aware that many Iranians use virtual personal networks to access forbidden material on the internet and that generally the failings identified in the judge's analysis are not mere disagreements with his conclusions they are material errors and he asked

me to find that the decision is unsafe and to set it aside and to remit the matter back for rehearing before the First-tier Tribunal.

13. In response Miss Isherwood contends there is no material error and that the judge goes through the history of this matter thoroughly pointing out that in the previous hearing before Judge Greasley, the Appellant had been found not to be credible. At paragraph 36 she points out that the judge concludes having considered the evidence that the Appellant is not a genuine convert and that that was a finding that was open to the judge. She submits that the finding at paragraph 29 relating to credibility of documents is such that the arguments put forward by the Appellant's representative are mere disagreement. She goes on to conclude that all findings were open to the judge and it cannot be ignored that the Appellant had used other methods to remain in the UK and that when nothing was left she made an asylum claim. Further she points out that the Appellant has previously returned to Iran and therefore would be aware as to how she needs to conduct herself. As far as the internet activity is concerned, she submits that the judge made findings that were open to him. She asked me to dismiss the appeal.

The Law

14. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
15. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

16. Miss Isherwood makes no representations to me with regard to the arguments that are made that the judge has failed to consider Article 8. I have had the benefit of considering Mr Gayle's skeleton before the First-tier and the evidence that was called. It seems to me irrefutable that there was a claim based on private and family life extant

before the judge on Article 8 and this is an issue which has specifically been honed in on by Judge McWilliam when she granted permission. On any reading or analysis, the failure to make any findings on the Article 8 claim and to indeed conclude that there is no Article 8 claim before the judge, is one that he was not entitled to make and as such there is a material error of law.

17. It has to be remembered that the finding under Article 8 based on family life is effectively a different claim to that based on asylum. The judge heard the evidence that the Appellant's conversion to Christianity was not credible. A proper approach to credibility will require an assessment of the evidence and of the general claim and in an asylum claim relevant factors would be the internal consistency of the claim, the inherent plausibility of the claim and the consistency of the claim with external factors of the sort typically found in country guidance. I accept it is theoretically correct that a claimant need do no more than state his or her claim but that claim still needs to be examined for consistency and inherent plausibility and in nearly every case external information against which the claim could be checked will be available.
18. These general principles seem to have been available in this case. There had been evidence taken and documents provided. It is Miss Isherwood's contention that the findings reached by the judge were ones that he was entitled to. However it does seem unduly harsh to make a finding of adverse credibility merely because an Appellant gets a date wrong by twelve months when she thereafter seeks to correct it and whilst the First-tier Tribunal Judge has accepted the evidence from the Senior Minister present which confirmed the genuineness of the Appellant's Christianity and explained that she was unable to attend the hearing due to work commitments, it is an error merely to base adverse credibility findings on the absence of other members of the church not attending the hearing.
19. In such circumstances there are material errors of law. It is possible that had this evidence been available and considered properly the judge may have come to a different conclusion as to the Appellant's credibility.
20. Bearing in mind that the judge has failed to consider a full section of this appeal, namely the Article 8 claim, and the errors relating to the judge's findings on credibility, the correct approach is to set aside the decision of the First-tier Tribunal Judge and remit the matter back to the First-tier Tribunal for rehearing. Clearly the Article 8 claim has as yet to be heard on appeal. The Appellant however is put on notice that just because this matter is remitted on the asylum/humanitarian protection claim, that does not mean that on a rehearing of the evidence another judge would automatically come to a different conclusion to that of Judge Talbot.

Notice of Decision

The decision of the First-tier Tribunal Judge contains a material error of law and is set aside. The following directions are given:

- (1) That on finding that there are material errors of law in the decision of the First-tier Tribunal Judge the decision of the First-tier Tribunal is set aside with none of the findings of fact to stand.
- (2) The appeal is remitted to be heard before the First-tier Tribunal sitting at Hatton Cross on the first available date 28 days hence with an ELH of three hours.
- (3) That the appeal is to be before any judge of the First-tier Tribunal other than Immigration Judge Greasley, Immigration Judge Talbot or Immigration Judge Ford.
- (4) That there be leave to either party to file and serve an up-to-date bundle of subjective and/or objective evidence upon which they seek to rely at least seven days prior to the restored hearing.
- (5) That a Farsi interpreter is to attend the restored hearing. In the event the Appellant or any witnesses do not require an interpreter or an interpreter from another language is required, the Appellant's instructed solicitors must notify the Tribunal within seven days of receipt of these directions.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

Anonymity

The First-tier Tribunal Judge granted the Appellant anonymity. No application is made to vary that order and the anonymity direction will remain in place.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris