



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00725/2018

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 10th July 2018

Decision & Reasons Promulgated
On 24th July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

MJ
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss N Patel, Lei Dat & Baig Solicitors

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Siddiqi (the judge) of the First-tier Tribunal (the FtT) promulgated on 14th March 2018.
2. The Appellant is a female Iranian citizen born [] 1967. Her sons born in [] 2002 and [] 2003 are dependants in her asylum claim.

3. The Appellant's claim for asylum was based on the Iranian authorities accusing her of being a spy as a result of her occupation in a bank.
4. The Respondent refused her application on 29th December 2017 and the Appellant appealed to the FtT. The judge heard the appeal on 15th February 2018. After hearing evidence from the Appellant, the judge found that the main issue in the appeal related to the Appellant's credibility. The judge found that the Appellant had given an incredible account, and dismissed her appeal on all grounds.
5. The Appellant applied for permission to appeal to the Upper Tribunal. It was contended that the judge had erred at paragraph 22(a) and (b) of the decision.
6. At paragraph 22(a) the judge had found the Appellant to be inconsistent in that she had provided two different accounts as to why she became suspicious about a bank account. It was contended that the judge was in error in making such a finding, as the Appellant had not put forward two explanations as to why she became suspicious, but had simply elaborated upon her account.
7. At paragraph 22(b) the judge found that the Appellant had not explained why she considered her job would be in jeopardy. It was submitted that the judge had erred on this point, in failing to take into account the explanation given by the Appellant at paragraph 13 of her witness statement, in which she stated that she feared she would be accountable if there was an investigation, and why she would be held accountable. It was submitted that the judge had failed to engage with the evidence, and therefore the decision should be set aside.
8. Permission to appeal was granted by Judge Mailer of the FtT in the following terms;
 - "2. It is arguable, as contended in the grounds, that the Appellant did not give an inconsistent account between her statement and interview, as she simply elaborated why she became suspicious. Further, it is arguable that she did explain why she considered her job in jeopardy.
 3. Whether these asserted errors were material would be considered by the Upper Tribunal in the light of Judge Siddiqi's further findings at [22(c) and (d)]."
9. Following the grant of permission the Respondent did not lodge a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Directions were issued making provision for there to be a hearing before the Upper Tribunal to ascertain whether the FtT decision contained an error of law such that it must be set aside.

The Upper Tribunal Hearing

10. Miss Patel relied upon the grounds contained within the application for permission to appeal, and the grant of permission. It was submitted that the judge was wrong to find the Appellant had given two inconsistent accounts. If the witness statement and interview record were compared, what the Appellant had done was elaborate upon her account rather than provide different accounts.

11. With reference to the finding at paragraph 22(b) it was submitted that the judge had failed to consider material evidence, that being paragraph 13 of the Appellant's witness statement in which she explained that she was ultimately responsible and why she feared her employment would be in jeopardy.
12. Miss Patel submitted that the material errors of law contained at paragraph 22(a) and (b) infected the other findings made by the judge in relation to the Appellant's credibility.
13. Mr Tan disagreed, submitting that the judge had not materially erred in law. It was however accepted that the judge had erred as contended in the grounds in relation to the conclusion reached at paragraph 22(a) of the decision. It was not accepted that the judge had erred at paragraph 22(b) as the judge was entitled to question why the Appellant had conducted her own investigation, having already raised her concerns with her branch manager and the investigations team. It was not accepted that there was any error of law disclosed in paragraph 22(b).
14. Mr Tan pointed out that there had been no challenge to the conclusions reached at paragraph 22(c), (d) and (e). The judge had looked at the claim holistically, and was entitled to find the Appellant not credible, and had given reasons for conclusions reached. Therefore although there was an error disclosed at paragraph 22(a), overall there was no material error of law and it was submitted the decision should stand.
15. In response Miss Patel submitted that there was an error disclosed at paragraph 22(b) because the judge had not taken into account what the Appellant had stated at paragraph 13 of her witness statement. In that paragraph the Appellant had explained that she was ultimately responsible for the financial activities of that account, and that even if it became the subject of judicial investigation, it would be the Appellant not the branch manager who would be accountable.
16. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

17. Both parties agree that the judge erred at paragraph 22(a) in concluding that the Appellant had provided an inconsistent account. My view is that it would be more accurate to describe the Appellant as elaborating upon her account rather than providing two inconsistent accounts.
18. I also find at paragraph 22(b) that the Appellant did give an explanation as to why she decided to investigate, in addition to reporting matters to the branch manager, because at paragraph 13 of her witness statement she did explain that because she was the head treasurer, she was ultimately responsible for the financial activities of that account.
19. However I do not find the judge materially erred at paragraph 22(a) or (b) because the judge made other separate credibility findings which in my view are not in any way infected by the findings made at paragraph 22(a) and (b).

20. There has been no specific challenge to the findings made by the judge at paragraph 22(c), (d) and (e). It is submitted that the incorrect findings at (a) and (b) have infected the other findings. I reject that submission. I do not find that evidence has been submitted to demonstrate that the findings at (c), (d) and (e) have in any way been infected by earlier findings.
21. At (c) the judge finds that the Appellant has given an inconsistent account as to what action she took after receiving a threatening telephone call. In interview she said that she reported it to the security department at the bank although in her witness statement she said that she reported the telephone call to the branch manager, and in oral evidence claimed that the branch manager had overheard her talking on the telephone when she was threatened. The judge was perfectly entitled to find that the Appellant had given a contradictory account on this point, and entitled to find as a significant omission, the Appellant's initial failure when interviewed to mention that she reported the telephone call to the branch manager.
22. At (d) the judge makes findings upon the Appellant's claim that she took some documents home from the bank by mistake in a shopping bag, and that her sons had removed the documents from the bag. These documents had been printed on or around 31st July 2017 and removed at that time. It was claimed that they were discovered by the authorities in her home approximately three weeks later. The judge was entitled to conclude that it was not reasonably likely that the Appellant would have printed out confidential documents, removed them from the bank in error, and then not taken any steps to return them.
23. At (e) the judge examines the Appellant's claim that she was informed by her sister-in-law that she was being accused of being a spy. She had explained in her interview and oral evidence that her husband had been detained overnight before she fled and he had also been accused of involvement in a conspiracy. In her asylum interview she explained that her husband had been sacked from his employment at another bank although at the hearing she claimed that he had been suspended. When asked why her husband had not fled with her she explained that he intended to leave legally, and that he hoped to be able to return to his employment and secure his retirement. Her husband remained living in Shiraz. The judge was entitled to find the account not credible, on the basis that the Appellant fled Iran with her two sons, but her husband who was also accused of being involved was able to stay in Iran without repercussions, and was hoping to return to his employment and secure his retirement.
24. The judge noted at paragraph 23 the Appellant's claim to have been accused of spying, as was her husband but he had been able to live openly in Iran without any repercussions. The judge was not satisfied that the Appellant had discovered a suspicious account, but even if wrong on that point, was not satisfied that the Appellant had to flee Iran after her house was raided by the authorities, and was not satisfied that she was accused of being a spy.
25. In my view the credibility findings at 22(c), (d) and (e) were open to the judge to make and sustainable and adequate reasons have been given for those findings. I do not

find that those findings have been infected by the findings made by the judge at 22(a) and (b).

26. I am not persuaded that the judge materially erred in law in assessing the credibility of the Appellant's account.

Notice of Decision

The decision of the FtT does not disclose a material error of law. The appeal is dismissed.

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 her or any member of her 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. This direction is made because the Appellant has made a claim for international protection.

Signed

Date 17th July 2018

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date 17th July 2018

Deputy Upper Tribunal Judge M A Hall