Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03488/2017

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
16 February 2018	**On 4 May 2018**

Before

MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE MACLEMAN

Between

SAREH [K]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A. Caskie, instructed by Latta & Co. Solicitors.
For the Respondent: Mr Dywnicz, Home Office Presenting Officer.

DETERMINATION AND REASONS

1. The appellant, a national of Iran, appeals, with permission, against the decision of Judge S T Fox in the First-tier Tribunal dismissing her appeal against the decision of the respondent on 24 March 2017 refusing her asylum and human rights claims.

2. The grounds of appeal raise a number of issues asserting lack of proper care by the judge. The first ground is a detailed assertion that the judge indicated at the beginning of the hearing, and during it, that he had a

plane to catch and that it would be necessary to conclude the hearing in order for him to deal with the rest of the list and depart from the hearing centre in time for his plane. As the judge who granted permission observed, "it is unfortunate if the appellant was left with the impression she might not be accorded as much time as the case warranted". That is probably correct, but at the beginning of the hearing before us, Mr Caskie told us that he withdrew that ground of appeal. We do not criticise Mr Caskie for doing so, but we observe that the allegation in the first ground of appeal should not have been made, if it was not to be sustained.

3. There are, however, a considerable number of grounds for concern arising out of the text of the determination itself. In paragraph 17 of his decision, Judge Fox says that he is satisfied that the appellant's general credibility has been established. But paragraph 50 reads as follows:

> "50. On the evidence before me today I am satisfied that the Appellant has not provided any credible basis for challenging the assertions, analyses and conclusions in the Respondent's refusal letter. On the evidence before me today, I am satisfied those assertions, analyses and conclusions are valid and tenable and I reach similar conclusions myself like reasons. I find that the Appellant's failure to demonstrate I have alone consistent story without a satisfactory explanation, undermines the credibility of the Appellant's claim to have come to the United Kingdom to escape persecution. That credibility is further undermined by the inconsistencies and implausibilities in the story, examples of which I have referred to above. I find therefore that the core of the Appellant's account of persecution lacks credibility and is a fabrication designed to gain access to the United Kingdom."

4. The infelicities of expression are in the original. We find it wholly impossible to reconcile paragraph 17 with paragraph 50, and although the judge's final conclusion is clearly in line with what he says in paragraph 50, it is not possible to say why in paragraph 17 he concluded that the appellant was to be regarded a generally credible. In paragraph 60 the judge says there is no claim made under article 8, but in paragraph 15, the judge works through the parts of sections 117A-D that would be relevant if there had been an article 8 claim.

5. Throughout the determination there are infelicities of expression similar to those found in paragraph 50 which we have set out above; some of them are typographical errors that have not been corrected, or errors caused by mishearing of dictation or misapplication of voice recognition software. Some are readily correctable, but others are not. It is apparent that the written decision was not read through before being sent to the parties.

6. Paragraphs 52 to 62 are, as Mr Caskie pointed out, in standard form. That is not of itself a defect, but does not give any confidence that the judge was paying proper attention to the appellant's appeal when preparing his determination.

7. On behalf of the respondent, Mr Dywnicz referred us to the Rule 24 response, which asserts that the judge's decision does not reflect that adequate scrutiny was not given to matters at the hearing, that the typographical errors are minor and do not affect the outcome of the decision, that his reference to section 117 does not affect his findings of fact, and that he has made adequate findings of fact and given adequate reasons. Mr Dywnicz did not seek to expand on those submissions orally.

8. It is not this Tribunal's practice to work over First-tier Tribunal decisions as a proof reader or as an examiner in the English language. There is, however, a level at which the presentation of a judgment has to be regarded as unacceptable, and we have with regret to take the view that that level has been exceeded by Judge Fox's decision in this case. It is difficult to understand that either of the parties to the appeal before him could, on reading this decision, consider that proper attention had been paid to the need to achieve professional standards in the adjudication of the case. In addition, the contradiction between the judgment that the appellant is credible and the judgement that she is not worthy of credit is wholly inexplicable and only serves to emphasise the points that we have just made.

9. In summary, the position is that the First-tier Tribunal decision cannot stand. For lack of proper attention by the judge, the public and private resources expended upon the hearing and the preparation of the determination, have been entirely wasted.

10. Judge Fox's decision is not properly intelligible and of an insufficiently professional standard: as an exercise of the judicial function it is accordingly infected by error of law. We set it aside. We remit the appellant's appeal to the First-tier Tribunal for determination afresh by a different judge.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 2 May 2018.