Upper Tribunal

(Immigration and Asylum Chamber) Appeal Number: PA/06746/2017

THE IMMIGRATION ACT

Heard at Field House	**Decision & Reasons Promulgated**
On 15th February 2018	**On 23rd February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

SG

(Anonymity Direction made)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Gayle of Counsel instructed by Elder Rahimi Solicitors

For the Respondent : Mr Walker Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of the Iran. Having considered all the circumstances, I consider it appropriate to make an anonymity direction.

2. This is an appeal by the appellant against the decision of First-tier Tribunal Judge D Ross. By the decision promulgated on 14th

September 2017 Judge Ross dismissed the appellant's appeal against the decision of the respondent to refuse her asylum, humanitarian protection or relief otherwise on human rights grounds either under Articles 2 and 3 or under Article 8.

3. By decision dated 6 December 2017 First-tier Tribunal Judge Parkes granted permission to appeal to the Upper Tribunal. Thus the matter appeared before me to determine in the first instance whether or not there is a material error of law in the decision.

4. At the start of the grounds of appeal references are made to what are clear mistakes within paragraph 2 of the decision. Whether the mistakes are due to dictation or typographical errors, the errors of their on the face of the papers.

5. Firstly the appellant being a citizen of Iran has spent all her life in Iran or in the UK. However in paragraph 2 there is reference to the fact that the appellant had been to Mexico on 2 or 3 occasions. The appellant has never been to Mexico. Whilst it may be that in dictating, mosque has been put down as Mexico is a possibility, there is a failure to correct an error, which is evident on the face of the decision.

6. Further to that in the same paragraph there is reference to the fact that the appellant *"was a devoted Muslim whilst in Iraq"*. Whilst the reference to Iraq may be merely a slip and should have read Iran, it was a matter that should be corrected.

7. More material in that respect is the general assessment of the chronology of events. It is clear from the appellant's version of events that she has been into hospital on 2 occasions. The first occasion at some time in or about 2006/7 when she was treated for a serious back condition and subsequently in 2017 when she had a fall. The date is material. In the chronology advanced by the appellant she began to take an interesting Christianity in or about 2006 after being treated for the pain and serious back condition in hospital. Whilst in hospital she had talked to a lady about Christianity and on leaving hospital the appellant had taken an interest in Christian faith and church.

8. In the version of events by the judge the appellant had only started to take an interesting Christianity after being treated in hospital in 2017. That clearly is an error in assessing the factual matrix of the appellant's case. It is accepted that that is clearly wrong. The judge appears to have taken the references by the appellant to having started her interest in Christianity after she had been in hospital to be a reference to the 2017 admission, when it is clear that it is a reference to much earlier admission.

9. The judge goes on to indicate that given the timeline the appellant's account is not credible in the circumstances. The assessment is based upon a clear error as to the alleged facts of the appellant's case. That clear misunderstanding of the evidence that was

presented has resulted in the judge basing his findings of fact on a wholly false factual basis and premise.

10. It was accepted on behalf of the respondent that if it was accepted that the judge had wholly misunderstood the evidence, that undermined the whole of the findings of fact made by the judge. In the circumstances I am satisfied that the judge has found this findings of fact on a fundamental misunderstanding of the evidence.

11. Further to that medical reports were submitted in respect of the appellant. The medical reports confirm that the appellant is suffering from vascular dementia and that the appellant has some degree of difficulty in remembering dates and specific events. The vascular dementia may in part be due to a serious head injury sustained by the appellant after the fall and hospitalisation in 2017 referred to above. However the judge has gone on to make findings of fact indicating that the appellant's account is vague, inconsistent and unconvincing. In making those findings of fact judge appears to refer to the fall and to the hospitalisation of the appellant but makes no reference to the problems that arose because of the significant subdural haemorrhage had and the vascular dementia that the appellant is suffering from. Whilst it is not to say that had the judge taken account of the medical evidence the judge would have been entitled to make the findings that he did, it was necessary for the judge to demonstrate that he had considered whether the appellant's recollection may have been effected by her condition. The judge has not taken such into account.

12. Given the failure to properly approach the facts of the case and given the failure to give take account of the medical evidence that the appellant is suffering from vascular dementia, I find that there are material errors of law within the decision.

13. I considered with the representatives the appropriate course. It was accepted that it was necessary for proper findings of fact to be made. It will be necessary for the whole of the evidence to be heard again. In the light of that I determined to remit the case to the First-tier Tribunal for hearing afresh with none of the findings of fact to be preserved.

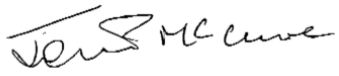
Notice of Decision

14. I find there is a material error of law in the original decision.

15. I set the decision aside.

16. I direct that the appeal be remitted to the First-tier Tribunal for rehearing afresh.

Signed

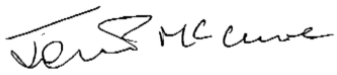


Deputy Upper Tribunal Judge McClure

Dated 15th February 2018

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 the appellant or any member of the appellant's family. This direction applies both to the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings



Signed Date 15th February 2018

Deputy Upper Tribunal Judge McClure