



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11032/2017

THE IMMIGRATION ACTS

Heard at Bradford
on 18 July 2018

Decision promulgated
On 31 July 2018

Before

UPPER TRIBUNAL JUDGE HANSON

Between

LAYAL [M]
(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hussain instructed by Bankfield Heath Solicitors
For the Respondent: Mrs R Pettersen Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Dearden who in a determination dated 29 December 2017 dismissed the appellant's appeal on all grounds.

Background

2. The appellant, a citizen of Lebanon born on 5 July 1985, arrived in the United Kingdom on 30 April 2017 and claimed asylum on 4 May 2017. The application was refused by the respondent and the appeal dismissed by the Judge.
3. The Judge considered the case relied upon by both parties before setting out findings of fact from [31] of the decision under challenge.
4. The Judge finds the best interests of children are to remain with their parents. There are four dependents to the appellants claim who are her family members. The Judge considered the appellant's residence in Saudi Arabia, entry to the United Kingdom, activities in the United Kingdom, contact with family in the Lebanon, journey to the airport, procedure for asylum, relationship with her in-laws, husbands relationship with the children and the appellant's residence in Saudi Arabia before concluding at [33] that the Judge did not accept that the appellant had travelled regularly from Saudi Arabia to Lebanon as alleged and did not accept the appellant had a violent row with her ISIS supporting brother and did not accept the appellant had told the truth about the application for the visit Visa. The Judge did not accept the appellant was estranged from her husband finding there were large parts of the appellants evidence which the Judge did not accept as being credible, a finding not inconsistent with that of the respondent at [30] of the refusal letter. The Judge finds the matters on which the appellant did not tell the truth were not minor or peripheral matters but those which went to the very heart of her overall credibility. The Judge finds, in conclusion, that the appellant failed to discharge the burden of proof upon her to prove she is of any interested anyone in the Lebanon or Saudi Arabia or she had established an entitlement to remain on any ground.
5. The appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal in the following terms:
 - “5. The findings as to the credibility of the appellant's account made by the Judge were open to the Judge on the evidence. The Judge did state that the appellant's brother is said to be a member of ISIS when the appellants evidence was that her brother held extremist views sympathetic of ISIS, however given the Judge's findings as to credibility of the appellant's account this does not amount to a material error
 6. The failure of the Judge to make a finding of fact as to whether or not the appellant is an apostate amounts to a failure to make a material finding of fact and is an arguable error of law.”
6. The applicant asserted at Ground 3 that the Judge made no express findings on whether the appellant had left Islam or not, a claim rejected by the respondent, but argues the Judge was obliged to make a finding and, if he found that the appellant had left Islam, to decide whether she was at risk because of this, irrespective of whether the Judge believed her account of antagonism from her family/husband's family.

Error of law

7. In relation to the element on which permission to appeal was granted, the appellant stated that her solicitors wrote to the respondent, following the substantive asylum interview which took place 20 September 2017:

‘RISK DUE TO RELIGIOUS BELIEFS

It is clear from our client’s substantive interview, she grew distanced from the practice of Islam then renounced her faith in front of her family in 2016. Our client has stated, in Lebanon it is considered very important for a person to ‘follow’ the Islam and its cultural practices. This statement is supported by objective evidence that suggests that those people who choose to deviate from Islam may face some significant problems in Lebanon. The Refugee Review Tribunal of the Government of Australia reported in 2012 that:

There is a lack of information on the number of atheists in Lebanon; however, a 2004 BBC survey found that less than 3% of Lebanese “do not believe in God”. [21] sources the strong role religion plays in the ebony society, for example Parliamentary seats are allocated based on religious affiliation. Author Lara Deeb [22] in 2006 opined “[i]t is difficult to be an atheist in Lebanon, or rather, it is impossible to refuse a religious identity.” [23] William Harris in 2012 added:

[L]oyalty to a religion derived community does not necessarily mean religiosity; there are numerous agnostics and even atheist Maronites, Sunnis and Shia [24]

Both of these above sources indicate that the linkages, even if they are historic, between a person and their “birth” religion is more important than the level of religious dedication.

Further to this, the Report of the Special Rapporteur of Freedom of Religion or Belief recently reported that:

Adherence to non-recognised nominations, such as the Baha’is or Jehovah’s Witnesses, although mostly enjoying freedom to confess and practice their beliefs, face problems when attempting to build an infrastructure that would enable them to consolidate their community life. Some individuals remain officially registered and a recognised faith they inherited but actually no longer confess - the situation may create feelings of unease or self-betrayal. Agnostics and atheists expressed similarly ambiguous beliefs. While appreciating the open atmosphere in Lebanon, in which people are generally free to voice criticism of religions, a also expressed frustration that they are caught inside a closed system of recognised confessions in which they are forced to remain in order not to lose career options and local opportunities.

As such, the current country information about Lebanon suggests that our client will be at risk of experiencing persecution through all walks of life were she to freely express her religious opinions in Lebanon. Further, it has been reported that those people who express views which are contrary to the Islamic practice in Lebanon can be at risk of violent reprisal. A recent Freedom of Report highlighted one instance in which:

The library of a Greek Orthodox priest, Ibrahim Sarrouj, was burned down in Lebanon in January 2014 after he was accused of insulting Islam. Accounts differ as to the exact events leading up to the fire, with Lebanon Daily Star reporting a fatwa was issued against Father Sarrouj after he published an article on a Danish website, whereas AFP reported a blasphemous pamphlet was discovered in one have his books. The library, used by the whole community, was burned down following a “sectarian scuffle.”

As such, we would submit that our client could not be expected to be able to freely practice her religious beliefs on return to Lebanon. Objective evidence further shows that any attempt on the part of our clients to express her religious beliefs in Lebanon carry the risk of day-to-day discrimination in sectors such as employment, and risk of violent persecution.'

8. In his submissions Mr Hussain asserted the Judge failed to deal with the issue raised. It was asserted that findings needed to be made on the consequences of the issue raised by the appellant. It was submitted that Lebanon is an Islamic country and under Islamic law the appellant was at risk from her husband's family of separation from the children which would breach her article 8 rights. It was argued there was a requirement of the Judge to consider this point within the factual elements but the Judge had failed to do so.
9. Mr Hussain referred to the finding that the grandparents are devoted to the grandchildren and that they will say the children can stay with them. Even if there was no persecution country condition are relevant and it will be flagrant denial of the applicant's rights if the children were taken from her pursuant to Sharia law. It is argued the appellant has no right to redress in Lebanon as a result of Sharia law.
10. On behalf of the respondent Mrs Pettersen argued the Judge's decision must be read as a whole. The Judge did not accept the appellant claim is credible and gives ample reasons in support. It was argued the Judge's core finding goes to the heart of the case regarding religion and appellants claim regarding her husband. Mrs Pettersen submitted it was significant element the Judge did not find the appellant is separated from husband and it should not experience problems with her in-laws.
11. Mrs Petterson stated there may be a family argument if there was separation from her husband but the Judge did not find that this occurred. It was argued the appellant is not an apostate even if she disagrees with some of the teachings of Islam and that any error was not material to the decision to dismiss the appeal.
12. In *EM (Lebanon) v SSHD* [2007] Imm AR 347 the Court of Appeal said that although the Appellant's account of her experiences made grim reading, the evidence did not establish that women in Lebanon were a persecuted group.
13. In *EM(Lebanon) v SSHD* [2008] UKHL 64 the issue was the separation of mother and child on arrival back in Lebanon where Sharia law would award custody to the father with visiting rights to the mother. The Court of Appeal said that in the absence of very exceptional circumstances a person could not claim entitlement to remain in the UK to escape the discriminatory effects of family law in their country of origin. Bingham LJ said that the threshold test required that it had been shown that a person risked suffering a flagrant denial of the right under Article 8 such as would completely deny and nullify the right in the destination country. He thought that this would happen and that, in no meaningful sense could occasional supervised visits between the mother and child at a place other than her home be described as family life. In this case mother and son had a close relationship and there had been an almost total lack of contact between

- father and son. Bingham LJ thought that the effect of return, in his opinion, would be to destroy the family life of mother and child as it was now lived.
14. In *SS Malaysia v SSHD* [2013] EWCA Civ 888 the appellant was Roman Catholic. Her husband had by the date of hearing converted to Islam and she was concerned he might insist that their child be brought up as a Muslim. The Appellant therefore absconded with the child to the UK. The First-tier Tribunal Judge accepted that there was at least a reasonable degree of likelihood that, if he were returned to Malaysia, the child would be brought up as a Muslim, but found that any dispute over his religious upbringing should be decided by the courts of his own country. The First-tier Tribunal Judge accepted that religious upbringing would probably be made by a Shari'a court with a predisposition in favour of Islam. The most likely outcome was that the child would be allowed to live with his mother until he was about 15, but that she would not be allowed to bring him up as a nominal Christian. Although the First-tier Tribunal Judge recognised that the family courts of this country would adopt a different approach, he did not think that it was necessary for that reason for him to take a course which would result in the imposition of the same values or remedies. The Court of Appeal concluded that the child, aged 6, had yet to form his own religious views and upheld the decision. *EM (Lebanon) v Secretary of State for the Home Department* [2008] UKHL 64, [2009] was distinguished. In that case family life would have been nullified.
 15. The appellant in this case was refused permission to appeal to challenge the adverse credibility findings made by the Judge. The Judge refusing permission found that those findings were open to the Judge on the evidence and not infected by arguable material legal error. Mr Hussain's submissions regarding the grandparents and family dynamics have to be considered in light of those findings.
 16. The Judge found at [32 (8)] the appellant was married to her husband and her evidence regarding the relationship with the in-laws was found to be inconsistent. The reality of the Judge's findings is that the appellant has failed to tell the truth about matters which are central to her appeal such that she had not discharged the required evidential burden which includes her claimed problems with her husband and her in-laws. The finding by the Judge that the appellant remains married to her husband and lack of credibility regarding alleged difficulties she will face with the in-laws means there is no credible basis for the Judge to have found there was a real risk faced by the appellant of losing her children on return to the Lebanon.
 17. As there is no credible foundation for the claim made by Mr Hussain that there was a real risk the grandparents will take the children the appellant failed to establish before the Judge that the family life she has with her children will be nullified by the actions of any family member or the Sharia courts on return.
 18. In relation to the religious point; the Judge noted the evidence given by the appellant in relation thereto but does not accept that the appellant has told the truth [33].
 19. At [28 - 29] of the reasons for refusal letter the appellants claim to have left the Islamic faith is examined and the following noted:

28. You claim to have left the Islamic faith, and that you now have no religion (SI Q1.12). You asked why you decided to leave Islam. You claim that when you are young you were forced to wear a hijab, which you did not like and did not want to wear. You claim that your mother was 'tough' with you and would hit you for not wearing your hijab, and you were restricted and could not go out with friends (AIR Q 89). You then described a time where you asked a girl if she knew how to pray because she had started coming to school wearing a hijab. The interviewer stated they did not understand how the problems you describe affected you married in adulthood. You stated that everything you wanted to do was forbidden, you got married the traditional way which was not what you wanted, and that your problem is Islamic thinking and Islamic ideology (AIR Q91). You claim that you are raising your children 'not religious', and to accept others regardless of faith and agenda (AIR Q94). You asked, having left Islam, how do you interact with other people that followers of Islam. You stated 'People that know I have left Islam live in Lebanon' (AIR Q129). It is considered that this does not answer the question put to you.
29. Whilst your account is considered internally consistent, it is also considered to be lacking in detail. There is no external information which can confirm that you have left the Islamic faith. This material fact therefore remains unsubstantiated and will be considered under benefit of the doubt below.
20. Considering the 'benefit of the doubt' elements at [43 – 48] by reference to paragraph 339L of the Immigration Rules the decision-maker concluded the appellant had failed to meet the conditions in paragraph 339L and that those aspects of the claim being considered under the benefit of the doubt provisions had not been substantiated. The appellants claim to have left the Islamic faith was therefore rejected.
21. The appellant, for the purposes of the hearing, applied pursuant to rule 15(2A) to adduce additional evidence. Whilst this is not appropriate for the purposes of the error of law hearing it may have been relevant had legal error been found as the evidence would have been admitted as part of the process of reconsidering the decision.
22. One of those documents, in the public domain, is a document produced by the Australian Government Refugee Review Tribunal, Country Advice Lebanon, which has already been referred to above. The quotation taken from the skeleton argument discussing risk due to religious beliefs is arguably misleading as it is selective. It is not acceptable to a representative to refer in part to a portion of the report and then to omit what may be very significant final two sentences just because they may not support the point the representative is trying to make. There is an obligation upon representatives to refer all relevant matters to a court or tribunal whether in favour or against their client's position. The practice of the selective quoting from the Australian report is unacceptable.
23. The section omitted is after the reference to 'birth religion being more important than the level of religious dedication' in the following: "no information could be located on whether Lebanese atheists are targeted or attacked. It is also unclear whether a perceived non-practising Muslim would be targeted or identified as such".

- 24. The finding of the Judge is that the appellant is not credible. It is also found she failed to show that anything that she was claiming was credible, would lead to a real risk on return, or create an entitlement to a grant of international protection, was true. The Judge does make a sustainable finding regarding the appellant's credibility in relation to all the matters upon which she sought to rely.
- 25. I do not find it made out that the Judge has made an error of law material to the decision to dismiss the appeal.

Decision

- 26. **There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

- 27. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 25 July 2018