Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09188/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5th February 2019	**On 27th March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

[N P]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr K Behbahani, Solicitor
For the Respondent: Mr A Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iran born on 9th August 1997. The Appellant claims to have arrived in the UK in July 2017 by plane and claimed asylum on 11th January 2018. Her claim for asylum was based on a contention that she had a well-founded fear of persecution in Iran on the basis of her membership of a particular social group, namely a woman in Iran who is the potential victim of a forced marriage. Her application was refused by Notice of Refusal dated 12th July 2018.

2. The Appellant appealed and the appeal came before First-tier Tribunal Judge O'Keeffe sitting at Hatton Cross on 22nd July 2018. In a decision and

reasons promulgated on 5th September 2018 the Appellant's appeal was dismissed on all grounds.

3. On 19th September 2018 Grounds of Appeal were lodged to the Upper Tribunal. Those grounds made the following contentions:-

   (1) That there had been a failure by the First-tier Tribunal Judge to make proper findings based on the evidence before her and/or failure to properly take into account the Appellant's explanations before making her findings.

   (2) That there had been a failure to properly consider the plausibility of the Appellant's account.

   (3) That there had been findings based on material mistakes of fact.

   (4) That there had been an unreasonable expectation of corroborative evidence.

   (5) That there had been a failure by the judge to consider the background material within their proper context.

   (6) There had been a failure to make any proper findings in respect of the Appellant's sister's evidence.

4. On 12th October 2018 First-tier Tribunal Judge Page refused permission to appeal. On 5th November 2018 renewed Grounds of Appeal were lodged to the Upper Tribunal. These renewed grounds consist of a two page analysis by the Appellant's instructing solicitor as to why the judge refusing permission was wrong and attached to that the original Grounds of Appeal.

5. On 21st December 2018 Deputy Upper Tribunal Judge Grimes granted permission to appeal. Judge Grimes noted that it was contended in the sixth ground that the judge had erred in failing to make any proper findings in relation to the Appellant's sister's evidence. The Appellant's bundle contains a statement from her sister. The judge had said at paragraph 4 that she heard evidence from the Appellant's sister. However, the judge had made no reference to the sister's evidence in the "Findings" section of the decision. Judge Grimes considered that it was arguable that the failure to assess this evidence was a material error, particularly in the context of the finding that the Appellant provided no corroborating evidence to show that her father was a wealthy businessman with connections to the Iranian government. Whilst Judge Grimes considered that the other grounds had less merit, permission to appeal was granted on all grounds.

6. On 5th February 2019 the Secretary of State responded to the Grounds of Appeal under Rule 24. It is on the above basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by her instructed solicitor, Mr Behbahani. Mr Behbahani is very familiar with this matter. He appeared before the First-tier Tribunal and he is the author of the Grounds of Appeal and the amended Grounds of Appeal. The Secretary of State appears by her Home Office Presenting Officer, Mr

Melvin. Mr Melvin is also familiar with this matter. He is the author of the Rule 24 response to the Grounds of Appeal which I have read and considered. Unlike many Rule 24 responses, this is a detailed response extending to some fifteen paragraphs.

Submission/Discussion

7. Mr Behbahani acknowledges that the main basis upon which Judge Grimes has granted permission is the contention that there has been a failure to look at the Appellant's sister's evidence but he starts his submissions by addressing the Grounds of Appeal in the order in which they are produced. He asked me to look at paragraphs 27 to 42 of the Appellant's interview and submits the judge has failed to properly take into account the entirety of the Appellant's answer particularly within the context of the evidence which she had given in her witness statement and/or other evidence. He submits that there is no inconsistency and that the response at question 42 is entirely consistent with the details the Appellant had already provided to the interviewing officer in her answer to question 27 and clearly indicates exactly what the Appellant had explained in her witness statement. He consequently submits that the finding by the judge that there is a contradiction between the Appellant's answers to these questions in the interview record are actually not supported by the evidence before the judge.

8. He reiterates his contention that there has been a failure to properly consider the plausibility of the Appellant's evidence and that the judge's findings are based entirely on her own impression rather than taking into account the evidence that was before her. He submits that it is necessary to carry out a thorough assessment of the evidence and given the factual nature of the evidence that was before her, namely that of the Appellant's sister who had been cross-examined, it is essential for the judge to have regard to that evidence when reaching her conclusion.

9. He asked me to give due consideration to the witness statement of the Appellant's sister, pointing out that there are two particularly important issues therein. Firstly, he asked me to note the sister's reference to the characteristics of her father's ill-treatment, firstly of herself and secondly of her mother, and secondly that there had been a failure by the judge to consider that evidence which he submits renders the judge's findings on plausibility unsustainable. He submits that in reaching implausibility findings the judge has failed not only to apply the correct legal test, but also reached conclusions based on her own perception when there was no evidence before the judge to support them.

10. Mr Behbahani turns briefly to the other grounds, submitting that there has been a failure to give anxious scrutiny to the evidence by the judge and that there was evidence before the judge that there are forced marriages throughout Iran and that there is no protection when someone is forced into a marriage. He notes that at paragraph 31 the Appellant has been criticised for not having provided corroborative evidence to show the status of her father and his business partner as influential individuals in

Iran with close connections with the government. He acknowledges that position but submits that it cannot really be said that evidence would have been available to be brought before the Tribunal in these circumstances and that the judge has put too great an onus on the production of such evidence.

11. For all the above reasons he considers that there are material errors of law and that the appeal should be remitted to the First-tier Tribunal for rehearing.

12. Mr Melvin in response relies on his Rule 24 and submits that this is an attempt by the Appellant to reargue the case. Whilst he accepts there are similar witness statements, he points out that the judge has focused on discrepancies within the evidence and contends that the judge has looked at the evidence and made findings that she was entitled to. With regard to the position of the objective evidence in relation to forced marriages, he points out that the judge has addressed this at paragraphs 35 and 36 but that the objective evidence is far stronger with regard to difficulties that might face the Appellant if she lived in a rural part of Iran, pointing out that she lives in Tehran where the position is, he contends, different. However, he submits that there is no suggestion made that the Appellant's father is connected to the government. He asked me to dismiss the appeal.

The Law

13. 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.

14. 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

15. The inherent plausibility of an Appellant's claim is part of the assessment to be carried out when looking at the overall position of an Appellant's credibility. It is theoretically correct that an Appellant need do no more than state his or her claim but that claim does still need 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. In this case I am satisfied that the judge has failed to look at all the evidence. The judge has failed to have regard to the first part of the Appellant's answer to question 42 in her asylum interview and, importantly, has failed to give full and proper consideration and make proper findings in respect of the Appellant's sister who had provided a detailed witness statement and had given oral evidence. I pose the question as to whether or not the failure to consider the evidence of the Appellant's sister fully is material. The answer is that it may be and as such, the decision is unsafe. It is only right that the evidence of the Appellant's sister is properly assessed and to expect the judge to show full and thorough consideration of the evidence produced and to consider the extent to which it is corroborative of the Appellant's own written and oral testimony.

16. Consequently, it is possible that the judge's findings have been based on her own perception and on a basis where there was no evidence before the judge to reach the findings that she did. In such circumstances I am satisfied that the submissions made by Mr Behbahani have merit and that the arguments maintained by Mr Melvin, both orally and as set out in the Rule 24 response, are not sustainable.

17. It is possible that had the judge looked at the evidence fully and, not as appears to be the case imposed her own pure perception, that the judge may have come to another conclusion. In such circumstances the correct approach is to set aside the decision of the First-tier Tribunal Judge and to remit the matter back to the First-tier Tribunal for rehearing. I emphasise, however, that that is not to say that another judge on considering all the evidence will ultimately come to a different conclusion to that of the original First-tier Tribunal Judge.

Decision and Directions

The decision of the First-tier Tribunal Judge contains material errors of law and is set aside. Directions are given hereinafter for the rehearing of this matter.

(1) On the finding that the decision of the First-tier Tribunal contains material errors of law the decision is set aside and the appeal is remitted to the First-tier Tribunal sitting at Hatton Cross on the first available date 28 days hence for rehearing with an ELH of three hours.

(2) That the appeal is to be before any Judge of the First-tier Tribunal other than Immigration Judge O'Keeffe.

(3) That none of the findings of fact are to stand.

(4) That there be leave to either party to file and/or serve an up-to-date bundle of both subjective and/or objective evidence upon which they seek to rely at least seven days prior to the restored hearing.

(5) That in the event that the Appellant and/or any witnesses to be called require an interpreter at the restored hearing, then the Appellant's instructed solicitors should notify the Tribunal within seven days of receipt of these directions.

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

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

Signed Date

Deputy Upper Tribunal Judge D N Harris