IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No.: UI-2024-002450
First-tier Tribunal No:
PA/56728/2023
LP/01239/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 31 July 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

IZ (KAZAKHSTAN)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Sonia Ferguson, Counsel instructed by Solomon Solicitors
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard at Field House on 23 July 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to

identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals from the decision of First-tier Tribunal Judge Chana promulgated on 1 May 2024 ("the Decision"). By the Decision, Judge Chana dismissed the protection claim of the appellant, and the human rights claims of the appellant and her dependent children, on all grounds raised.

Relevant Background

2. As summarised in the asylum skeleton argument ("ASA") settled by Ms Ferguson for the hearing in the First-tier Tribunal, the appellant is a national of Kazakhstan, but ethnically Russian. In 2006 she converted to Islam and was thereby regarded as a Wahhabi (not a proper Muslim). Since 2013 the appellant had been of interest to the KNB (the National Security Council) who monitored her and approached her on numerous occasions. In 2016 the appellant left Kazakhstan for Turkey with her then husband, AG, whom she had married in 2009 and by whom she had given birth to three of her four dependent children.

3. In 2018 AG was removed to Moldova from Turkey, from where he went to Kiev. The appellant and the children reunited with AG in Kiev. The family hoped to travel to the Dominican Republic, but were unable to do so. They were transiting in the UK with the intention of returning to Ukraine when AG heard the KNB was looking for him in Kiev.

4. AG claimed asylum in the UK on 14 June 2018. The appellant and the children were dependants on AG's claim.

5. In his statement of claim, AG said that he had converted to Islam in 2002, and that he became a member of Tablighi Jamaat. (At the time, Tablighi Jamaat was not banned, but it was banned by the Kazakhstan authorities in 2013.) After a year he stopped affiliating with Tablighi Jamaat as they were not right for him. In December 2005 he was arrested on fabricated drug charges. He believed that his arrest was related to his plans to go to a madrasa in Pakistan. He was sentenced to five years' imprisonment. During his imprisonment he continued to practice Islam. He became an imam in the prison mosque. About 2-3 months after he was appointed as an imam, which was at the beginning of 2007, the KNB started to visit him in prison and ask him questions about members of Tablighi Jamaat and others who were in prison with him. Towards the end of 2007 some members of Hisb ut-Tahri were detained in the same prison. The KNB requested that he teach them "*right Islam*". He agreed to do this, but he refused to become an informant for the KNB.

6. On his release from prison in December 2009 he had to report on a weekly basis and he was not able to leave the country until December 2015. In about 2012, he said that the KNB had begun to pressurise him and make threats against him in order to force him to become an informant.

7. His family had also suffered as a result of their religion. His wife and daughter both wore a Hijab, and his wife was *"persecuted"* as a result. It was forbidden in Kazakhstan to wear a Hijab at school. His wife was shouted at by the head of his son's school, and his son was discriminated against because he was living in a Wahhabi family.

8. In 2019 the appellant separated from AG. On 6 April 2021 AG was granted asylum. Thereafter, the appellant pursued an asylum claim on her own behalf. The appellant's claimed fear on return to Kazakhstan was that, at a minimum, she would be heavily interrogated by the authorities, and at the higher end she was likely to face prison.

9. In the Home Office reasons for refusal letter dated 14 September 2023. it was accepted that she was a Sunni Muslim; that she had suffered discrimination because of her faith; and that she had been approached by the authorities. Her credibility was damaged by her failure to claim asylum in France before arriving in the UK; and it was not accepted that she would be at real risk of persecution on return to Kazakhstan, as 70% of the population of Kazakhstan was of the Muslim faith, and discrimination was not the same as persecution. It was accepted that she had been approached by members of the KNB on numerous occasions seeking information regarding other Muslim members of her community, but by her own admission they had never acted in a threatening manner towards her, and they had always come across in a friendly manner, even when she had informed them that she would be unwilling to provide them with any information.

10. As set out in the ASA settled by Ms Ferguson, the appellant's case on appeal was that the respondent had failed to appreciate fully the risk that the appellant faced on return. The appellant relied upon a Country Expert report pointing to human rights violations by the security forces and a climate of intolerance. As a convert to Islam and as being also of Slavik ethnicity, this made her a Wahhabi or (in the eyes of the KNB) a suspected radical. There was generally an anti-Russian sentiment. There was a state agency in Kazakhstan known as the DMUK, which controlled Muslims and led to Kazakh Muslims adhering to the Hanafi school. The appellant did not adhere to the Hanafi (state-sanctioned) school and the expert found it highly plausible that the appellant would face treatment amounting to persecution as a Muslim who did not conform with the Hanafi school. Wearing beards or a Hijab was not permitted in Kazakhstan. There had been fabricated charges against followers of non-traditional Islam, such as false drug charges. Ethnicity might also play a part in religious persecution. The authorities were gravely concerned about radicalism and

Syria. The appellant's history of converting to Islam, although her father was an atheist, starting to wear the Hijab; and marrying a prisoner who was imprisoned for being part of a banned extremist terrorist organisation (sic), would be enough for the Security Forces to regard the appellant as a terrorist. The abuse that was directed to her by the school where her children attended indicated that she was listed on a black list for Wahhabi/ non-state sanctioned Muslims, which meant that she was perceived by the KNB as a religious extremist or terrorist. The appellant's father had been visited four times since she left Kazakhstan, and it was not right to say that she would not be at risk on return. She said that she would be interrogated or imprisoned upon return, and the expert report supported this. Her profile meant that she could well be charged with terrorism offences or that other false charges could be brought against her. The expert report also suggested that her details would be shared with Border Guards as someone on the black list who had long been absent from her home area.

The Decision of the First-tier Tribunal

11. The appellant's appeal came before Judge Chana sitting at Hatton Cross on 12 April 2024. Ms Ferguson appeared on behalf of the appellant, but there was no representation on behalf of the respondent.

12. The Judge's findings of fact began at para [14] of the Decision. She said that she had considered all the evidence in this appeal, including evidence to which she had not made specific reference.

13. At para [17] the Judge noted the appellant's evidence that she had to wear a special hat in hospital, because they saw people who wore Hijabs as terrorists.

14. At para [19] the Judge said that the fact that the hospital provided alternative head gear for the appellant demonstrated that the Wahhabi faith was accommodated by the hospital authorities. This went against her claim that she feared being persecuted in Kazakhstan due to her Wahhabi faith.

15. At para [20] the Judge noted that in interview when she was asked the name of the sub-group of the Sunni Muslim faith to which she belonged, the appellant answered that she did not belong to any group. The Judge said that this vague response went to her credibility.

16. At para [22] the Judge distinguished the appellant's case from that of her ex-husband AG on the basis that AG had agreed to become an informant, whereas she did not do so.

17. At para [24] the Judge said that background evidence stated that there was protection available to the appellant in Kazakhstan, and she

concluded at para [25] that the appellant could seek protection against those she believed discriminated against her.

18. At para [26] the Judge turned to consider the Country Expert report. She found that it was not an objective report and that it had been written as an advocate for the appellant's appeal. The expert had speculated as to what might happened to the appellant if she was returned to Kazakhstan. He stated that under the best scenario as a woman she would not receive any help, and under the worst scenario she would end up being a victim of police brutality and the extreme prejudice of the courts. The Judge commented: "*This is against the appellant's evidence that when she was politely asked to become an informant, she refused and no adverse consequences befell her.*"

19. The expert acknowledged that the appellant had received better treatment from the KNB than her ex-husband who was detained. The Judge said that this also demonstrated that the appellant was not considered to be of any interest to the authorities. The expert had not considered in the report the fact that the appellant was not deemed to be of any interest to the authorities when she lived in Kazakhstan, and therefore there would be no reason for her to be of interest to the authorities on her return.

20. At para [30] the Judge noted that the appellant had stated in her witness statement that she was not a terrorist. Therefore, the Judge held, it would be apparent to the authorities that the appellant was not a terrorist. The mere fact that the KNB had asked her to collect information about other Muslims demonstrated that they knew she was not a terrorist, as they would not have asked a terrorist to be an informant.

21. At para [31] the Judge rejected the expert's opinion that the appellant would not be protected by the state on return to Kazakhstan, on the ground that the appellant had come to no harm when she lived in Kazakhstan even when she converted to Wahhabism, other than facing some discrimination.

22. The Judge turned to address the human rights claims of the appellant and her dependent children. She concluded her proportionality assessment as follows, at para [45]:

> "I find that the factors raised by the appellant do not outweigh the public interest because … the appellant is not credible and the respondent's interest outweighs the interests of the appellant and her children."

The Grounds of Appeal to the First-tier Tribunal

23. The grounds of appeal to the Upper Tribunal were settled by Ms Ferguson. She submitted that the Judge did not fully understand the claim in the country context, and so her findings in relation to risk and credibility were fundamentally flawed.

24. The Judge had not attempted to reconcile the fact that, whilst the approaches on numerous occasions had always been friendly, her ex-husband had since been recognised as a refugee in the UK, and that the KNB had attended her father's house on four occasions.

The Reasons for the Grant of Permission to Appeal

25. On 21 May 2024 First-tier Tribunal Judge Dainty observed that the grounds of appeal were not divided into discreet grounds, and Judge Dainty further observed that it was not arguable that the Judge had failed to understand the risk. The Judge's findings on risk hinged on the accepted position of the appellant, which was that she had been approached by the authorities but then released, and as such would not be of interest on return. This also formed a part of the Judge's rejection of the expert report. Judge Dainty observed that the grounds of appeal did not deal with this.

26. However, it was arguable that the position with respect of visits to the appellant's father were such a material matter that there should have been findings. Secondly, para [45] was so oddly worded that it arguably undermined the Judge's approach to credibility in the asylum claim, as well as to the approach to and understanding of the Article 8 balancing exercise. As such, there were arguable errors of law in respect of both the asylum claim and the claim under Article 8 ECHR, and permission was granted on that basis.

The Error of Law Hearing in the Upper Tribunal

27. At the hearing before me to determine whether an error of law was made out, Ms Ferguson developed the case put forward in the grounds of appeal. For the Secretary of State, Ms Cunha opposed the appeal on the basis that the grounds of appeal were no more than an expression of disagreement with the findings that were reasonably open to the Judge for the reasons which she had given.

28. After hearing from Ms Ferguson briefly in reply, I reserved my decision.

Discussion and Conclusions

29. In view of the grounds of appeal in their totality, I consider that it is helpful to bear in mind the observations of Lord Brown in *South Bucks County Council -v- Porter* [2004] UKHL 33; 2004 1 WLR 1953. The guidance is cited with approval by the Presidential Panel in *TC (PS compliance - "Issues-based reasoning") Zimbabwe* [2023] UKUT 00164 (IAC). Lord Brown's observations were as follows:

> "36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal

> controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in dispute, not to every material consideration…Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

30. I do not consider that there is any merit in the overarching criticism that the Judge failed to give adequate reasons as to why the appellant did not succeed in her asylum appeal, given that her ex-husband was successful in his asylum claim. The Judge was incorrect to identify as a point of difference that AG had agreed to be an informer, whereas the appellant had not. But she correctly identified as a crucial point of difference that AG had been detained by the authorities in Kazakhstan, whereas the appellant had never been detained. According to AG's Statement of Claim, he always had a much higher risk profile than his wife. He had become an imam while in prison, and he was known to the authorities as such and he was also known to have associated with Tablighi Jamaat in the past, and from about 2012, according to him, he was pressurised and intimidated into becoming an informant whereas he did not claim that his wife had been subjected to any pressure to become an informant.

31. The Judge was wrong to characterise the appellant as having converted to the Wahhabi faith. But her error in this regard did not operate to the appellant's disadvantage in the assessment of risk, as the cases of both AG and the appellant were more nuanced. Their case was that they had converted to mainstream Sunni Islam, but they were verbally abused as Wahhabi (a) simply because they were converts, and therefore not proper Muslims on that account; and (b) because they visibly practised their Muslim faith in an openly devout and conservative manner, with the appellant and their daughter wearing a Hijab wherever possible, and the appellant apparently encouraging her children to pray at school, consistent with the requirement for devout adherents to Islam to pray five time a day. For this, the appellant suffered discrimination, but not – judged objectively - persecution. As such, the Judge was not wrong to find that the risk faced by the appellant in continuing to follow her faith did not amount to persecution.

32. However, I am persuaded that the Judge materially erred in law in the two respects identified in the grant of permission. Firstly, the only external evidence bearing upon the issue of risk on return, aside from the Country Expert report, was the undated statement from the appellant's father

detailing the four visits that he claimed to have received since the departure of his daughter. Taken at its face value, arguably this evidence supported the appellant's case that she was of ongoing interest to the authorities of Kazakhstan as a suspected radical and hence potentially of adverse interest to them in the event of her return. Accordingly, it was incumbent upon the Judge to make findings on the probative value of the father's statement.

33. Secondly, although the Judge indicated that the appellant's answer about her faith in her asylum interview damaged her credibility, the Judge did not explain how this impacted upon the issue of risk on return, and in particular how it impacted on the weight that should be given to the statement from her father about the authorities' perception of the appellant's faith. (In contrast to the appellant's vague response in interview, AG gave an explanation in his statement of claim as to how his version of the Sunni Muslim faith differed from the state-sanctioned version, which he characterised as being influenced by Sufism.) The Judge also did not explain the basis upon which she subsequently made a global adverse credibility finding at para [45], albeit in the context of a claim under Article 8 ECHR.

34. The upshot is that the Decision is inadequately reasoned, and so it is unsafe and must be set aside.

35. I have carefully considered the venue of any rehearing, taking into account the submissions of the representatives. Applying *AEB* [2022] EWCA Civ 1512 and *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 00046 (IAC), I have considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the Senior President's Practice Statement.

36. I consider that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process and I therefore remit the appeal to the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal contains an error of law, and accordingly the decision is set aside in its entirety, with none of the findings of fact being preserved.

This appeal is remitted to the First-tier Tribunal at Hatton Cross for a fresh hearing before any Judge apart from Judge Chana.

Andrew Monson
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
29 July 2024