



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/00394/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 10th July 2014**

**Determination Sent
On 4th September 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MS MAHIN ROBATJAZI
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Medley-Daley
For the Respondent: Mrs K Heaps

DETERMINATION AND REASONS

1. The Appellant is a citizen of Iran born on 23rd September 1963. The Appellant between 2003 and 2010 made several visits to the UK on visit visas. On 22nd September 2011 the Appellant and her daughter, who is dependent on her claim, arrived in the UK on her own passport containing a valid visa until 22nd December 2011. She claimed asylum on 20th

November 2011 on the grounds that she feared persecution in her homeland on account of her religious beliefs. The Appellant's application was refused by Notice of Refusal dated 29th December 2013.

2. The Appellant appealed and the appeal came before Immigration Judge Edwards sitting in the First-tier Tribunal on 26th February 2014. In a determination prepared the same day the Appellant's appeal was dismissed on asylum and human rights grounds and the Appellant was found not to be in need of humanitarian protection.
3. On 10th March 2014 the Appellant's instructed solicitors lodged Grounds of Appeal to the First-tier Tribunal. On 18th March 2014 First-tier Tribunal Judge Holmes granted permission to appeal. Judge Holmes noted,

"The excessively lengthy grounds can perhaps be reduced to the following simple proposition; there was a wealth of medical evidence before the Tribunal in relation to the Appellant's psychiatric health, and before the Tribunal turned to any assessment of the credibility of her written evidence it was obliged to assess that medical evidence, and in turn form a view as to what weight could be placed upon any consistencies in it, or any perceived failings in its depth of knowledge of her religious faith. It is arguable that the medical evidence in question received inadequate analysis, rendering the assessment of the Appellant's credibility (and in particular the attachment of any weight to the failure to tender her for cross-examination) unsafe."
4. On 31st March 2014 the Secretary of State responded to the Grounds of Appeal under Rule 24. Those grounds contended that the First-tier Tribunal Judge was clearly mindful of the contents of the psychiatric report and at no point did he make an adverse finding as a result of the Appellant's decision not to give oral evidence. The response contends that there was no indication that the Appellant was unable, due to psychiatric difficulties, to answer questions at interview or to give a written statement through solicitors at the relevant times and that it was for the judge to assess what weight to give to each item of evidence, and to reach a conclusion as to the Appellant's credibility. The response contended that in doing so the judge had not fallen into error of law.
5. It is on that basis that the appeal comes before me to decide whether there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant is represented by his instructed solicitor Mr Medley-Daley. The Secretary of State appears by her Home Office Presenting Officer Mrs Heaps.

Submissions/Discussions

6. Mr Medley-Daley starts by referring me to the authority of *The Queen (on the application of SA (Iran)) [2012] EWHC 2575 (Admin)* and to the finding of His Honour Judge Gilbert QC therein that,

“There must be a real risk that if she has professed herself to be a Christian, and conducted herself as one, that profession, whether true or not, may be taken in Iran as evidence of apostasy.”

7. Mr Medley-Daley submits that the key ground herein is medical evidence and that the First-tier Tribunal Judge has been very selective in his approach and that when taken as a whole a different picture emerges and that it is appropriate for the judge to make findings before addressing the Appellant’s mental health problems. He takes issue with the findings of the judge at paragraph 42 of his determination submitting that the judge has not considered the position in the round.
8. Mr Medley-Daley takes me to the medical evidence that was before the First-tier Tribunal. He starts by referring to the letter of 25th July 2013 from Dr J Mylvaganam. At page 2 of his report he states,

“Her memory loss is the most severe I have ever seen in a PTSD case and functionally it is as debilitating as that of a demented patient. This memory loss symptom of her PTSD is responsible for her depression symptoms which comprise low mood/tearfulness/poor concentration/low motivation/anhedonia/some suicidal thoughts.”

Mr Medley-Daley emphasises that the judge has not given due consideration to this nor has he considered the letter from Dr Hoult dated 13th January 2014 where Dr Hoult has stated,

“I do however believe, through my extensive appointments with Mahin, that the threat is very real and if she were to return a catastrophic effect on her mental health could ultimately prove fatal.”

9. Mr Medley-Daley submits that the failure to address these issues constitutes a material error of law. He acknowledges that the test is not that set out in *N* but is the six stage test as set out in *J* and that this test has not been applied. He asked me to find a material error of law and to set aside the decision of the First-tier Tribunal and to remit it on the basis that it can be reheard.
10. Mrs Heaps in response merely relies on the Notice of Refusal as the starting point and submits that the judge has looked at the issue with regard to the Appellant’s conversion to Christianity at paragraphs 37 to 38 of his determination. She emphasises she has nothing further to add.

The Law

11. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial consideration, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

12. 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

13. It is very clear from the medical evidence that was available before the First-tier Tribunal that the medical practitioners have very serious reservations about the mental health of the Appellant. It is regrettably also fairly clear that that has only been addressed at paragraph 42 of the First-tier Tribunal Judge's determination and that he has failed to give full and due consideration to the medical evidence, something to which Mrs Heaps in her very sensibly limited submission acknowledges. There was before the First-tier Tribunal Judge a wealth of medical evidence. Whether he would have decided the decision differently had he addressed it in his determination is not a matter for the Upper Tribunal to comment on but I think it is fair to say that the judge may well have come to a different decision had he given full and due proper attention to the medical testimony when he came to address the issue of the Appellant's purported Christianity and as such I find that the credibility finding made by the First-tier Tribunal Judge is fatally flawed and I find that there is a material error of law and I set aside the decision of the First-tier Tribunal Judge with none of the findings of fact to stand and remit it to the First-tier Tribunal.
14. Following discussion between the legal representatives it is accepted by both sides that the Appellant is not fit to attend to give evidence but Mr Medley-Daley considers that there will be a considerable number of witnesses whom he would wish to call on the Appellant's behalf. On that basis I set out below directions with an estimated length of hearing of one day. The appeal can be remitted to any First-tier Tribunal Judge sitting at Manchester other than Immigration Judge Edwards.
15. **Decision and Directions following Remittal to the First-tier Tribunal**

The decision of the First-tier Tribunal contains a material error of law and is set aside. The matter is remitted to the First-tier Tribunal for rehearing. Directions for the rehearing are:-

1. That on the finding of a material error of law the decision of the First-tier Tribunal Judge is set aside and the appeal is remitted to the First-tier Tribunal with none of the findings of fact to stand.
2. The appeal can be heard before any First-tier Tribunal Judge other than Immigration Judge Edwards sitting at Manchester.
3. That there be leave to the Appellant's solicitors to file and serve an additional bundle including any up-to-date witness statements and medical evidence by 15th October 2014.
4. Leave is granted to the Appellant's solicitors not to call nor have in attendance the Appellant for the rehearing.
5. Relist on the first available date after 1st November 2014 with an ELH of one day - 6 points. It is recorded that six witnesses are expected to attend to give evidence.
6. In the event that interpreters are required the Appellant's instructed solicitors must notify the Tribunal and the Secretary of State seven days prehearing.

Signed

Date

Deputy Upper Tribunal Judge D N Harris