



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/10394/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 8<sup>th</sup> May 2017**

**Promulgated**

**On 31<sup>st</sup> May 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD**

**Between**

**M N**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Fouladvand of Migrant Advisory & Advocacy Service (MAAS)

For the Respondent: Mr T Wilding, Senior Presenting Officer

**DECISION AND REASONS**

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Lucas sitting at Taylor House on 28<sup>th</sup> October 2016 whereby in a decision promulgated on 21<sup>st</sup> November 2016 the judge dismissed the appeal on all grounds including protection grounds and human rights grounds. The Appellant had sought permission to appeal against that decision. Permission to appeal was refused by the First-tier Tribunal and

thereafter there was a renewed application to the Upper Tribunal. Upper Tribunal Judge Bruce said the following in her grant of permission,

- (1) Permission is granted despite of, not because of, the grounds, which amount to some ten pages of written submissions about why the decision of the First-tier Tribunal should have been other than it was.
  - (2) I am prepared to grant permission because it is arguable that in finding at paragraph 33 there is to be no evidence that the Appellant's former husband worked for a television company, the Tribunal overlooked the Appellant's own evidence on the matter. If that evidence was to be rejected then reasons had to be given. It is further arguable that in stating at paragraph 31 that the background to this appeal leads inevitably to the conclusion that this claim is entirely manufactured and the Tribunal placed rather more weight on matters raised in Section 8 AI (TC) A 2004 than Parliament intended.
2. Before me today the Appellant's solicitor said he relied on the grounds of appeal and the grant of permission. It was submitted that the decision of the First-tier Tribunal should be reversed and that if necessary the matter either be reheard here at the Upper Tribunal or remitted to the First-tier Tribunal. That was all that was said. I then heard submissions on behalf of the Respondent. It was submitted that it was clear that Judge Bruce was not impressed with the grounds of appeal. It was unfortunate that this stage had been reached but it was clear at paragraph 33 of the First-tier Tribunal Judge's decision that there was no corroborative evidence that the husband worked for a satirical television station in the United Kingdom. It was said that Judge Lucas was aware of what the claim was in relation to the husband so despite Judge Bruce saying what she did about there being no evidence in terms of finding it is clear what Judge Lucas was driving at.
  3. It was submitted that insofar as the evidence was concerned, the point was that the evidence was manifestly missing. The judge had not accepted the position as simply suggested. The Appellant submitting pictures of a man broadcasting does not show he was employed or linked to the Appellant. It was said that in any event at paragraph 34 onwards the judge had considered the matter in the alternative i.e. even if there was this acceptance of the Appellant's fundamental aspect of claim. It was said that the rejection which is a comprehensive finding of the alternative basis of the case really did lead to a conclusion which could not be impeached in any way.
  4. I then heard the Appellant's solicitor in response. Unfortunately, the paperwork which he held was lacking for example he did not have the Reasons for Refusal Letter and other important documents. I therefore provided him with the relevant documentation from the Tribunal's file to enable him to be able to represent the Appellant. I then adjourned the matter for a period of time to enable him to deal with such things. Thereafter further submissions were made but it is right to say that a fair

amount of confusion crept in in terms of as to whether the initial grounds of appeal were still relied upon or not and if there were on what basis or whether it was simply the grant of permission by Judge Bruce. It was said by Mr Wilding that the Appellant's submissions really were nonsensical and there were manifest difficulties with what was being said on behalf of the Appellant.

5. Unfortunately, I got very little assistance in following the Appellant's case through her solicitor so I had to adjourn matters again to look through the file with some detail because with regret the assistance being provided on behalf of the Appellant was not what it should have been and that necessitated me looking through several hundred pages of documents on my own to ascertain what the case was really about. I then went through the mass of grounds of appeal which Judge Bruce herself had highlighted.
6. Now, ultimately I do find that there is a material error of law and that is against my initial inclination but it is after having considered the case with some care and in some detail. It is just as Judge Bruce noted when she granted permission, namely that I allow this appeal despite of not because of the submissions made to me on behalf of the Appellant.
7. It really just comes down to two relatively straightforward aspects. The judge said in the decision at paragraph 33 that "there is no evidence to show that the Appellant's husband had any role within that TV channel." Whilst it is right that there were some stills pictures of a male person broadcasting on television, but there was also other evidence from the Appellant herself. That in my judgment was well encapsulated in Judge Bruce's grant of permission. Secondly there is reference to whether the judge went too far in respect of section 8 matters at paragraph 31 of her decision when it was said,

"The background to this appeal leads inevitably to the conclusion that this claim is entirely manufactured and opportunistic. The Appellant entered the UK in December 2014 with a spousal visa. She then separated from her spouse one year later in December 2015 and returned to Iran in February 2016. Her leave to remain in the UK was curtailed on 24<sup>th</sup> February 2016 and she returned to the UK on 8<sup>th</sup> March 2016. At the time of her return therefore she had no leave to remain in the UK. It was only upon her re-entering to the UK on 8<sup>th</sup> March 2016 and the absence of any other leave that she lodged this claim for asylum."

8. In my judgment, this does take the Section 8 matters into account but it goes way to far just as Judge Bruce noted. Giving the case the anxious scrutiny that it requires this being a protection claim leads me to the inevitable conclusion that the most anxious scrutiny was not applied by the judge in this case. She did not explain why the evidence of the Appellant was "not evidence" for the purposes of the background to the Appellant's husband or former husband and secondly she went too far in respect of Section 8 issues. Had she not done that then she may well

have come to a different decision. Therefore, in the circumstances I conclude that there is a material error of law. The matter will have to be reheard and in my judgment the appropriate place for the matter to be considered further is at the First-tier Tribunal. There will be a hearing de novo. None of the current findings will stand. The rehearing will take place at Taylor House or at such other venue as the Resident Judge directs and there will be a Farsi interpreter. All other directions will be dealt with by the First-tier Tribunal.

**Notice of Decision**

The appeal is allowed.

There shall be a re-hearing at the First-tier Tribunal on all issues.

**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 him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 8 May 2017

Deputy Upper Tribunal Judge Mahmood

No fee is paid or payable and therefore there can be no fee award.

Signed

Date: 8 May 2017

Deputy Upper Tribunal Judge Mahmood