



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006502
First-tier Tribunal Nos:
PA/51174/2021
IA/04643/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 06 July 2023

Before

UPPER TRIBUNAL JUDGE KEITH

Between

'A T' (Iran)
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms S Iqbal, Counsel, instructed by Birchtree Law Chambers
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

Heard at Field House on 1 June 2023

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. These written reasons reflect the oral decision which I gave to the parties at the end of the hearing. At the core of this appeal is the appellant's claim to fear persecution as a result of marrying without her father's wishes. She is an Iranian national, who married a Christian convert in the UK, she claims without her father's consent. She also claims that if she were returned to Iran she would be at risk of persecution either from her father or the Iranian state, the latter because of her father's connections and her sur place activities in the UK,

working for a TV broadcaster in the UK, said to be critical of the Iranian government.

The Judge's decision under challenge

2. A Judge of the First-tier Tribunal, Judge Hussain, rejected the appellant's claims, in his decision promulgated on 6th August 2022. There were in fact two hearing dates, the first of which is not specified, but the second is the 18th May. At §49 to §50 of his decision, the Judge explained that the issue of the appellant's credibility had been raised and that was why he had adjourned the hearing to a separate date, to address the issue of Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. That in turn related to whether, for the purposes of Section 8(5) the appellant had made her asylum claim before being notified of an immigration decision, unless as Section 8(5) makes clear, the claim relied wholly on matters arising after the notification. The appellant claimed that she had not been aware of the notice of curtailment at the time she had claimed asylum, a claim which the Judge did not accept, at §54 to §56. The Judge then went on to consider expert evidence relating to the two aspects of her claim, namely the risk from her father in relation to the TV broadcaster. At §58, the Judge noted:

"I am aware that the appellant has enlisted the assistance of a country expert. I mean no disrespect to the expert if I make no reference to his report. This is because I have come to the conclusion that the appellant has concocted a story simply to support an asylum claim. In other words, I do not accept that there is any truth in the appellant's account."

3. The Judge did not accept that the appellant worked for the TV channel and concluded at §66 that the only reasonable explanation was that the appellant came from a liberal family background. In doing so, he rejected the testimony of a witness tendered in support of the appellant, which the appellant, in her grounds, seeks to criticise as insufficiently reasoned. The Judge rejected the appellant's protection and human rights claims.

The appellant's challenge

4. Without criticism of Ms Iqbal, who did not settle them, the grounds themselves are in parts difficult to follow and do not always refer to the specifics of the Judge's decision. Ms Iqbal therefore needed to develop them orally, while Mr Avery countered by questioning whether the appellant had in fact challenged the Judge's finding about the appellant not working for the TV broadcaster. I summarise the grounds as I understand them.
5. First, when considering Section 8 of the 2004 Act, the Judge had erred in the timing of events. The notice of curtailment was effective on 10th October 2013. He recorded the date of the claim of asylum at a screening interview as the same date. However, the appellant had not booked and attended a screening interview the same day. Setting aside separate issues of whether she had moved addresses which meant that she had not received the notice of curtailment, the respondent's own GCID records confirmed that the appellant had booked the asylum interview at an earlier date, specifically as recorded at page 32 of the supplementary bundle, 17th September 2013 at 1.30pm. In other words, regardless of the coincidence of curtailment and the screening interview

being on the same date, the appellant had booked her asylum interview earlier than that date, so that Section 8(5) did not apply.

6. Second, the grounds say that the Judge failed to take into account “the living arrangements” for the appellant at the time. When I asked what this meant, Ms Iqbal referred to the appellant moving home to flee her husband, in the context of domestic violence. It is unclear what evidence was raised and how the point was referred to, before the Judge.
7. Third, the grounds contend that the Judge had failed to consider the appellant’s reasons for why she had made the asylum claim when she did. The grounds do not add more than this generalised statement.
8. Fourth, the Judge had not referred to the response to a data subject access request, which was said to include a decision of the respondent to reject an asylum claim in February 2015. The relevance of that and how it was raised before the Judge was unclear from the grounds.
9. Fifth, the Judge had failed to decide the extent to which the appellant’s credibility was damaged, (see JT (Cameroon) v SSHD [2008] EWCA Civ 878)).
10. Sixth, the Judge had erred in rejecting the appellant’s other expert evidence out of hand on the basis of disbelieving the appellant. The Judge had not given adequate explanations for rejecting the appellant’s friend’s evidence, relying on supposition as to how an alleged persecutor would behave.

The hearing and my decision

11. I do not recite all of the submissions except to explain why I have reached my decision. On the one hand, the Judge who granting the permission had been concerned about the discounting of the expert report on the basis that the Judge had not accepted the appellant’s credibility. I too had initial concerns on this particular point. However, I accept Mr Avery’s submission that there remains a question of materiality, because of what the expert said in his report. The report recited at length the nature of the Iranian society and penal regime. It described the patriarchal (i.e. sexist) nature of Iranian society and how the appellant’s claim of control by her father was consistent with that background. Second, it refers to the TV broadcaster for whom the appellant claimed to work being well-known and in opposition to the Iranian state.
12. I do not accept that the Judge’s discounting of the expert report because he did not believe the appellant was an error such that the Judge’s decision was not safe and could not stand, on that ground. While such discounting risks the error identified in Mibanga v SSHD [2005] EWCA Civ 367), much depends on the context. In this case, the report made general comments on the nature of Iranian society and the prominence of the particular TV broadcaster. The Judge will already have been aware of the former; and the risk in relation to the latter depends in this case on whether the Judge accepted that the appellant worked for the broadcaster, which he did not.
13. However, I turn to the issue of the Judge’s assessment of the appellant’s credibility, by reference to Section 8(5) of the 2004 Act. I have already referred to the timing issue. Mr Avery conceded that the appellant had made her asylum claim before the curtailment of her leave was effective, but said that this issue could be severed, and did not undermine the remainder of the Judge’s

assessment of the appellant's credibility. At the core of this, Mr Avery argued, was the Judge's assessment of the appellant's relationship with her father. However, I accept Ms Iqbal's submission that the assessment of credibility cannot be "severed", in that way, or by analogy to the weight attached to the expert report. The effect of the application of Section 8(5) featured as a significant point, enough to warrant adjournment of the first hearing and to begin the Judge's assessment of credibility (and at some length) in §§54 to 55. To the counter-argument that the Judge concluded that the appellant's credibility was damaged, in any event, (§57), this was only "for the reasons given", which included an assessment of the "totality of the evidence" (§54). The issue in Section 8(5) cannot be severed in the way contended by Mr Avery. In assessing the appellant's truthfulness as to her relationship with her father, the fact that her credibility is damaged because the asylum claim is seen as opportunistic and born out of a fear of an adverse immigration decision cannot safely be seen as an immaterial error, particularly where as here it featured so significantly in the reasons. Where the assessment has to be a global one, the Judge's decision on credibility is not safe and cannot stand. The consequence of that is that I set aside the Judge's decision in its entirety.

Disposal of the appeal

14. I turn to the question of disposal and how I should re-make matters. I remind myself of the Court of Appeal's decision in AEB v SSHD [2022] EWCA Civ 1512 and the nature and the extent of the necessary fact-finding, (see §7.2(b) of the Senior President's Practice Statement). Both representatives agreed with me that this was an appropriate case that would need to be remitted back to the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal contains material errors of law and I set it aside, without preserved findings.

I remit this appeal to the First-tier Tribunal for a complete rehearing.

Directions to the First-tier Tribunal

This appeal is remitted to the First-tier Tribunal for a complete rehearing with no preserved findings of fact.

The remitted appeal shall not be heard by First-tier Tribunal Judge Hussain.

The anonymity directions continue to apply.

J Keith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

22nd June 2023