Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05828/2015

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke	**Determination Promulgated**
On 22 October 2015	**On 23 October 2015**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

SH
ANONYMITY DIRECTION MADE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Ms Chaggar, Counsel
For the respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an anonymity order. Unless the Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

1. The appellant is a citizen of Iran, who has made an asylum claim in the United Kingdom. For this reason I have made the above anonymity direction.

2. In a decision promulgated on 23 July 2015 First-tier Tribunal Judge VA Cox dismissed the appellant's appeal on asylum and human rights grounds. The Judge comprehensively disbelieved much of the appellant's claim as to what happened to her in Iran.

3. At the hearing before me Ms Chaggar submitted that the judge had made three errors of law as set out in the grounds of appeal. Mr McVeety did not accept that there were any errors of law in the decision and invited me to dismiss the appeal.

4. After hearing from both representatives I reserved my decision, which I now give by addressing each ground of appeal relied upon by the appellant._

Ground 1 – failure to admit a 'YouTube' clip

5. At the beginning of the hearing before the judge Ms Chaggar applied to admit late evidence in the form of a YouTube clip. The clip comprised solely of a YouTube film said to include fervent anti-Islamic content. The appellant claimed that she had attached this to a Facebook message that she sent to her sister-in-law in 2012. The clip was said to be relevant to demonstrate that at the time the appellant was anti-Islamic and held atheist views.

6. It is important to note that the appellant did not claim that the authorities discovered that she had sent or used this clip. The clip did not relate to the appellant personally. She did not claim to be at risk by reason of having sent this clip. Its only relevance was said to support the appellant's claim to be an atheist. The appellant's asylum claim focused upon the authorities discovering that she and her family members held atheist meetings in Iran. After one such meeting was raided the appellant fled and claims that she is wanted by the Iranian authorities.

7. I do not accept that it was necessary for the judge to admit the YouTube clip in order for the hearing to be conducted justly and fairly. As the judge observed "*the detail of the clip added nothing to the evidence that counsel relied on to show that the Facebook entry was from a date prior to the decision*" [6]. Indeed the detail of the clip showed no more than an anti-Islamic film. The judge acknowledged that the appellant was not a supporter of Islam [44]. In my judgment there was no unfairness in refusing to admit evidence which was readily available for a number of years, on the day of the hearing. It was not necessary for the judge to view the film when it had been summarised in the witness statement of the appellant's sister-in-law and by the appellant in examination-in-chief [20]. Viewing the film would not have assisted the judge's assessment of whether or not the appellant is a committed atheist who attended meetings and researched the topic over many years.

Ground 2 – assessment of the evidence

8. This is divided into three parts, which I address in turn. For the reasons I have already set out I do not accept that viewing the film itself would have added anything to the judge's credibility assessment when the judge was clearly aware of the contents of the film.

9. It is incorrect to assert that the judge assumed that an atheist from Iran would be aware of Darwin or the 'big bang' theory. The appellant did not describe herself as a mere atheist but rather a committed atheist who attended meetings on the subject over many years. Her evidence was that she knew about Darwin and the big bang theory [25, 26 and 43]. In these circumstances the judge was entitled to draw adverse inferences from the appellant's failure to answer relevant questions at the interview and to provide a cogent explanation for such failure [42].

10. The judge was well aware of the appellant's mental health concerns [35, 48, 66] and the stresses facing the appellant [38, 40]. It cannot be said that she failed to take these into account when assessing the appellant's evidence.

Ground 3 – mental health

11. The appellant's bundle contained a report dated 15 June 2015 from a CBT practitioner. This described the appellant as suffering from severe PTSD symptoms. The appellant also relied upon a short letter dated 6 March 2015 from Dr Killingley who described the medication she has been described for depression.

12. Ground 3 submits that the judge has dealt with the mental health evidence in a perfunctory manner and this infected her decision. It is correct that the judge has not dealt with the detail contained in the report from the CBT practitioner and it might have been more helpful for her to have done so. However the judge was clearly aware of this evidence [35] and specifically said she had taken into account all the evidence in reaching her decision [7]. I am satisfied that when the decision is read as a whole that the judge has taking into account this evidence as part of her overall assessment of the appellant's evidence.

Decision

13. I do not find that the decision of the First-tier Tribunal contains an error of law.

14. I do not set aside the decision of the First-tier Tribunal.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
22 October 2015