



IAC-AH-SAR-V1

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

Appeal Number: AA/09161/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 24th November 2015**

**Decision and Reasons
Promulgated
On 18 December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**HK
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs C Johnrose of Broudie, Jackson & Canter Solicitors

For the Respondent: Miss C Johnstone, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant appeals against the decision of Judge Farrelly of the First-tier Tribunal (the FtT) promulgated on 16th February 2015.
2. The Appellant is a female Iranian citizen born 21st July 1985 who claimed asylum when she arrived at Gatwick Airport on 6th July 2012.

3. The application was refused on 25th July 2014, and the appeal heard by the FtT on 26th January 2015.
4. The FtT heard evidence from the Appellant and her sister, and concluded that it did “not believe the truth of the claim given”. It was not accepted that the Appellant would be at risk if returned to Iran and the appeal was dismissed on all grounds.
5. The Appellant applied for permission to appeal to the Upper Tribunal.
6. Permission to appeal was granted by Upper Tribunal Judge Coker in the following terms;
 - “1. The Appellant seeks permission on the grounds that the First-tier Tribunal Judge applied the wrong standard of proof, speculated and his findings are not corroborated by evidence, failed to take into account/make findings on material evidence.
 2. Although it can usually be assumed that an experienced judge will be aware of and apply the correct standard of proof even where there is no self direction, the combination of the apparent failure to refer to and consider and assess the mother and sister’s evidence and the possible contradiction between the background material and the lack of acceptance of the Appellant’s claim together with the apparent failure to make a finding on the Appellant’s claimed illegal exit from Iran do render it arguable that the First-tier Tribunal Judge made errors of law in his determination.
 3. Permission is granted on all grounds”.
7. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008 contending, in summary, that the FtT had not misdirected itself as to the correct standard of proof, had considered all of the evidence, made findings which were open to it on the evidence, and followed a country guidance decision.
8. The Tribunal issued directions that there should be a hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision should be set aside.

The Appellant’s Submissions

9. Mrs Johnrose relied and expanded upon the grounds contained within the application for permission to appeal which may be summarised as follows.
10. It was contended that the FtT had failed to identify at any point in the decision, the standard of proof relied upon.
11. It was submitted that the judge had speculated when making findings, and his findings were not supported by the evidence.

12. It was submitted that the FtT had failed to take into consideration and to make any findings on material evidence.
13. The FtT had not made any reference to the evidence of the Appellant's mother and sister. The FtT had not given adequate reasons for findings made in paragraphs 18-25. It was not clear from reading those paragraphs whether the FtT was making findings or simply setting out the Appellant's claim.
14. It was contended that the Appellant would be at risk if returned to Iran as an individual with no documentation. The FtT should have considered background evidence that was more up-to-date than the evidence considered in SB (risk on return – illegal exit) Iran CG [2009] UKAIT 00053.

The Respondent's Submissions

15. Miss Johnstone relied upon the rule 24 response and submitted that in paragraph 30 the FtT had referred to the correct standard of proof by stating that the FtT did not believe the truth of the claim, and did not find it established that there is a real risk of persecution on return to Iran.
16. Miss Johnstone submitted that the FtT had given adequate reasoning in paragraphs 23-29 of the decision, and had considered the background information on Iran at paragraphs 10-13.
17. In relation to the Appellant's mother, Miss Johnstone pointed out that she did not give oral evidence. The FtT had considered the medical evidence in relation to the Appellant's mother at paragraph 28, noting that she had a diagnosis of post traumatic stress disorder. The reliability of the diagnosis had not been tested. That evidence did not go to the core of the Appellant's claim. It was accepted that the Appellant's sister had given oral evidence before the FtT, but Miss Johnstone pointed out that she had not been in Iran when it was claimed that the Appellant and her mother had been detained and ill-treated, and her evidence was repeating what she had been told.
18. In relation to the issue of illegal exit from Iran, Miss Johnstone submitted that there was no evidence that the Appellant would be returned without documentation, and there was no evidence before the FtT that would entitle it to depart from the findings in SB Iran CG.

The Appellant's Response

19. Mrs Johnrose disagreed that the correct standard of proof was set out in paragraph 30 of the FtT decision. The correct standard is a reasonable degree of likelihood, and it was submitted that there was no evidence that such a standard was applied by the FtT. Mrs Johnrose repeated her assertion that the FtT had not taken into account material evidence and had not made findings of fact and given adequate reasons for those findings.

20. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

21. The FtT erred in not making any reference to the evidence of the Appellant's mother and sister and not analysing that evidence and not giving reasons as to why the evidence was accepted or rejected.
22. The Appellant's mother did not give oral evidence but had supplied a signed witness statement dated 3rd December 2014 which was contained at pages 13-15 of the Appellant's bundle before the FtT. Included within the Appellant's bundle at pages 17-18 was a letter dated 4th December 2014 from a social worker who is an approved mental health professional, giving the view that the Appellant's mother was not fit to attend a Tribunal hearing.
23. The evidence contained within the statement dated 3rd December 2014 appears to support the Appellant's contention, as her mother states that she was apprehended on 15th May 2012 together with her daughter, the Appellant, and subsequently detained and tortured before being released on the same day as her daughter. As the Appellant relied upon this evidence, the FtT should have analysed it and explained what weight, if any, was to be attached to it. Failure to do so amounts to an error of law.
24. The Appellant's sister gave oral evidence at the hearing and provided a witness statement dated 13th January 2015. Her evidence may be described, in the main, as repeating what she has been told by her mother and sister, as she was not in Iran when they contend they were detained and ill-treated. However her evidence also referred to the transformation in her mother's health, which was said to have been caused by her ill-treatment in Iran. Therefore, the FtT was under a duty to analyse and make findings upon that evidence, and to make no reference to it is an error of law.
25. There is a contradiction when one reads paragraphs 13 and 22 of the FtT decision. In paragraph 13 the FtT accepts that background information supports the claim that Iranian authorities use measures against political opponents which would not be acceptable in the west, and it is stated that "removal by people in plain clothes does occur with the person being taken to places of detention, other than official ones. Abuse, including rape is documented".
26. In paragraph 22 the FtT records having difficulty in accepting the likelihood of the Appellant's prolonged detention with regular assaults, including rape, taking place. This is because the Appellant had no political background, and it would be apparent that she had no information to give. The FtT does not adequately explain the contradiction, as the Appellant's evidence appears to be supported by background evidence, and the FtT does not adequately explain why her account was not accepted.

27. The FtT did not make a specific finding as to whether or not the Appellant left Iran illegally. At paragraph 31 it is noted that she claimed to have left illegally. The FtT observed that there is no documentation to confirm whether she left illegally, but in any event this fact alone would not put her at risk, which was confirmed in SB Iran CG. Whether the Appellant left Iran illegally was an issue before the FtT, and findings should have been made as to whether she did or did not.
28. In my view no clear findings are made in relation to the Appellant's claim in paragraphs 18-25. The FtT appears to be setting out the Appellant's claim, without making specific findings, and without giving adequate reasons as to why the account was not accepted. This is an error of law.
29. Overall, I find that the arguable errors of law referred to by Judge Coker in granting permission, are in fact material errors of law, and therefore the decision of the FtT must be set aside with no findings preserved.
30. Both representatives indicated that if an error of law was found as contended on behalf of the Appellant, it would be appropriate to remit the appeal back to the FtT to be heard afresh.
31. Having considered the Senior President's Practice Statement paragraph 7.2, I find it appropriate to remit the appeal back to the FtT, because of the extent of fact-finding which is necessary.
32. The appeal before the FtT will take place at the Manchester Hearing Centre on a date to be advised and will be heard by an FtT Judge other than Judge Farrelly.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the First-tier Tribunal with no findings preserved.

Anonymity

~~The FtT made no anonymity direction. There was no request for anonymity to the Upper Tribunal and no anonymity order is made.~~

Signed

Date 1st December 2015

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

No fee award is made by the Upper Tribunal. This must be considered by the First-tier Tribunal.

Signed

Date 1st December 2015

Deputy Upper Tribunal Judge M A Hall