IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/03231/2015

THE IMMIGRATION ACTS

Heard at Field House
On 27th January 2016

Decision & Reasons Promulgated
On 15th February 2016

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

S Z-M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr K Gayle, Counsel instructed by Elder Rahimi Solicitors
For the Respondent: Mr S Staunton, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iran born in 1958. Her appeal against the decision to remove her to Iran was dismissed by First-tier Tribunal Judge Asjad on asylum, humanitarian protection and human rights grounds in a decision promulgated on 10th November 2015.

2. The Appellant appealed against the decision on the grounds that the judge failed to properly apply Devaseelan [2002] UKIAT 00702. Further, her approach to the Appellant's evidence was fundamentally flawed and

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contrary to the principles set out in AS and AA (Effect of previous linked determination) Somalia [2006] UKAIT 00052 in which the Tribunal found:

> "66. Returning to the reasons which might be given for citing a decision or determination made in an application or appeal by a related claimant, there is surely no reason, in principle or authority, to give the previous determination evidential value to the case now under consideration. The previous determination is not the result of the application of the rigorous requirements of the criminal law; and the fact that a previous court or other decision maker has reached a view on facts which are in issue in the present appeal is not of itself any evidence as to those facts. On the other hand, in the general interests of good administration, it is probably true to say that decisions should not be unnecessarily divergent. It is that principle of good administration which, so far as we can see, provides the sole basis in logic or on authority for saying that the result of the previous litigation may be relevant in the present appeal.
>
> ...
>
> 68. We can see no possible basis for the assertion that a determination in one Appellant's case has any binding effect on any other individual. All the authorities, as well as principle, are against that. Still less can we find any reason for saying that favourable decisions are binding but unfavourable decisions have no lasting effect at all. That latter submission, if we may say so, is only too obviously a demonstration of the way in which the appellate process may be the subject of cynical manipulation.
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> ...
>
> 72. There is one final point we would make. As we have said above, the contents of a previous determination or decision may be of value as evidence of what was said before that decision was reached. The decision itself, however, is only a starting point for the second Tribunal. It is the point from which a departure may be made. Crucially, the conclusion of the previous decision maker is not in itself any evidence of the facts upon which the conclusions appears to have been based."

3. Permission to appeal was granted by First-tier Tribunal Judge Dineen on 4th December 2015 on the following grounds:

> "Although the judge carefully set out at [15] the guidelines provided in the appeal of Devaseelan there was an arguable error of law in that the credibility findings which followed were in respect of a different previous Appellant in a different appeal, as opposed to the present Appellant herself."

4. Permission to appeal was granted on that basis only. First-tier Tribunal Judge Dineen rejected the remaining grounds that "the judge erred in attaching importance to the fact that the Appellant had provided an account, after her daughter's appeal was dismissed, which distanced herself from her daughter's case" and "the judge wrongly took into account the fact that the Appellant failed to take issue during her asylum interview concerning alleged interpretation problems at her screening interview."

Submissions

5. Mr Gayle submitted that the matters referred to in [19] of the judge's decision were not in fact part of the Appellant's daughter's account and were not before Judge Thornton, who heard the appeal of the Appellant's daughter. Accordingly, the judge's finding that the facts were not materially different was incorrect. The error was material because the judge could have come to a different conclusion if she had considered the facts of the Appellant's case independent of Judge Thornton's decision. The judge had failed to take into account that it was not the Appellant's fault that there was a delay in her asylum interview and [23] of the decision was confusing in that it was not clear whether the judge was dealing with the whole of the Appellant's evidence, not just the explanation as to why she had not mentioned her own political activities in her screening interview. Mr Gayle submitted that the decision should be set aside.

6. Mr Staunton submitted that there was no error of law and that the judge was entitled to look at the Appellant's daughter's appeal in assessing the Appellant's appeal. The judge was entitled to rely on Judge Thornton's findings of fact, particularly when the Appellant claimed in her screening interview that her fear of return was based on her daughter's political activities. The judge could not allow the Appellant's appeal on the basis that she would be at risk on return from her daughter's activities because Judge Thornton had found that her daughter's claim was not credible. The Appellant's appeal therefore must fail on the same basis. The judge's findings were open to her on the evidence and the reasons she gave were valid. There was no error in relation to Devaseelan.

7. Mr Gayle submitted that the judge had incorrectly applied Devaseelan and did not take into account AS and AA. She had not used the decision of the Appellant's daughter as a starting point but as an end point. Her treatment of the previous appeal was wrong in law as she had placed too much weight on the findings of Judge Thornton, which had infected her assessment of the Appellant's claimed political activities.

8. Further, the judge had implied that some of the Appellant's evidence was before Judge Thornton when in fact it was not. The judge therefore erred in law in relying on findings that Judge Thornton had not in fact made. At [23] it is clear that the judge was confused in relation to the problems with interpretation and appears to be referring to the asylum interview rather than the screening interview.

The Judge's Decision

9. The judge sets out the basis of the Appellant's claim at [7] to [13]. She then sets out the previous findings made in her daughter's appeal at [16], having first directed herself on the application of Devaseelan at [15]. The

judge set out the answers given in the Appellant's screening interview at [18]:

> "4.1. What was the reason for coming to the UK?
>
> *Because my daughter is doing secret activities against the government.*
>
> 4.2. Can you briefly explain why you cannot return to your home country?
>
> *If we go back we will be killed."*

10. At [19] the judge sets out parts of the Appellant's witness statement dated 5th December 2014. This witness statement appeared in the Respondent's bundle. The judge quotes paragraphs 13 to 19 and paragraph 21 of the witness statement. Mr Gayle takes issue with the fact that the matters referred to at paragraphs 15, 16 and 19 of the witness statement were not in fact before Judge Thornton and criticises the judge for finding at [20] of the decision that the facts set out in [19] are not materially different from those put before Judge Thornton.

11. The judge then, at [21], deals with the Appellant's claim. At [23] onwards the judge gives reasons for why she rejects the Appellant's account:

> "23. First and foremost, she did not say that her own activities were the reason why she left Iran. In fact, in her screening interview when she was asked why she had come to the UK, she said: 'Because my daughter is doing secret activities against the government.' She has since sought to explain this sentence in an additional statement dated 26th January 2015 by stating:
>
> > 'With regard to paragraphs 34 and 35, I explained why there were discrepancies in [M_1]'s account. In relation to my screening interview, at the outset of that interview, I was told to keep my answers short and I would be given an opportunity to provide a fuller account at my full asylum interview. The interpreter was from Afghanistan. He summarised what I was saying, rather than interpreting word for word. Therefore, he missed some of what I said. I definitely made reference to my own political activities when stating why we fled Iran.'
>
> But I do not accept the Appellant's explanation. She was given ample opportunity to add or clarify her statement at the end of the asylum interview (AIR 119). I note that not once anywhere in the interview is issue taken with the language being spoken by the interpreter. I find that since her daughter's claim has been rejected, the Appellant has attempted to divert attention away from her daughter's alleged activities to those allegedly of her own and this is the reason why she initially told the interviewing officer that it was her daughter's activities. But when her account is compared to that of her daughter there are of course glaring inconsistencies.
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> 24. [M_1] states that it was her brother who telephoned them to say her house had been raided whereas the Appellant says her neighbour/niece told her. But even that evidence by [M_1] was so

variable that it is unclear who told them. Her brother also apparently told her that he was to hand her in.

25. [M_1] stated that she was told that her brother received 170 lashes in response to the allegations made against her – there is no mention of this being because of a tattoo.

26. The circumstances of the Appellant's involvement are I find impossible to accept. [M_1] claimed to have suffered torture, rape and abuse following her arrest. According to her interview she was released following her parents' intervention and she was admitted to hospital for three days and told to rest for four months. The Appellant claims, however, that following her release her daughter was bitter [sic] and when she again started distributing leaflets, the Appellant helped her. I find the actions of the Appellant difficult to accept. A submission has been made before me that no account was taken to the horrific abuse and torture that [M_1] suffered as a result of her detention, which may have affected the credibility of her testimony. Yet, according to this Appellant as soon as her daughter 'felt a bit better' she not only resumed her activities but the Appellant helped her. The circumstances of the alleged detention and the impact this is supposed to have had on [M_1] does not sit easy with this Appellant's evidence that she not only encouraged her daughter to carry on with her activities but actually helped her to do so."

Discussion and conclusions

12. The judge's finding at [20] that the facts of the Appellant's claim that she could not return to Iran because of her daughter's political activities were not materially different from those put before Judge Thornton was open to the judge on the evidence and did not amount to an error of law. The main events such as her daughter's claimed activities and detention, the wedding, [M_2]'s arrest and the fear of identification were common to the Appellant's and her daughter's claim.

13. The Appellant in her screening interview had indicated that she left Iran because of her daughter's political activities. Her daughter's asylum appeal was dismissed and the judge was entitled to rely on the findings of fact made by Judge Thornton in that respect. The judge's approach was not inconsistent with AS and AA in that the earlier decision should be treated as a starting point.

14. Mr Gayle submitted that the judge had in fact treated the previous decision as an end point and rejected the Appellant's credibility on the basis that Judge Thornton had rejected her daughter's credibility in an earlier appeal. I am not persuaded that this is in fact the case. The judge assesses the relevance of the previous findings of Judge Thornton but then goes on to assess the Appellant's claim put forward in her substantive interview.

15. The judge set out the Appellant's account at [21]. The judge rejected her account on the basis that her initial statement in the screening interview was that she had left Iran because her daughter was doing secret

activities against the government but in her own asylum interview she was now claiming to have had some political involvement of her own in distributing leaflets for the On Million Signatures Campaign.

16. The judge considered the Appellant's explanation for why she had failed to mention her own activities in her screening interview dated 12th July 2012. The judge gave adequate reasons for rejecting this explanation at [23]. There was no confusion in this paragraph. The Appellant submitted a statement on 5th December 2014 and attended a substantive interview on 20th January 2015. The judge noted that the Appellant was given ample opportunity to clarify her statement at the end of her substantive asylum interview but she made no mention at that point of any difficulties with the interpreter.

17. The Appellant first mentioned problems with the interpreter at her screening interview in her additional statement dated 30th April 2015. Paragraph 12 of that statement is set out in the judge's decision at [23]. It is not material that the judge gives the wrong date for this statement because the relevant paragraph is actually set out and quoted in full. The Appellant failed to mention problems with the interpreter in her initial statement and in her substantive asylum interview. The judge's reasons for rejecting the explanation were open to her on the evidence.

18. The judge then considered the Appellant's claim and assessed it against her daughter's claim and found that they were significant discrepancies. Accordingly, the judge assessed the Appellant's credibility on the basis of the account she has given in her statements and interview. She also assessed it against the account given by her daughter in her daughter's asylum appeal.

19. I am not persuaded that because the judge set out the previous findings in the appeal before Judge Thornton that she had in fact made up her mind on the Appellant's credibility at that stage. The judge starts with the decision of Judge Thornton and then goes on to consider the Appellant's claim put forward in her statements and asylum interview. The judge assesses that claim and finds that the explanations given for failing to mention her own political activities were not credible explanations and that they were in fact discrepancies between the Appellant's account and that of her daughter. On that basis the judge then finds that the Appellant's account of persecution had been fabricated and was not credible.

20. On reading the decision as a whole the approach adopted by the judge was in fact twofold. She first considered the Appellant's claim that she had a well founded fear of persecution on account of her daughter's political activities in Iran. She then considered the Appellant's claim that she could not return to Iran on account of her own political activities. The judge rejected her claim based on her daughter's activities on the basis of the findings of Judge Thornton and the discrepancies in the Appellant's and her daughter's accounts. She rejected the Appellant's claim in relation to

her own activities on the basis that it was inconsistent and her account had changed from her initial claim.

21. The judge has adopted the correct approach as set out in Devaseelan and AS and AA in that the previous decision was a starting point and not an end point. I am not persuaded that the judge has misdirected herself in law or failed to properly apply relevant case law. The judge's findings were open to her on the evidence and were adequately reasoned.

22. Accordingly, I find that there was no material error of law in the decision dated 7th November 2015 and I dismiss the Appellant's appeal.

Notice of Decision

The appeal is dismissed

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 her or any member of her 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.

J Frances

Signed Date: 10th February 2016

Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

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

J Frances

Signed Date: 10th February 2016

Upper Tribunal Judge Frances