



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08909/2016

THE IMMIGRATION ACTS

Heard at Centre City Tower Birmingham
On 8th May 2018

Decision & Reasons Promulgated
On 22nd May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

N A A D

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Bedford of Counsel instructed by Freedom Solicitors
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Ghani (the judge) of the First-tier Tribunal (the FtT) promulgated on 18th April 2017.
2. The Appellant is a female citizen of Iraq born 24th March 1960. She claimed asylum on the basis that her husband was a member of the Ba'ath Party in Iraq. She is separated from him and if returned to Iraq she would be returned as a lone woman.
3. The asylum and human rights claim was refused on 5th August 2016 and the appeal heard by the FtT on 7th March 2017.

4. The judge heard evidence from the Appellant and did not accept that she had given a credible account. The Appellant had claimed that she had visited Iraq in January 2016 and armed kidnappers were looking for her, but when they did not find her, they kidnapped one of her husband's sisters who was subsequently murdered. The appeal was dismissed on all grounds.
5. The Appellant applied for permission to appeal to the Upper Tribunal, and her initial application was refused by Judge Pedro. The Appellant thereafter renewed her application which I summarise below.
6. Firstly the judge erred in his approach to the Appellant being at risk from family members of individuals who were victims of the Appellant's husband when he was in the Ba'ath Party. It was contended that the judge did not adequately consider the Appellant's explanation that the families of the victims were powerful in the region and would take revenge even when many years had passed. It was submitted that the judge had failed to look at the evidence in the round.
7. Secondly the judge had erred by failing to consider that the Appellant would be alone if returned to Iraq. Her parents have passed away and her elder brother is now 71 years of age and in Kirkuk, and her younger brother and his wife had passed away. The Appellant has a sister who lives in the USA.
8. Thirdly the judge erred in requiring corroborative evidence that the sister of the Appellant's husband had been killed. There is no requirement of corroboration. A medical report had been submitted.
9. Fourthly the judge erred in making adverse credibility findings against the Appellant. The judge failed to take into account what had happened to the Appellant in Iraq and her fear of return. It was submitted that the findings made by the judge were mostly based on opinion and not fact.
10. Permission to appeal was granted by Upper Tribunal Judge McWilliam in the following terms;

"The Appellant is not represented.

Whilst it is clear that the judge found the Appellant's evidence in relation to the provenance of the police letter of 26 January and the medical evidence (I believe that this is the document in the Respondent's bundle marked 'autopsy forensic medical report') problematic, it is arguable that the judge did not make clear what weight she attached to the documents in the context of the evidence as a whole."
11. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. In brief it was submitted that the judge had considered all the evidence that was available to him, and the grounds had no merit and amounted to a disagreement with the adverse outcome of the appeal.
12. Directions were issued 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 Upper Tribunal Hearing

13. Mr Bedford submitted that the Appellant's case before the FtT was that she would be at risk if returned to Iraq because of her husband's membership of the Ba'ath Party. The death of the husband's sister during the Appellant's visit to Iraq in January 2016 showed that the Appellant would be at risk, as the husband's sister had been taken by gunmen looking for the Appellant.
14. It was submitted that the judge had erred by not adequately considering the documentary evidence produced in support of the Appellant's claim. These documents were a police report the translation of which is at page 36 of the Appellant's bundle, and an autopsy forensic medical report a translation of which starts at page 38 of the Appellant's bundle. Mr Bedford submitted that at paragraph 38 of the FtT decision, the judge when referring to Tanveer Ahmed and documentary evidence, was in fact referring just to the flight tickets to the USA.
15. Mr Bedford relied upon European case law. He referred to RC v Sweden (No. 41827/07) a decision of the European Court of Human Rights dated 9th March 2010. Reference was made to paragraphs 50 and 53 and it was submitted that when documents were submitted by an asylum seeker capable of proving that there are substantial grounds for believing that he would be at risk, it is for the government to dispel any doubts about that evidence.
16. Reference was also made to MA v Switzerland (Application No. 52589/13), another European Court of Human Rights decision, dated 18th February 2015. Reference was made to paragraphs 55, 62, 64 and 65. It was submitted that this case is authority that in relation to the burden of proof, if evidence is adduced capable of proving there are substantial grounds for believing that the Appellant would be at real risk, it is for the government to dispel any doubts about that evidence and the court must take into account the particular situation of asylum seekers and their special difficulties in providing full proof of persecution.
17. Mr Bedford submitted that the judge had given no individual consideration to the documents submitted by the Appellant, and no weight had been placed on the documents simply because the judge did not find the Appellant's account to be credible. It was submitted that this is contrary to the European Court of Human Rights case law referred to above.
18. On behalf of the Respondent Mrs Aboni submitted that the judge had not materially erred and had directed himself appropriately. It was submitted that the judge had made findings which were open to him to make on the evidence, and gave adequate reasons for those findings. The judge had highlighted inconsistencies in the evidence and considered the documents in the round.
19. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

20. In my view the judge in considering the documents followed the guidance in Tanveer Ahmed [2002] UKIAT 00439 which is that in asylum and human rights cases it is for an individual claimant to show that a document on which he seeks to rely can be relied on, and a decisionmaker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round. That decision was considered and upheld by the Upper Tribunal in MJ (Afghanistan) [2013] UKUT 00253 (IAC) which held that the conclusions of the European Court of Human Rights in Singh v Belgium (Application No. 33210/2011) neither justify nor require any departure from the guidance set out in Tanveer Ahmed. The Tribunal in Tanveer Ahmed envisaged the existence of particular cases where it may be appropriate for enquiries to be made. On its facts Singh can properly be regarded as such a particular case. The judge did not err in applying the guidance in Tanveer Ahmed and did not err by not referring to the European case law referred to by Mr Bedford.
21. In considering the appeal as a whole, the judge set out the correct burden and standard of proof at paragraph 4 recognising that it was for the Appellant to prove he was entitled to international protection, and the standard of proof is a reasonable degree of likelihood. This is reinforced at paragraph 30 when the judge commences his findings, as he records that the lower standard of proof applies, and he must look at the account as a whole.
22. I do not accept the submission that at paragraph 38 the judge when referring to documentation was only making reference to the USA flight tickets. In my view the judge clearly considered the police report and autopsy report.
23. Consideration of those documents is contained at paragraph 32, and it is evident that the judge was not satisfied that a satisfactory explanation had been given as to how the documents had been obtained and by whom, and how the Appellant knew of the existence of the documents. The judge recorded at paragraph 31 that the Appellant had last had contact with her husband's sister in Iraq in January 2016 and had no contact since.
24. A First-tier Tribunal judge must make findings in a case such as this, and give reasons for those findings. The judge must comply with the guidance given in Budhathoki (reasons for decision) [2014] UKUT 00341 (IAC) the head note of which I set out below;

It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.
25. The judge complied with the duty set out above. The judge granting permission found it arguable that the judge did not make clear what weight was attached to the

documents in the context of the evidence as a whole. In my view the judge did make it clear that little weight should be attached to the documents, and this is recorded in the last sentence of paragraph 38.

26. In my view it should be clear to the Appellant why her appeal has not been successful. The judge considered whether she had proved her case to a reasonable degree of likelihood and found she had not. The judge gave sustainable reasons for that conclusion.
27. The judge at paragraph 36 accepted the evidence that the Appellant's husband had left Iraq in 1996. The judge did not accept that people would still be "revengeful against her husband after such a long period". In my view the judge was entitled to make such a finding.
28. The judge gave a number of reasons for not accepting the Appellant as credible. It is noted at paragraph 33 that the Appellant accepted that she had been returning to Iraq once a year from 2005 until 2016. Her children had accompanied her. There was no evidence that she had accounted any difficulties. The judge did not accept that if the Appellant's husband believed there was a risk, he would have allowed the Appellant and his children to visit Iraq without him.
29. The judge found that the Appellant's family members had been resident in Kirkuk and had never been at risk or encountered difficulties as a result of the Appellant's husband's involvement with the Ba'ath Party.
30. The judge has correctly applied the law, made findings open to him on the evidence, and given adequate reasons for those findings.

Notice of Decision

The decision of the FtT does not disclose a material error of law. I do not set aside the 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.

Signed

Date: 15th May 2018

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date: 15th May 2018

Deputy Upper Tribunal Judge M A Hall