



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00636/2018

THE IMMIGRATION ACTS

Heard at Birmingham
On 11th January 2019

Decision & Reasons Promulgated
On 24th January 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

Mrs AS
(ANONYMITY DIRECTION MADE)

Appellants

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr W Khan, Counsel, instructed by Fountain Solicitors.

For the respondent: Mrs Eboni, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant had been given permission to appeal the decision of First-tier Tribunal Judge N Lodge who, in a decision promulgated on 4 July 2018 dismissed the appellant's appeal against the respondent's decision refusing her claim for protection.

2. The appellant made a claim for protection on 13 August 2015 with her 3 children as dependents. She said that she was a national of the Islamic Republic of Iran.
3. She said she was born in Kuwait of an Iranian father and a Kuwaiti mother. She had lived in Kuwait her entire life. She had married an Iranian national and they lived in Kuwait. The appellant is a Shia Muslim and her husband is an Arab who follows the Sunni branch of Islam.
4. The claim was that in February 2015 she and her husband and their 3 children visited Iran. Whilst there, her husband attended a meeting as he was involved in an organisation supporting Sunni Arabs. He was arrested by the Iranian authorities and his whereabouts are now unknown. His friend told her of this. He had their passports. She and the children relocated within Iran before leaving illegally 3 months later.
5. The respondent accepted the appellant is Iranian but did not accept the authorities had any interest in her. Her account about her husband's activities was considered to be vague and her account of being informed by his friend was not considered credible. Consequently, it was not accepted that she was wanted by the Iranian authorities because of any imputed political opinion or on account of her husband's claimed activities. It was accepted that she had left Iran illegally, travelling overland into Turkey, but it was not accepted that this would expose her to persecution. The respondent also took the view that she would be entitled to Kuwaiti citizenship.
6. Regarding her article 8 rights, the respondent took the view that she could reintegrate into life in Iran. The Khuzestan province had between 2.5 and 5 million Arabic speakers and her husband had family there. The appellant also raised medical conditions she and her daughter had but the respondent concluded article 3 or 8 were not breached. Regarding section 55 the view was there would be medical treatment available for her daughter and the condition was not life-threatening.

The First tier Tribunal

7. The appellant gave evidence and said she was unaware of her husband's political activities but knew he helped people in Iran. The judge did not find this credible and rejected the claim about her husband's friend helping her leave. The judge questioned why she would come to the United Kingdom rather than return to Kuwait with her children. The judge concluded by stating the appellant was not credible.
8. Permission to appeal was granted on the basis it was arguable the judge erred in stating the appellant was an Arab entitled to Kuwaiti citizenship.

At hearing.

9. Mr Khan referred me to paragraph 54 of the decision of First-tier Tribunal Judge Lodge. This reflects the presenting officer's submission that the appellant and her children could return to live in Kuwait, with the judge concluding she is entitled to Kuwaiti citizenship and that she has discarded her Kuwaiti passport to avoid the possibility of return. Mr Khan submitted that this was a material error of law in that the appellant did not have Kuwaiti citizenship. The grounds set out how a 3rd country national can acquire Kuwaiti citizenship. He submitted this did not cover the appellant situation. In particular, she is not an Arab.
10. Mr Khan's point also links with the judge's comments at paragraph 44. The appellant's credibility was an issue. The judge said he found it extraordinary that having a right of residence in Kuwait and having a Kuwaiti passport she and her children would make the long and difficult journey to the United Kingdom rather than return to Kuwait. Mr Khan said the appellant's claim was that she held an Iranian passport which was endorsed with a Kuwaiti residence permit which had been seized by the Iranian authorities.
11. In response, Mrs Eboni accepted that Mr W Khan had demonstrated a material error of law. This primarily related to the judge's apparent assumption that she was entitled to Kuwaiti citizenship. The decision was therefore premised upon error of fact, with the judge stating she had a Kuwaiti passport. This was never her claim. Her claim was that she had simply a right of residence. Paragraph 13 of the refusal letter sets out her claim that she is a national of Iranian who had lived in Kuwait all her life. She also claimed her husband was an Iranian national of Arab ethnicity who was living in Kuwait.
12. Mrs Eboni made the point that the judge may have been led into error by the appellant's representative at hearing. This may well have been the case as I note the grounds of appeal to the First-tier Tribunal at paragraph 1 refer to the appellant facing discrimination if returned on account of being an Arab. This is reflected at paragraph 50 and 51 of the decision.
13. Mr W Khan in concluding pointed out that the judge had not considered the risk because she had left Iran illegally. Whilst the case law suggests this would not necessarily place at risk it should have been considered (SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC), SB (risk on return-illegal exit) Iran CG [2009] UKAIT 00053 et al.)

Conclusion.

14. I agree with both representatives that the decision materially errs in law and cannot stand. The judge has mistakenly referred to the appellant as being of Arab ethnicity and has apparently assumed she holds dual nationality. The judge has referred to her having a Kuwaiti passport which was not the claim made. I note one of the witnesses called at the appeal said he had lived in Kuwait and knew the appellant and her husband. He was asked by the judge about his status in Kuwait. His response was similar to that claimed for the appellant, namely, he never had a Kuwaiti passport but had a residence stamp in his Iranian passport. This evidence could have provided an alert for the judge about the appellant's position.
15. At 1.13 on the appellant's screening interview she said she was in an Iranian national. At 1.15 she said she had a permit to reside in Kuwait. She said their passports had been taken by the Iranian authorities. She repeats that she is an Iranian national in her statement and that she has siblings also borne in Kuwait who also are Iranian nationals. She goes on to state that her children were also borne in Kuwait and are Iranian nationals. Her husband was born in Iran. In her substantive interview she repeats that she is an Iranian national and paragraph 95 states that her father who is in his late 60s was never granted naturalisation in Kuwait but the family had permits to reside. Authenticated birth certificates issued by the Iranian authorities had been submitted. Clearly, the appellant has consistently made the case that she is an Iranian national. This was accepted in the refusal letter.
16. Paragraph 57 of the refusal letter concludes that the appellant meets the eligibility requirements for Kuwaiti citizenship. This is disputed. However, the refusal letter does not go on to state the significance of dual nationality in relation to the claim and so the judge may have overlooked this point.

Decision

The decision of First-tier Tribunal Judge Lodge materially errs in law and cannot stand. None of the previous findings are preserved and the matter is remitted for a de novo hearing to the First-tier Tribunal.

Francis J Farrelly
Deputy Upper Tribunal Judge.
12 January 2019

Directions.

1. Relist for a de novo hearing in the First-tier Tribunal at Birmingham excluding First-tier Tribunal Judge Lodge.
2. None of the previous findings are preserved but it is common case the appellant is an Iranian national.
3. An issue arising is whether she is entitled to dual nationality with Kuwait. To this end, the appellant's representative indicated they will consider instructing an expert on nationality law. If so, this should include comment on whether the appellant in her own right would be entitled to dual nationality or if this could be achieved following her husband's line: it being accepted he is of Arab ethnicity.
4. For the relisted hearing the appellant's representatives should prepare a skeleton argument. This should include addressing the significance of dual nationality to the claim and submissions as to the appellant's entitlement.
5. It is anticipated the hearing should take no more than 2 ½ hours
6. An Arab (Middle Eastern) interpreter will be required.

Francis J Farrelly
Deputy Upper Tribunal Judge.
12 January 2019