Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: HU/02025/2019 (P)
HU/02028/2019 (P)

THE IMMIGRATION ACTS

Decided under Rule 34	**Decision & Reasons Promulgated**
On 1 June 2020	**On 11 June 2020**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

SR (1)
SR (2)

Appellants

and

ENTRY CLEARANCE OFFICER, ISTANBUL

Respondent

Representation:
For the Appellants: Mr B Bedford, instructed by Freedom Solicitors (written submissions)
For the Respondent: Mr C Howells, Senior Home Office Presenting Officer (written submissions)

DECISION AND REASONS

I make an anonymity direction under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended) in the light of the matters raised in these appeals. This order prohibits the disclosure directly or indirectly (including by the parties) of the identity of the appellants. Any disclosure in breach of this order may amount to a contempt of court. This order shall remain in force unless revoked or varied by the Upper Tribunal or an appropriate Court.

Introduction

The appellants are citizens of Iran who were born on 10 September 1994 and 18 September 1996 respectively. They are sisters.

On 29 August 2019, they each made on-line applications for entry clearance to join their parents (in particular their father) in the UK.

On 15 December 2018, the Entry Clearance Officer refused each of their applications for leave under para 352D of the Immigration Rules (HC 395 as amended) and under Art 8 outside the Rules. On 6 March 2019, the Entry Clearance Manager upheld the ECO's decisions.

The appellants appealed to the First-tier Tribunal. In a determination promulgated on 19 August 2019, Judge Fowell dismissed each of the appellants' appeals under Art 8 of the ECHR.

The appellants' applications for permission to appeal to the Upper Tribunal were initially refused by the First-tier Tribunal but, on 6 January 2020, the Upper Tribunal (UTJ Jackson) granted the appellants permission to appeal.

Deciding Without a Hearing

In directions dated 2 April 2020 (and emailed to the parties on 4 May 2020), in the light of the COVID-19 crisis, I issued directions indicating my provisional view that the error of law issue could be decided on the papers without a hearing. I invited written submissions on that issue and I also invited the parties to make any submissions on the substantive error of law issue.

In response to those directions, both parties made submissions on the substantive error of law issue. Both parties agreed that the decision on the error of law issue should be made without a hearing under rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended). In the light of that, and having regard to all the circumstances, I have concluded that it is just and fair to determine the error of law issue without a hearing.

In reaching my decision in respect of the error of law, I have taken into account the appellants' grounds of appeal and the submissions made on their behalf by Mr Bedford dated 15 May 2020 and those of the Secretary of State made in writing by Mr Howells dated 26 May 2020.

The Appellants' Claim

The essence of the appellants' applications for entry clearance was that they were at risk from the Iranian authorities in their country. Their father came to the UK in 2014 and was granted asylum following his conversion to Christianity. Their mother joined him, as a dependent, in 2016. The appellants' case was that their father, whilst in the UK, had converted to Christianity and that he had spoken to them and otherwise communicated with them in Iran about Christianity issues. This came to the attention of the Iranian authorities, who had issued summonses against both appellants to attend the Revolutionary

Court in Shiraz on 1 May 2018. However, they had been scared to do so and had not attended but rather had gone into hiding staying with various relatives instead. As a result of not attending the court, the Iranian court had made an order confiscating the family home on 1 July 2018. The appellants fear the authorities and their exclusion from the UK breaches Art 8 of the ECHR.

The Judge's Decision

As the judge recognised, the essence of the appellants' Art 8 claim was, in fact, similar to an asylum claim based upon the risk to them. The judge's decision turned significantly on the adverse view he took on that issue.

In his determination, Judge Fowell did not accept the appellants' claims. He did not accept that they were of any interest to the Iranian authorities. He did not accept that they had converted to Christianity or that the summons (in respect of the first appellant) was a genuine document. Rejecting that core part of their Art 8 claims, the judge went on to find that the failure to grant them entry clearance to the UK was not a disproportionate interference with their family and private life. In reaching that conclusion, the judge noted that given that both appellants were over the age of 18, they could not succeed under the refugee family reunion rule in para 352D of the Immigration Rules and that there were not exceptional circumstances to outweigh the public interest.

The Grounds of Appeal

The appellants rely upon six grounds of appeal (though in substance there are only five grounds of appeal).

First, the appellants contend that the judge erred in reaching his adverse finding without making any credibility finding in relation to the witnesses who gave evidence at the hearing, namely the appellants' mother and father and a paternal cousin (Ground 1).

Secondly, the appellants contend that the judge made a number of serious errors in assessing the evidence. In particular, the judge failed properly to consider all the documents relied upon by the appellants. He failed to take into account a summons relating to the second appellant, stating (wrongly) that there was only a summons in relation to the first appellant. Further, he commented that there was no evidence that, as a result of the appellants' failure to attend court, the Iranian authorities had followed up the appellants' failures to attend, including an absence of evidence that the family property had been confiscated. In fact, there was a copy (translated) of the Iranian court order dated 1 July 2018 in the documents before the judge stating that the property had been confiscated. The judge had also wrongly stated that there was no supporting evidence of financial support of the appellants (Ground 2).

Thirdly, it is contended that the judge fell into error in finding that the summons in respect of the first appellant was a false document (rather than unreliable) purporting to apply the approach in Tanveer Ahmed (Ground 3).

Fourthly, the judge's reasoning was irrational in the light of the background evidence when he stated (at para 24) that it was not clear why the appellants felt the need to go into hiding and why the authorities proceeded to confiscate the family house in their circumstances (Ground 4).

Finally, it is contended that the judge failed properly to carry out the balancing exercise required under Art 8 and, in particular, to have regard to the interests of the family as a whole, in particular of the appellants' mother and her medical conditions and that their father could not return to Iran (Ground 6).

Discussion

In his written submissions, Mr Howells accepts that the judge fell into a number of errors set out in Ground 2. In particular, he accepts that the judge failed to have regard to the witness summons relating to the second appellant and the court order dated 1 May 2018 purporting to show that the Iranian court had ordered confiscation of the family property. However, Mr Howells did not accept that those errors were material to the judge's adverse findings.

His concession is entirely proper and I agree. I do not, however, accept his submission that the error is not material. It is clear from the judge's determination that he did indeed fall into error in failing to take into account all the documentary evidence relied upon. At para 24 of his determination he states that:

> "On examination, the summons itself is only for the first appellant, [SR(1)]. It is not clear therefore why both of them felt the need to go into hiding, or why the authorities proceeded to confiscate the house".

Contained within the documents before the judge was, in fact, a summons in relation to the second appellant and not only the first appellant (see p.124 of the bundle).

Likewise, the judge made no reference to the court order dated 1 July 2018 (at p.126 of the bundle) which, on its face, purports to confirm the appellants' account that they had been summonsed to attend on 1 May 2018 and, having not attended, the court had ordered confiscation of the family home.

In his determination, Judge Fowell was undoubtedly influenced in reaching his adverse factual findings by the absence of these documents but which, of course, were in fact not absent at all. At para 23 the judge said this:

> "Nor is there anything to show that their former home has been confiscated by the authorities …".

Then, subsequently at para 26, in assessing the reliability (or more accurately the genuineness as he termed it) of the one summons he acknowledged was before him, the judge said this:

> "Clearly, if true it provides substantial support for the appeal, although for the reasons just given it is not necessarily a sufficient explanation for going into hiding. But it has to be seen against:

(a) the lack of any further supporting evidence, evidence which could easily have been provided to shed light on circumstances in Iran,

(b) the strange ineffectiveness of the authorities subsequently, and

(c) the fact that the appellants were able to travel to Istanbul and back in the meantime."

The latter point is a reference to the evidence before the judge that the appellants had been able to travel to Istanbul to attend for an interview to further their entry clearance applications in 2018.

I accept that the judge gave a number of reasons for not accepting the appellants' claim that they were at risk from the Iranian authorities, including the fact of their uneventful journey to Istanbul in 2018 despite claiming they were wanted by the authorities in Iran and contradictory evidence from their parents as to the strength of their religious convictions. However, as is clear from the passages in the judge's decision that I have quoted, the absence of documentation (which was not in fact absence at all) formed a significant part of his reasoning for rejecting the appellants' account which underlay their Art 8 claims. It was the core issue in their claim that they had come to the attention of the Iranian authorities who had taken action against them, namely issuing summonses against both appellants and a court order confiscating the family property. In my judgment, the judge's failure to take all the documentary evidence into account, and in the light of his reasoning relying significantly on its absence, was an error which was material to his adverse finding on a matter that went to the core of their claims. I cannot be confident that he would inevitably have made an adverse finding if he had not fallen into error in this way.

In the light of this, it is not necessary for me to address the other grounds of appeal. I am satisfied that the errors that I have identified falling within Ground 2, in themselves, were material to the judge's finding on the core issue of the appellants that they are at risk in Iran which is central to their Art 8 claims to join their parents in the UK.

It follows, in my judgment, that the decision of the First-tier Tribunal to dismiss the appellants' appeals under Art 8 involved the making of a material error of law and those decisions cannot stand and should be set aside.

Decision and Disposal

Neither the directions nor the parties' submissions addressed how the Tribunal should proceed if an error of law was established and the First-tier Tribunal's decisions set aside.

Any remaking of the decision is likely to involve the appellants' parents and, possibly, their cousin giving oral evidence. Their credibility will be central to a Tribunal's decision whether the refusal of entry clearance is a disproportionate interference of any private and family life of the appellants. None of the judge's findings of fact can be preserved. In my judgment, having regard to para 7.2 of the Senior President's Practice Statement, and to the nature and

extent of the fact-finding involved in remaking the decision, the appropriate disposal of these appeals is to remit them to the First-tier Tribunal for a *de novo* re-hearing.

Consequently, the decision of the First-tier Tribunal to dismiss the appellants' appeals under Art 8 involved the making of a material error of law. That decision is set aside.

The appeal is remitted to the First-tier Tribunal for a *de novo* re-hearing before a judge other than Judge Fowell.

Signed

Andrew Grubb

Judge of the Upper Tribunal
4, June 2020