



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/00993/2013

THE IMMIGRATION ACTS

Heard at Bradford
On 16 July 2013

Determination Sent
On 30 August 2013

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

SANNA EL-KHATIB

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Marshall, Barry Clark Solicitors

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Sanna El-Khatib, was born on 24 July 1945 and is a citizen of Lebanon. The appellant had appealed to the First-tier Tribunal (Judge Sarsfield) against a

decision of the respondent to remove her from the United Kingdom, having refused her claim for asylum. The First-tier Tribunal, in a determination promulgated on 4 April 2013, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant claimed that, in August 2012, masked men had come to the home of her husband's parents in Lebanon and the family had been accused of being involved with spying for Israel. The appellant and her husband had fled to the United Kingdom. They are now estranged, the husband having returned to Lebanon.
3. Judge Sarsfield's findings are set out [12] of the determination. The first finding reads as follows:

“On her own evidence the appellant had no problems in Lebanon before July 2012 when she said they began when masked men came to the Lebanon home of her husband's parents (Q56); this was on 3.7.12 (SCR 4.1/C1) but she also said that they ‘came at home and talked to *my* father’; she also said the visit was on 6 or 7 July 2012 (Q54) and she, her children, husband and the parents were present (C1). As an important part of her account, it is difficult to accept that she would err over such an important date or whose home it was or who was spoken to.”

4. Judge Sarsfield appears to have overlooked the refusal letter of the respondent at [24]:

“You have given differing accounts of who was present at the house when the masked men came. You have provided an explanation for these discrepancies and therefore it is deemed they are not sufficiently significant...”

5. Judge Sarsfield should have taken account of that passage of the refusal letter in reaching his own findings of fact. The passage (although not entirely clear) appears to accept the appellant's explanation for the discrepancy in this part of her evidence. The judge's failure to, at the very least, refer to and deal with the apparent concession was, in my opinion, an error in law.
6. At [13], Judge Sarsfield went on to find that “[the appellant's] husband returned to Lebanon in July 2012. I consider it implausible, given the background material, that if he considered there was any risk he would return at all.” He went on to find that, “there is no evidence that her husband has suffered on return or evidence from him”. Judge Sarsfield appears to have overlooked the fact that the appellant and her husband are estranged. The appellant has said that the husband's return to Lebanon was a highly dangerous and irrational act but one which should have no impact upon her own claim for asylum. That appears to me to be *prima facie* a reasonable argument and one with which the judge should have engaged. What is certainly unreasonable is that Judge Sarsfield should have expected to see evidence from the husband given that he has returned to Lebanon and is estranged from the appellant. Further, there is no particular reason why, given the state of their relationship, the appellant would have any information as to whether or not her estranged husband has “suffered on return”. There were no grounds for supposing (as I believe the judge did) that,

because the husband had returned to Lebanon and there had been no reports of his having suffered persecution there, it is now safe for the appellant herself to return.

7. I find that the First-tier Tribunal's analysis of the evidence and assessment of the credibility of the appellant's account is flawed. The determination of the First-tier Tribunal is set aside. It will be necessary for the next Tribunal to consider the matter afresh; none of the findings of fact of the First-tier Tribunal are to be preserved. In those circumstances, I consider it appropriate to remit the matter to the First-tier Tribunal for that Tribunal to remake the decision.

DECISION

8. This appeal is allowed. The appeal is remitted to the First-tier Tribunal (not Judge Sarsfield) to remake the decision.

Signed

Date 20 July 2013

Upper Tribunal Judge Clive Lane