



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/09284/2012

THE IMMIGRATION ACTS

Heard at North Shields
On 20th August, 2013

Date Sent
On 4th October, 2013
.....

Before

Upper Tribunal Judge Chalkley

Between

FATEMEH SOHRABI
(No anonymity order made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: *Mr Gayle, Assistant Solicitor with Elder Rahimi*
For the Respondent: *Mr J Kingham, Home Office Presenting Officer*

DETERMINATION AND REASONS

1. The appellant is a female who was born on 29th March, 1986 and who is a citizen of Iran.
2. The appellant left Iran illegally in March or April, 2012, and travelled to Turkey where she remained for three months. She then travelled by air to Spain using a passport which was not hers. She remained there until 2nd September, 2012, when she then travelled to the United Kingdom.

3. On her arrival in the United Kingdom the appellant was unable to produce a passport or documentation to Immigration Officers and claimed asylum.
4. The respondent considered, but rejected, the appellant's asylum claim and on 1st October, 2012 decided to issue directions for her removal. It is that decision which the appellant appealed to the First-tier Tribunal. Her appeal was heard on 25th January, 2013. In his determination, promulgated on 7th February, 2013, First-tier Tribunal Judge Mark-Bell dismissed her appeals on asylum grounds, on humanitarian protection grounds and on human rights grounds.
5. Lengthy grounds of appeal were submitted by the appellant's solicitors. For completeness they are produced in the Appendix of this determination. First-tier Tribunal Judge Froom granted permission to appeal, because he thought it was arguable that the judge's conclusions about plausibility, particularly at paragraphs 27 and 29, were not firmly based on evidence, but based instead on the judge's own assumptions about what might happen in Iran.
6. Mr Gayle relied on his grounds and told me that the judge had erred in what he had said at paragraph 29 of the determination by suggesting that a Basij would not try to injure the appellant with scolding water. The judge made assumptions which he was not entitled to do.
7. At paragraph 23 the judge noted that during the course of the appellant's asylum interview, she gave the date of an incident which led to her detention overnight as being 25/11/1389. In the Gregorian calendar this is said to be 14th February, 2011.
8. However, in a letter written by the appellant's previous solicitors on 19th September, 2012, before the asylum interview was conducted with the appellant, they stated that, "her first incident with the authorities was in 1389, exact month/day unknown. She was arrested on this occasion". Mr Gayle said that the judge was being critical because the appellant had actually given the correct date. The appellant had explained at the hearing that she had only had a short meeting with her representatives and she claimed that she had told them that the incident had taken place on 25 Bahman 1389 which, in the Gregorian calendar is 14th February, 2011. The judge was critical of the appellant and claimed that her representatives would not have ignored the precise date had she given them it. The judge found that the appellant's credibility was undermined by contradictions made not by the appellant, but by her solicitors.
9. Mr Gayle suggested that the judge's findings at 24 and 25 were insufficiently reasoned by the accounts given by the appellant were plausible. At paragraph 24 the judge found that he was not satisfied that the appellant was encouraged to attend two demonstrations in 2011 and 2012 by the influence of her fiancé. At 25 the judge refers to the appellant describing her father's disapproval following her detention in 1389 of her relationship with the young man and her involvement in politics. The judge noted that the appellant's evidence was that she decided to dedicate herself to her study until she qualified, but claimed that that was inconsistent with evidence

that she would involve herself in political demonstrations in February 2011 and February 2012 when she was still trying to obtain a place on a lawyer's postgraduate training course. He went on to say it was particularly inconsistent that a person with the appellant's claimed profile would provoke members of the Basij at a second demonstration in 2012 when they had shown no interest in her group and were merely withdrawing cash from a bank ATM machine. The judge went on to find that he agreed with the respondent that the Basij would not act as the appellant's evidence would have it. Mr Gayle suggested that the judge has simply assumed how they would react. There are insufficient reasons given by the judge for his findings. The judge misunderstood the evidence of the appellant's second arrest at the end of paragraph 25. There was no question of the Basij waiting before they came after her in an alley. They did not wait at all.

10. At paragraph 27 of the determination the judge refers to the appellant's account of events which took place at a new year's celebration bonfire. He found that it was neither credible nor plausible that if there were a large number of Basij attending the bonfire they would not have been able to prevent the appellant and her mother from escaping after the appellant had apparently aggressively approached a Basij to stop him filming her. The account given by the appellant was not implausible. Mr Gayle also suggested that the error referred to by the judge at paragraph 28 was an error that the appellant had corrected at the outset of the hearing.
11. Finally, at paragraph 30 of the determination, the judge found against the appellant because she claimed that she had no idea that the agent was proposing to bring her to the United Kingdom. The judge said that this was not credible because agents remain in business because their reputation is that, circumstances permitting, they deliver the goods, including a destination of choice if that is practical. Mr Gayle simply pointed out that there was no evidence to suggest that the appellant did know where she was coming.
12. Mr Kingham suggested that there were no material errors and that the challenges amounted to little more than disagreements. He suggested that if, as was claimed by the appellant, her previous solicitors had erred on her behalf then they should have been contacted and asked for a witness statement or they should have been made the subject of a complaint to the solicitors' regulatory authority.
13. Any error that the judge may have made in paragraph 29 in his determination was not material because the medical evidence showed that the appellant had not been scalded at the time that she claimed to have been scalded. The medical evidence suggested that it was simply not credible that the appellant could have been scalded in December 2012. He pointed out that the grounds of appeal suggested that at paragraph 24 the judge had erred by applying the wrong standard of proof. He had not. It is apparent that the judge gave a proper self-direction on the standard of proof. Simply suggesting that the appellant had not satisfied him that she had been encouraged to attend two demonstrations did not mean that he was not satisfied on any higher standard than on a reasonable likelihood.

14. So far as paragraph 25 is concerned it appears that the appellant would have us believe that she actually deliberately provoked a Basij. That was inconsistent with what the appellant had claimed. The judge was entitled to conclude as he had done.
15. He disagreed that there was a material misunderstanding with the evidence demonstrated by paragraph 25 of the determination and referred me to paragraph 21 of the appellant's statement. There clearly had been a pause because the Basij had clearly waited until the boyfriend went into the shop before they pursued the appellant.
16. The judge was similarly entitled to find as he did at paragraph 27. It was simply not plausible that on the one hand the appellant would be frightened of the authorities and on the other would knock a phone out of the hand of the Basij. The alleged error at paragraph 28 and 30 were not in any event material to the outcome of the appeal and a careful examination of the medical report reveals that the doctor does not say that he has been given a chronology, there is nothing in the report to indicate that he was aware of when it was claimed that the scalding had occurred.
17. He asked me to uphold the determination.
18. Both representatives indicated that were I to find an error of law in the determination, they would have no objection to the matter being heard afresh by the First-tier Tribunal, given the length of time the appellant would have to wait before the matter could be reheard by me in North Shields. I reserved my determination.
19. I have concluded that the judge **has materially erred in law** in his determination. I believe that there is no basis on which the judge could make the finding at paragraph 29 of his determination, that a Basij would not try and injure the appellant with scalding water. The judge gives no reasons at all why it is not credible that the appellant was scalding when clothed. Similarly, I believe that at paragraph 23 of his determination, the judge errs in holding it against the appellant that her previous solicitors had indicated that the appellant's first incident with the authorities was in 1389, "exact month/day unknown". That statement may indicate that the solicitors themselves (as opposed to the appellant) do not know the day and month that the appellant was first arrested. The appellant had indicated to the Tribunal that she was arrested on 25th Bahman, 1389 and claims that that was the date that she had given to her solicitors. It may well be that her solicitors made an error. This appears not to be something which was contemplated by the First-tier Tribunal judge. Unfortunately, it is difficult to assess how much this first credibility finding influenced the judge in his consideration of the remaining evidence. I am also concerned that the next adverse credibility findings at paragraph 24 do not appear to be sufficiently reasoned.
20. While I do not believe that the judge did necessarily misunderstand the appellant's evidence, which he records in paragraph 25, I believe that the judge was wrong to

suggest that the Basij would not react as the appellant's evidence would have it. He had no basis on which to make that assumption.

21. I believe that those errors mean that the determination cannot stand.

22. Paragraph 7 of the Senior President's Practice Statement provides as follows:-

“7.1 Where under section 12(1) of the 2007 Act (proceedings on appeal to the Upper Tribunal) the Upper Tribunal finds that the making of the decision concerned involved the making of an error on a point of law, the Upper Tribunal may set aside the decision and, if it does so, must either remit the case to the First-tier Tribunal under section 12(2)(b)(i) or proceed (in accordance with relevant Practice Directions) to re-make the decision under section 12(2)(b)(ii).

7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

7.3 Remaking rather than remitting will nevertheless constitute the normal approach to determining appeals where an error of law is found, even if some further fact finding is necessary.”

23. I am satisfied that this is a case which falls squarely within paragraph 7 of the Senior President's Practice Statement, given the length of time that the parties will have to wait for the matter to be relisted before me in North Shields. Conversely, it could be heard relatively speedily by the First-tier Tribunal and in view of the overriding objective informing the onward conduct of this appeal, I have decided that this appeal be remitted to the First-tier Tribunal for a hearing afresh before a First-tier Tribunal judge other than First-tier Tribunal Judge Mark-Bell. None of the findings of First-tier Tribunal Judge Mark-Bell are preserved.

Upper Tribunal Judge Chalkley

APPENDIX referred to above

APPEAL NO: AA/09284/2012

IN THE FIRST TIER TRIBUNAL OF THE
IMMIGRATION AND ASYLUM CHAMBER

BETWEEN:

FATEMEH SOHRABI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**APPLICATION FOR PERMISSION TO
APPEAL TO THE UPPER TRIBUNAL**

1. Permission is sought to appeal the decision of the First-tier Tribunal of the Immigration and Asylum Chamber in this matter, on the basis of material errors of law.
2. It is submitted that the analysis of Judge of the First-tier Tribunal Mark-Bell (the JFTT), is undermined by a failure to provide sufficient and/or sustainable reasons for adverse credibility findings. Such a failing is among those listed by Lord Justice Brooke in R & ors [2005] EWCA Civ 982 as a point of law that may be raised.
3. Indeed, at paragraph 29 of the determination, the JFTT makes a perverse finding in relation to a central aspect of the Appellant's account. The JFTT asserts that it not credible that the Appellant was scalded, by boiling water, while clothed. Yet it

is obvious that a person can be scalded while clothed. This perverse finding is illustrative of the JFtT's materially flawed analysis of the Appellant's evidence.

- 22/02
4. At paragraph 23, the JFtT bases an adverse credibility finding on an alleged contradiction in the Appellant's evidence. Prior to her asylum interview, the Appellant's previous legal representatives, Chambers Solicitors, wrote to the Home Office, asserting, *inter alia*, that the Appellant was unsure of the exact date of her first detention. In her asylum interview, however, the Appellant gave an exact date for that detention, namely 25 Bahman 1389 (14/02/2011). It is submitted that the JFtT materially errs by placing undue weight on this alleged contradiction. The Appellant consistently maintained that 'Chambers' had misrepresented her instructions. Indeed, the Appellant had nothing to gain by changing her evidence in relation to this date. The JFtT maintains that if approached, 'Chambers' would have provided evidence of their 'error', if such existed. The fact that no evidence was forthcoming led the JFtT to conclude that they had not made an error. It is submitted that the JFtT fails to adequately explain why 'Chambers' would have admitted an error on their part. The fact that the Appellant changed representation, due to dissatisfaction with 'Chambers', is ignored by the JFtT. It is submitted that the JFtT's analysis does not bear scrutiny.
 5. At paragraph 24, the JFtT maintains that the Appellant had not 'satisfied' him that her fiancé had encouraged her to attend demonstrations on 14th February 2011 and 14th February 2012. It is submitted that the JFtT materially errs by adopting the wrong standard of proof. The fact that the JFtT was not 'satisfied' does not mean that the Appellant's account was not 'reasonably likely'.
 6. Furthermore, the JFtT bases his adverse credibility finding on the Appellant's, consistent, account of her fiancé's reticence in discussing his political activities. It

is submitted that the JFtT materially errs by failing to appreciate that in the context of Iran, such reticence was wholly understandable. The Appellant's fiancé would have been well aware that, if detained, the Appellant would be interrogated about her knowledge of the anti-regime activities of those close to her. It was safer for the Appellant to have no knowledge. The JFtT's analysis is materially flawed.

- 22/02 1
7. At paragraph 25, the JFtT finds it 'inconsistent' that the Appellant sought to participate in two demonstrations, a year apart, while still seeking to gain her qualification as a lawyer. Yet there was no inconsistency. Iran is governed by a repressive regime. It is risky for anyone to participate in anti-regime demonstrations. Despite this, millions of ordinary Iranians have so participated, especially since the flawed presidential election in 2009. In Y v SSHD [2006] EWCA Civ 1223, Keen LJ held that it was a fundamental legal principle that Immigration Judges (IJs) should be cautious before finding an account inherently incredible. The problem, Keen LJ maintained, was that there was a considerable risk that an IJ would be over influenced by personal views of what was or was not plausible. These views would have been inevitably influenced by British customs, as well as the IJ's own background in this country. Accordingly, it is submitted that the JFtT materially erred in law by failing to consider the Appellant's evidence in the context of the background evidence on Iran.
- 22/02 2
8. In the same paragraph, the JFtT finds it inconsistent' that the Appellant made a flippant remark to Basijis while on her way to the demonstration on 14/02/2012. Yet the Appellant explained: *'I do not know why I made the comment to the Basijis. We were all excited about the demonstration and the adrenalin was flowing. Sometimes, when you live in fear, you just blurt things out.'* (WS para 40). In Kasolo (13190) the IAT held that IJs must beware of imposing their views

of what a sensible person would do in a given situation. It is submitted that the JFtT falls into this trap.

9. The JFtT appears to misunderstand the Appellant's evidence in relation to her subsequent arrest. The Appellant consistently maintained that two female Basijis tried to arrest her, but she was able to extricate herself from their grasp and run off. She was immediately followed and cornered in an alleyway. Contrary to the JFtT's assertions, there was no pause in this pursuit. The JFtT's analysis is materially flawed.

10. At paragraph 26, the JFtT asserts that the Appellant provided inconsistent evidence about being beaten during her detention in February 2012. Yet the JFtT fails to identify the inconsistency. Clearly, this is a material error of law.

11. The JFtT also misrepresents the Appellant's evidence in relation to the 'central thrust' of the interrogation she endured. The Appellant never stated that she was primarily interrogated about ownership of a satellite dish. Nor was she predominantly questioned about her contact with the British and the Americans. At AIR Q37, the Appellant detailed how she was interrogated about her family background, previous political activities, previous arrests, her dissident contacts and alleged collusion with anti-regime groups. The JFtT ignores this evidence. This is a material error of law.

12. At paragraph 27, the JFtT again bases an adverse credibility finding on his own opinion of what a sensible person would do in a given situation. The JFtT finds it implausible that the Appellant 'reacted' when she saw herself being filmed by a suspicious looking individual. It is submitted that as the Appellant was psychologically scarred by her detention, her unpredictable reaction to that situation was wholly plausible. The Appellant did not claim to know that the

person was a Basiji, nor did she intend to be violent. She asked him to stop filming and the situation deteriorated.

13. The JFtT finds it implausible that in the ensuing melee, the Appellant was able to escape. It is unclear why this is implausible. The Appellant did not assert that there were more Basijis than ordinary members of the public involved in the melee. Nor is it implausible that a bystander took the Appellant, her mother and her sister home in his car. There is a want of reasoning in this finding. It is not unusual for strangers to offer assistance to vulnerable women, even in Iran. For some, this is human nature.

14. The JFtT finds it not credible that the Appellant enabled the bystander to learn her address. The Appellant consistently maintained that she was semi-conscious and in a state of shock when taken home by this stranger. It was her mother that gave the home address not the Appellant. The Appellant was in no fit state to prevent her mother from giving their address.

15. At paragraph 28, the JFtT bases an adverse credibility finding on an inconsistency between her asylum interview and statement. Yet at the outset of the appeal hearing, before she adopted her statement, the Appellant pointed out that the date given for her graduation, in paragraphs 16 and 37, was incorrect. She clarified that the date given at AIR Q27 was correct. Therefore, there was no inconsistency.

16. At paragraph 29, as well as the perverse finding identified earlier, the JFtT finds it not credible that a Basiji would try to injure the Appellant by pouring boiling water on her during a melee. It is submitted that, given the size of the scalding injury suffered by the Appellant, it is wholly plausible that this was a targeted assault. It

is not inevitable that others in the melee would have been injured by the boiling water. The JFtT's analysis is materially flawed.

17. At paragraph 30, the JFtT bases an adverse credibility finding on the Appellant's assertion that she did not know that the agent intended to bring her to the UK. Yet there was no evidence before the JFtT to suggest that agents routinely inform those they are assisting of their ultimate destination. Nor was there any evidence to suggest that agents routinely acquiesce to the desires of those seeking escape from persecution, in relation to their final destination.

18. At paragraph 32, the JFtT makes confusing findings in relation to the medical report by Dr Michie. In the report, Dr Michie finds the Appellant's scars consistent with the history given. The JFtT concludes that this means the scars are consistent with other causes. This confused analysis does not bear scrutiny.

19. At paragraph 33, the JFtT asserts that there is a contradiction between the medical report and the rest of the Appellant's evidence. Dr Michie reported that the Appellant described being touched inappropriately. The JFtT asserts that the Appellant did not mention any inappropriate touching while in detention. Yet at AIR Q39, the Appellant specifically refers to this. The JFtT's analysis is materially flawed.

20. Also in paragraph 33, the JFtT finds that Dr Michie's report contradicts the Appellant's evidence in relation to the timing of the scalding that caused the scarring on her back. Yet Dr Michie made clear that the timing of injuries is very difficult. He stated that rates of healing vary considerably between individuals. Much also depended on the severity of the scalding, which could also vary considerably.

21. At paragraph 34, the JFT's places no weight on the summons, with certified translation. It is submitted that the JFT fails to follow the guidelines laid down in Tanveer Ahmed [2002] UKIAT 00439, where it was held: *'Only rarely will there be the need to make an allegation of forgery, or evidence strong enough to support it. The allegation should not be made without such evidence.'* No such evidence was presented at the hearing of this appeal. The JFT relies purely upon his own speculation.

22. The Appellant explained that it was only after her legal representatives insisted that she try to find out from her family if any summonses had been issued, or further raids taken place, that she made a concerted effort to contact them. The JFT rejects the Appellant's account of very limited contact with her family since her arrival in the UK. Yet the JFT ignores the objective evidence showing that the Iranian authorities do monitor communications. The Appellant explained that she was afraid of putting her family in danger. It is submitted that the JFT materially errs in his approach to this aspect of the Appellant's evidence.

23. As a result of these failings, it is submitted that the JFT's conclusions in dismissing this appeal, on **Asylum, Humanitarian Protection and Human Rights** grounds, are unsafe.

Accordingly, permission to appeal the Tribunal's decision is respectfully sought.

Elder Rahimi Solicitors