



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/04860/2014

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly
On 15 October 2015

Decision & Reasons Promulgated
On 28 October 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

A A M
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Nicholson counsel instructed by Broudie, Jackson and Cantor
For the Respondent: Ms C Johnstone

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. An anonymity direction was previously made and will continue.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Levin promulgated on 30 January 2015 which dismissed the Appellant's appeal against a refusal of asylum on all grounds .

Background

3. The Appellant was born on 27 December 1983 and is a national of Yemen. Her child A M Y born 7 January 2008 is a dependent in the appeal.
4. On 3 July 2012 the Appellant applied for asylum.
5. On 16 January 2015 the Secretary of State refused the Appellant's application and made directions for her removal.

The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Levin ("the Judge") dismissed the appeal against the Respondent's decision.
7. Grounds of appeal were lodged arguing that the Judge made a mistake of fact in asserting that the certified translations of the Facebook account had not been signed; that the Judge was in error in not raising this issue at the hearing ; that the judge was not entitled to make an assessment of the child's best interests and that the matter should have been remitted to the Respondent to make that decision; the Judge failed to assess the Appellant's risk from the Houthis who were opponents of the former regime.
8. On 26 February 2015 First –tier Tribunal Judge Osborne gave permission to appeal.
9. At the hearing I heard submissions from Mr Nicholson on behalf of the Appellant and on behalf Ms Johnstone on behalf of the Respondent. I took those submissions into account.

Finding on Material Error

10. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.
11. The Appellant is a national of Yemen who it was accepted was a distant relation of former President Saleh and claimed asylum in the United Kingdom claiming that she had to flee the country as she was to be arrested and questions in relation to a number of allegations amounting to treason.
12. In a lengthy, detailed and cogently reasoned decision the Judge assessed the Appellant claim against the background material and I am satisfied taking full account of the expert report from Dr Seddon which he refers to on a number of occasions in the decision. The event that underpinned the Appellant's flight from Yemen, the key event of her claim, was her claim that she had left on 8 May 2012 after receiving a telephone called from a colleague in the Intelligence Department informing her that the head of the Department, 'Tariq' had accused her of treason and ordered her arrest and interrogation. The Judge considered the factual backdrop to her claim taking into account the expert report of David Seddon. He set out a detailed summary of the historical background to the Appellant's claim based largely it appears on the contents of Dr Seddon's report. Therefore I do not accept the argument that the

Judge either did not give sufficient weight to Dr Seddon's report or that his approach to it was flawed. Thus the Judge considered the fact that there was an immunity law passed on 21 January 2012 granting immunity from prosecution to former President Saleh and anyone who worked for him during his 33 year rule. He took into account Dr Seddon's suggestion that it was over optimistic to suggest that the Appellant could rely on the law for protection but found that Dr Seddon's views were entirely speculative and did not take into account the other evidence that he had before him at paragraph 48.

13. The Judge gave detailed reasons for why he did not accept that the Appellant had given a credible account of why she fled from Yemen and where he rejected Dr Seddon's views gave clear reasons why he did so. He found it surprising that the Appellant was not arrested in the 5 days following her warning phone call and her flight from Yemen and he rejected the Appellant's explanation for this as speculation and was entitled to do so. The authorities had shown no adverse interest in her mother or brothers who were successful businessmen in Yemen and he found that this cast doubt on the credibility of her claim that the authorities suspected her of being a traitor and had issued a summons to arrest her: he was entitled to draw that conclusion.
14. The Judge considered the 7 matters that the Appellant claimed the authorities wished to interrogate her about. He set out in detail at paragraphs 27 why he did not find her claim to be credible. The Appellant's claim to have been accused of treason against President Saleh in May 2012 was inconsistent with the fact that Saleh had ceded power to his successor in February 2012. He found that there was a high level of violence in Yemen and the two incidents where shots were fired at a presidential vehicle in which she was travelling were not targeted at her but rather the vehicle. He found that the fact that the Appellant who claimed to be well known in Yemen was able to leave the country without any difficulty on an international flight was inconsistent with her claim to be of interest to the authorities. The Judge concluded that he did not accept the Appellant fled from Yemen because she was about to be arrested for treason and that she had fabricated this claim. These were findings that were open to him
15. I turn to the issue of risk on return where Mr Nicholson argued initially that the Judge made a factual mistake in failing to take into account the Facebook evidence on the basis that the translations before him did not bear the signature of the translator. It became clear when I examined the file in court that in fact the Judge did not have signed copies of the Facebook entries and Mr Nicholson conceded that the solicitors representing her appeared to have forgotten to serve them although Mr Nicholson who appeared in the First-tier believed that they had been served on all parties.
16. I accept however that even though the Judge did not have signed copies of the Facebook entries and therefore failed to take them into account it could arguably be a procedural error though no blame attached to the Judge. However I am satisfied that the evidence in issue could not have made a material outcome to the decision given the nature of the evidence itself and the other findings that the Judge had made. Although the Appellant suggests in her witness statement at paragraph 36 'I was given a name on Facebook as A S' the evidence simply shows a Facebook account the Judge identified was not in the Appellant's name but in the name of another person, it is not an account purportedly created by her in another name and it would

be difficult to see how that could be rationally argued given its contents. The photographs and entries ridicule the former President and tribal elders but also include photographs of the Appellant herself and comments that are critical of her role in the former regime. A Tribunal would have been entitled to conclude that it was not credible that the Appellant would be held responsible for entries that were not only critical of her and thus unlikely to have been created by her and therefore she would not be at risk arising out of the contents. It would have also been open to a Tribunal to conclude that given the finding that the Appellant had fabricated the reasons given for her flight from Yemen her claim that she had been threatened as a result of the contents of the Facebook account which she had not even created was not credible.

17. Mr Nicholson suggested to me that Dr Seddons report supported the Appellant's argument that she was at risk from the Facebook evidence and indeed he suggested that at paragraph 6.24 Dr Seddon said it was plausible that the Facebook account put her at risk. I have read paragraph 6.24 of the report and Dr Seddon does not state that, indeed he states:

"I cannot comment on the Facebook issue as I have not seen the posts: I do not therefore wish to conjecture as to the likely response of the tribal leaders".

18. Therefore I am satisfied that even had the Facebook material been considered it would have made no material outcome to the decision.
19. It was finally that the Tribunal was precluded from making the assessment of the child's best interests and this had to be carried out by the Respondent relying on JO (section 55 Duty) Nigeria UKUT 00517 (IAC) . This was an argument advanced before the Judge in the First-tier and recorded by the Judge at paragraph 57-58. The Judge gave clear reasons both relying on JO and on a decision of the Court of Appeal AJ (India) and others v SSHD [2011] EWCA for concluding that he was entitled to make that assessment himself. I was also referred to MK (section 55-tribunal options) Sierra Leone [2015] UKUT (IAC) which I am satisfied justified the approach taken by a Tribunal Judge who feels that he is 'sufficiently equipped to make an adequate assessment of the best interests of any affected child.'
20. Indeed both Mr Nicholson and the Judge were in error in suggesting that the Respondent did not consider the best interests of the child in the refusal letter: at page 2 reference is made to s 55 of the Borders Citizenship and Immigration Act 2009 and then at paragraph 62. The Judge was also entitled to take into account that the Appellant's child had entered the United Kingdom in June 2013 posing as the child of another family and it is unclear at what stage the existence of this child was drawn to the Respondent and what information was placed before the Respondent in making the decision. The Judge then in his decision went on at paragraphs 60-66 to make a detailed, meticulous and well balanced assessment of the needs of a child very recently arrived in the United Kingdom who was only 7 years old, had no family other than his mother in the United Kingdom but had an extended family in Yemen. I am satisfied that he was entitled to make the assessment and that the findings were open to him.
21. It was finally argued in the grounds as amended by the Appellant's representatives (though not a matter pursued by Mr Nicholson as he conceded that the original

grounds as drafted by him did not contain this paragraph) that the Judge had not made findings on a 'key part' of the Appellant's claim that she was at risk from the Houthis 'as raised in the witness evidence and the objective material.' I am satisfied that this ground is simply an attempt to re argue the case that the Appellant was at risk from other Islamic groups. There was no evidence placed before the Judge to suggest that all returned asylum seekers were at risk on return because of the general country situation I am satisfied that in his assessment of the risk on return at paragraph 39(d) and 51 onwards the Judge adequately addressed the risk of the Appellant being targeted by 'Islamic groups' and/or Al Qaeda and found there was no such risk to the Appellant.

22. I remind myself of what was said in Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC) about the requirement for sufficient reasons to be given in a decision in headnote (1): *"Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge."*
23. I was therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

24. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

25. **The appeal is dismissed.**

Signed

Date 27.10.2015

Deputy Upper Tribunal Judge Birrell