



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/07636/2014**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 8 May 2015**

**Determination
Promulgated
On 3 June 2015**

Before

Deputy Upper Tribunal Judge MANUELL

Between

**MRS F H A
(ANONYMITY DIRECTION CONTINUED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Nollet, Authorised Representative
(Migrant Legal Action)
For the Respondent: Ms A Brocklesby-Weller, HOPO

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by First-tier Tribunal Judge PJG White on 26 February 2015 against the decision of First-tier Tribunal Judge Davidson made in a decision and reasons promulgated on 2 February 2015 dismissing the Appellant's asylum, humanitarian protection and human rights appeals.

2. The Appellant is a national of Iran, born on 5 April 1980. She had appealed against her removal from the United Kingdom, a decision taken by the Respondent on 15 September 2014. She stated in bare summary that she feared to return to Iran because of her perceived association with her brother who was wanted by the authorities, and because of her escape from prison.
3. When granting permission to appeal, First-tier Tribunal Judge White considered that it was arguable that Judge Davidson had erred in various significant ways, including failing to have regard to the Appellant's supplementary bundle of evidence which contained relevant country background evidence about Iranian divorce procedures, failing to have regard to the local cultural context and local calendar, had speculated about how a raid might have been executed by the Iranian authorities, had placed excess weight on answers given at the Appellant's screening interview and had erred in finding that the Appellant had given inconsistent answers about her brother at her asylum interview when compared to her witness statement.
4. The Respondent filed notice under rule 24 indicating that the appeal was opposed. Standard directions were made by the tribunal and the appeal was listed for adjudication of whether or not there was a material error of law.

Submissions

5. Ms Nollett for the Appellant relied on the grounds of onwards appeal earlier submitted. Ms Nollett took the tribunal to the evidence while developing the grounds of appeal in the same order as the grant of permission to appeal. There had been a number of fundamental misunderstandings by the judge, cultural and otherwise, and the absence of any reference to the objective evidence about divorce procedures in Iran showed that the judge had failed to take all of the evidence into account when making adverse credibility findings. The judge's findings about inconsistencies in the Appellant's evidence were not sustainable. The decision and reasons should be set aside and the appeal reheard before another First-tier Tribunal judge.
6. Ms Brocklesby-Weller for the Respondent relied on the Respondent's rule 24 notice. Candidly she accepted that the finding of inconsistency at [41] and [42] of the

decision and reasons was impossible to follow: there was substantial consistency.

Material error of law

7. The tribunal finds that all of the arguable errors of law identified in the grant of permission to appeal are indeed errors of law and are so material that the decision and reasons must be set aside and the appeal reheard before another judge.
8. There were two copies of the Appellant's supplementary bundle in the tribunal's file, one in the form of a disjointed fax which the Upper Tribunal has now discarded for shredding, the other clear and complete. Ordinarily the Upper Tribunal would have had little difficulty in inferring that the complete supplementary bundle had been considered by the First-tier Tribunal judge, whether or not it had been specifically mentioned. That inference unfortunately is not possible in the present appeal, because the judge gave attention to the contents of the main appeal bundle to the extent of mentioning its 109 pages, but failed entirely to discuss the report of Amnesty International which was in the supplementary bundle and which dealt extensively with divorce proceedings in Iran. The judge reached plausibility findings about the Appellant's evidence as to her divorce at [47] and [48] of the decision, but those reasons might well be mistaken in the light of the AI report. That in itself is a serious error or oversight which goes to the heart of the Appellant's case such that the decision and reasons must be regarded as unsafe.
9. Regrettably, that is not the only material error of law. As Ms Brocklesby-Weller candidly and properly conceded, the discrepancy the judge purported to identify at [41] between the record of the asylum interview and the Appellant's witness statement is not a discrepancy at all. What she said about her brother is exactly the same in substance in both places. The tribunal cannot understand why the judge suggested otherwise and there is nothing elsewhere in the decision and reasons which sheds any light on the matter. This is also a serious error or oversight which goes to the heart of the Appellant's case.
9. The other material errors have been sufficiently identified in the grant of permission to appeal and need not be repeated. It is plain that these errors mean that the appeal must be reheard *ab initio* before a differently

constituted First-tier Tribunal. As the Appellant has moved to Birmingham, it is appropriate that her appeal is reheard there.

10. It was agreed that the Appellant's appeal stood or fell on its asylum/humanitarian protection/human rights (Articles 2 and 3 ECHR) component, and that there could be no sustainable Article 8 ECHR claim.

DECISION

The tribunal finds that there are material error of laws in the original decision, which is accordingly set aside.

The appeal must be reheard before a differently constituted First-tier Tribunal

The rehearing will take place at Sheldon House, Birmingham, on 24 June 2015, with a time estimate of 4 hours.

Signed

Dated

Deputy Upper Tribunal Judge Manuell