Upper Tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/08048/2014

THE IMMIGRATION ACTS

Heard at Manchester
On 28 May 2015

Determination Promulgated
On 9 June 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

Zahra Jaberizadeh
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Ms G Patel, instructed by Broudie Jackson & Canter
For the respondent: Mr A McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Zahra Jaberizadeh, date of birth 19.9.85, is a citizen of Iran.

2. This is her appeal against the decision of First-tier Tribunal Judge Gladstone promulgated 29.1.15, dismissing her appeal against the decisions of the Secretary of State, dated 25.9.14, to refuse her asylum, humanitarian protection and human rights claims and to remove her from the UK under section 10 of the Immigration and Asylum At 1999. The Judge heard the appeal on 20.1.15.

3. First-tier Tribunal Judge Denson granted permission to appeal on 24.2.15.

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4. Thus the matter came before me on 28.5.15 as an appeal in the Upper Tribunal. The appellant did not attend and the hearing was confined to submissions in respect of error of law.

5. For the reasons set out herein I find that there was no error of law in the making of the decision of the First-tier Tribunal such as to require the decision of Judge Gladstone to be set aside.

6. The application for permission to appeal was made on the basis that the judge's findings that the appellant's claimed employment at Bushehr Airport was not credible was flawed, because of reliance on matters both stated and not stated at her screening interview; for failure to provide cogent reasons for rejecting Dr Khaki's expert report on the employment letter; for substitution of the judge's own opinion; and for expressing an opinion as to the photographs of injuries submitted by the appellant.

7. A further ground is that the judge failed to fully engage with the arguments in respect of illegal exit and risk on return, and failed to take into account a Court of Appeal case and the Iran OGN at 31.17.

8. In granting permission to appeal, Judge Denson improperly reached the conclusion that the judge erred in law by (1) failing to make clear findings in relation to the expert report; (2) placing weight on photographs and making findings in relation thereto without appropriate medical qualification to do so; (3) placing too much weight on credibility issues as regards to information given in the appellant's screening interview.

9. With due respect to Judge Denson, it is not for the judge considering an application for permission to appeal to make findings of errors of law in the decision of the First-tier Tribunal. The correct approach at the permission stage is confined to considering only whether there is an arguable error of law such that the matter should be allowed to proceed to an appeal before the First-tier Tribunal. It is for me, in this instance, to decide whether there is any material error of law such as to require the decision of the First-tier Tribunal to be set aside and remade. In the circumstances, I reject and ignore the purported findings of errors of law by Judge Denson.

10. I have considered the complaint that the judge relied on both information disclosed and not disclosed in the screening interview as part of her findings in relation to credibility. Ms Patel reminded the Tribunal that the primary purpose the screening interview is to establish the appellant's method and route of arrival into the UK and she was told that she would not be questioned as to the details of her asylum claim. However, it remains the case that what is stated in the screening interview must be true. It is not the case that the judge based primary credibility findings on the failure of the appellant to mention certain matters in the screening interview, but the judge was certainly entitled when assessing the credibility of the appellant's account to observe that some matters mentioned previously when giving her initial account were not part of her current account. For example, at §139 the judge noted that the appellant had mentioned in her screening interview that she had seen guns that were being transported to an Arab country. However, in her substantive asylum interview

she said that there was no writing on the crates she claimed to have seen and she has not explained how she could know they were going to an Arab country. Further, she said the boxes were being unloaded and not loaded, and that it was only a rumour where they were destined. In fact, as the judge explained at §140 her account as to what she had seen varied, but she has stated that she did not know what she had claimed to see. She was making assumptions and did not even view the footage of what she claimed to have recorded, giving inconsistent reasons as to why she did so.

11. Another example is that at her screening interview the appellant stated that she thought no one had seen her filming. However, in her asylum interview she eventually said that a colleague had seen her filming. The judge was certainly entitled to put this discrepancy to the appellant during the hearing, in response to which the appellant said that the screening interview was short and if she had been asked for more details she would have given them. The judge was entitled to reject this explanation at §142 of the decision, concluding that she had fabricated the account of a colleague seeing her to reinforce her asylum claim, an embellishment. The appellant had given an account in her screening interview which was inconsistent with her later account. The judge was entitled to take account of this as part of the credibility assessment. In the circumstances, I find no error of law in respect of this ground of appeal.

12. Even if there was undue weight given to matters arising from the screening interview, I do not accept that in the light of the decision, taken as a whole, such an error was material to the outcome of the decision. The various matters set out by the judge are an overwhelming indictment of the appellant’s credibility and the ultimate conclusion and I am satisfied that the decision in the appeal would certainly have been the same, even if there had been no reference to the screening interview.

13. I do not find any error of law in the complaint that at §135, §137 and §138 the judge superimposed her own perception of what she would expect to take place in an airport, or the suggestion that the judge should have sought clarification from the appellant and her witnesses by supplemental questioning if she found the evidence confusing. The judge was not confused, but found the evidence on behalf of the appellant confused, for the reasons set out at §134 of the decision, pointing out the discrepancy between there being a huge and secret military operation and yet there was allegedly very little security so that anyone could walk about any part of the airport. And yet the paranoia was such the concern that the appellant might have seen something she should not resulted in threats to kill or torture her, or the fear that if returned that would be the outcome.

14. It is quite clear that the judge found the appellant’s factual account not credible. In particular, at §135 the judge did not find it credible that the appellant would be employed in the way she described, with little or no checks, on the say so of a friend of a cousin. This is not the judge superimposing her own perception but part of the judge’s task to assess the credibility of the appellant and her own account. Frankly, it is obvious from the analysis of the judge that she found the account unbelievable, if not entirely ludicrous. Whilst the judge is entitled to ask questions to clarify matters, she was not obliged to do so, either with the appellant or other witnesses. It is for the appellant to set out her case.

15. I find no error of law in respect of the judge's treatment of Dr Khaki's so-called expert evidence between §128 and §132 of the decision. His opinion was confined to the letter alleged to emanate from the appellant's employer, adduced to support her claim to have worked at the airport. The letter in question was only produced at the asylum interview and not at the screening interview. It was not translated at that time and was resubmitted with a translation in the appellant's bundle submitted five days before the appeal hearing. At §129 the judge noted that the translation, which is not dated, is inaccurate suggesting that the letter was from the bank addressed to the airline, when in fact it was the other way round. It appears that Dr Khakhi saw only an untranslated document.

16. I find Judge Gladstone's criticism of Dr Khaki adequately reasoned and entirely justified. At §129 the judge pointed out certain errors in the analysis and queried on what basis Dr Khaki could express an opinion on the validity of the letter from Iran Air, including his suggestion that it had been stamped by the "relevant department." It is not clear that the original was seen, as the Notary Office stamp indicated that the document is a photocopy of the original. It remains unclear on what basis Dr Khaki could be said to be an expert sufficiently qualified to decide that the letter is genuine. He is not a document examiner. My attention has been drawn to page 2 of his report, where he states that the letter corresponds to "all legal and official requirements for a genuine employment confirmation letter." This appears to be based on the fact that the letter was drafted on headed notepaper and that the stamps used are all correct and in accordance with "expected standards" for such a confirmation document. It also has a batch number on it, suggesting that the government printed it. I have also considered Dr Khaki's stated qualifications at A27, which suggests that he has been providing expert opinions on Iranian law and procedure, and the structure of the Iranian legal system. However, like Judge Gladstone, I do not see how that makes him qualified as a document examiner. Further, that it may be on what appears to be official letter headed paper and stamped does not demonstrate that the letter content is genuine.

17. At §131 the judge explained that she could not tell when the certification took place and noted that the claimant asserted that there were two letters, one of which she had retained. At §136, the judge noted that even if Dr Khaki is correct and the claimant was employed by Iran Air, as claimed, it only demonstrated that she was employed as of 25.4.12, some 7 months before the alleged incident and did not confirm that she worked in the relevant area of the airport or would have the access she claims to have. In the circumstances, the judge was entitled to attach limited weight to the expert evidence.

18. Notwithstanding the judge's cogent criticism of the evidence of Dr Khaki, at §133 the judge very properly considered that evidence not on its own in isolation but in the context of the evidence as a whole, as she was entitled and required to do. The judge then set out a number of concerns about the claimant's account, which undermined the factual basis of her claim, concluding at §137 that even if she was employed at the airport in November 2012, the remainder of her account was not credible, for the reasons carefully set out in the decision. I find that the judge's careful and detailed analysis of the claimant's case and evidence is unassailable. The judge has clearly correctly understood and taken into account the expert evidence in the context of the

evidence as a whole. If there was an error in not reaching a final view as to whether Dr Khaki's evidence was to be accepted or rejected, it was not material in the light of the judge's alternative finding set out above.

19. In relation to the photographs, which are on the court file, I find no error of law in the criticism made. At §145 and §147, the judge considered the appellant's claim that she was slapped several times during her first alleged detention to the extent that her face was all black and blue. Her account, set out between §26 and §28 of the decision was that she was returned home about 4pm and asked her mother to come over, but not to bring her son, as her face was all black and blue. At §145 the judge observed that this claim was not borne out by the photographs allegedly taken either the same day as the slapping or after the second detention two days later. The judge was asked to consider the photographs as supporting evidence of the appellant's claim. The judge was entitled to observe that they do not show the appellant's face to be black and blue as claimed. Ms Patel suggested that they showed that the appellant had been injured but such a submission is to commit the same error as alleged against Judge Gladstone, expressing inexpert medical opinion on the basis of the photographs. In find no error of law in respect of this issue. It does not require medical expertise to observe that the photographs do not show the appellant's face to be black and blue, (although they may show some redness or apparent skin irritation to the right cheek) and thus the judge was entitled to consider that they undermined the appellant's account.

20. Finally, I find no material error of law in relation to the risk on return following illegal exit, as set out at §16 and §17 of the grounds. The judge was correct to rely on SB (Iran), to the effect that illegal exit does not attract the adverse attention of the Iranian authorities. It is a Country Guidance case that remains valid and the judge was obliged to follow it, unless there is good and sufficient evidence to suggest that the factual basis for the guidance is now wrong. All the appellant and Ms Patel relied on was one statement from the OGN of September 2013 at 31.17 which quotes an unnamed judge as suggesting that returnees are held for a few days until it is clear to the police that they have not been involved in political activity. Frankly, this single unattributable source is woefully inadequate to demonstrate that the judge was in error of law by relying on current country guidance and failing to depart from it on such a flimsy basis.

21. Complaint is made within this ground of the judge's criticism at §155 of the appellant's representative including in the bundle a copy of what was an interlocutory order in a pending appeal. It was, as the judge stated, merely an order granting permission to appeal. It surely cannot be said that such a document was relevant to put before the First-tier Tribunal when the issues in that appeal were not resolved. I find no error of law in this regard.

22. All in all the grounds are no more than a disagreement with the findings and conclusions of the judge and an attempt to reargue the appeal. No material error of law is disclosed.

Conclusion & Decision

23. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

Signed

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

I make no fee award.

Reasons: No fee is payable in this case and thus there can be no fee award.

Signed

Deputy Upper Tribunal Judge Pickup