



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/02598/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 8 December 2015

Decision and Reasons Promulgated  
On 7 January 2016

Before

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

Between  
NI NI WIN

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Singh counsel instructed by Duncan Lewis Solicitors

For the Respondent: Mr T Melvin Senior Home Office Presenting Officer

**DECISION AND REASONS**

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge C Twydell promulgated on 21 July 2015 which dismissed the Appellant's appeal against

the decision of the Respondent to remove the Appellant from the UK following the decision to refuse the Appellant's claim for asylum.

### Background

3. The Appellant was born on 5 March 1968 and is a national of Myanmar.
4. On 6 February 2014 the Appellant came to the UK with her father Than Win and her mother Molly Shwe as visitors. On 21 February 2014 the App applied for asylum. The Appellant claimed in essence that she was at risk because as a Muslim she was receiving threats from members of an extremist Buddhist organisation who she claimed networked actively in Myanmar and were trying to kill her.
5. On 10 February 2015 the Secretary of State refused the Appellant's application. The refusal letter gave a number of reasons:
  - (a) There was an inconsistency between the Appellant's account of her employment in Myanmar as the owner of her own pre school and primary teaching centre in Yangon where the teaching included Islamic Studies and her father's account in his interview that she was a teaching assistant in an all girl's private school.
  - (b) There was discrepancy between this and the Appellant's claim in her visa application that she was self employed as the owner of an automobile commission and automobile dealing service and that she had no additional jobs.
  - (c) In relation to her claim that her problems began in Meiktila on 20 March 2013 when she went to help a friend teach summer classes there were inconsistencies in that account as given by the Appellant and her father in his asylum interview.
  - (d) There are inconsistencies between the Appellant's account of what happened when she returned to Yangon and that given by her father.
  - (e) The Appellant's delay in claiming asylum undermined her credibility.

### The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Twydell ("the Judge") dismissed the appeal against the Respondent's decision. The Judge :
  - (a) Set out the Appellant's account based on her witness statement which included her explanations of the apparent inconsistencies between her account and that of her father.
  - (b) Recorded the oral evidence of the Appellant at the hearing and that of her brother and sister who had both provided witness statements.
  - (c) Noted at paragraph 37 that the Appellant's Representative applied to have her father's appeal bundle adduced in evidence in support of her appeal at 3.00 pm at the end of her closing submissions. The Respondent objected having had no prior warning of the application although both representatives had been in the building all day. The Judge adjourned in order for the parties to attempt to agree 'common ground' and the Respondent agreed that the App's father had ill health and accepted production of his GP report of 24.4.2014 and part of his

medical records. The Judge rules that the remaining documentation in the appeal bundle would not be admitted.

- (d) The Judge found that the Appellant was a teaching assistant in Myanmar who taught Islamic studies. She found that she was a Muslim albeit not a Rohingya Muslim. She did not attach great weight to the inconsistency between the Appellant's claim to have owned the school or worked in a school.
- (e) In relation to the incident described by the Appellant on 20 March 2013 she found that the Appellant's own account between her interview and her oral evidence was inconsistent and as a result she did not accept the Appellant's account that she saw her friends killed but rather found that she heard about the incident from a neighbour.
- (f) The Judge found that her father's account of when and how this incident occurred was inconsistent with that of the Appellant (paragraph 50-51).
- (g) The Judge found that the Appellant's account of what happened after this incident on her return to Yangon was inconsistent with that of her father (paragraph 52) including that she stated their family home was ransacked and destroyed which was not mentioned by her father at all which the Judge found to be a significant discrepancy.
- (h) The Judge considered the medical report in respect of the Appellant's father that he had heart disease and had had a by pass. She noted that he did not attend the hearing nor did he provide a witness statement. She noted the discrepancy in relation to whether their home had been ransacked or destroyed.
- (i) The Judge found that her failure to state in the visa application that she was a teaching assistant undermined her credibility
- (j) The Judge found that there was no good reason given as to why the Appellant did not claim asylum on arrival in the UK.
- (k) The Judge found that her case was that she had no problems between 1992 and 2013 although the extremist and the authorities would have been aware that she was a teacher of Islamic Studies and this was a good indicator for the future.
- (l) The Judge found that the Appellant could return to Myanmar and teach and not be at risk from extremists.

7. Grounds of appeal were lodged which argued:

- (a) The Judge failed to assess the evidence in accordance with the law.
- (b) The Judge failed to take into account the explanations given by the Appellant's for the alleged inconsistencies, her father's witness statement which was submitted as part of the father's bundle and her father's ill health in assessing the inconsistencies.
- (c) The Judge failed to properly assess the Appellant's explanation for her failure to state that she was a teaching assistant in her visa application.
- (d) The Judge applied the wrong test as to whether the Appellant was at risk of persecution describing it as 'an enhanced risk'.

- (e) The Judge has failed to properly assess by reference to the objective evidence whether being a teacher of Islamic studies would put the App at risk on return.
  - (f) The Judge's assessment under Article 8 was flawed as she had a number of family members in the UK.
8. An application for permission to appeal was initially refused. The application was renewed and on 7 September 2015 Upper Tribunal Judge Kopieczek gave permission to appeal stating:
- "I consider it arguable that there was procedural unfairness in the First-tier judge having refused to allow evidence to be admitted where that evidence is said to be relevant to apparent inconsistencies in the evidence. However, the appellant's representatives will have to establish the existence of any such witness statement, explain the late application to admit it, and explain how its admission could have affected the outcome of the appeal."
9. There was a Rule 24 response by the Respondent in which they argued that it was a matter for the Appellant to adduce the evidence on which they intended to rely prior to the date of hearing. The statement of the Appellant's father would have been unchallengeable given his inability to attend court and thus they would have been of no value.

### Submissions

10. At the hearing I heard submissions from Mr Singh on behalf of the Appellant after reminding him that he should ensure to address those issues raised by Upper Tribunal Judge Kopieczek in the grant of permission. Mr Singh's submissions can be summarised as follows:
- (a) He had an undated statement from Ms Angeli the Solicitor who appeared before the First-tier Tribunal.
  - (b) He conceded that the father's witness statement was not in this Appellant's appeal bundle.
  - (c) He asserted that the father's witness statement had been submitted as part of the father's appeal but accepted that the two cases had not been linked.
  - (d) He accepted that the application to admit the father's evidence was made after Ms Angeli had made her final submissions. He accepted that he had no good reason to offer as to why she only made the application at the end of the hearing.
  - (e) He submitted that nevertheless should the Judge have admitted the statement as it was relevant to the facts in issue and offered explanations for the inconsistencies in that the father stated he may have been confused and his memory let him down. The father had not been physically present at the incident in March 2013 he was merely recalling what he thought his daughter had told him. The daughter gave the same explanation in her witness statement that her father was old, ill and not physically present when these events occurred.
  - (f) The Respondent in the Rule 24 response had relied on the inconsistencies between the Appellant and her father while stating that the father's ill health made his evidence unchallengeable.

- (g) The Judge should have admitted the father's statement as there was every chance that the tribunal would have found that because the father was old and frail that no weight should be placed on the inconsistencies which may have led to a different outcome as to credibility.

11. On behalf of the Respondent Mr Angeli submitted that :

- (a) He relied on the Rule 24 notice.
- (b) The legal Representatives were aware that the refusal letter alleged inconsistencies between the account of the Appellant and her father.
- (c) The Judge rejected the Appellant's account of the incident of March 2013 and gave reasons for doing so.
- (d) The Appellant's father now said that he may have misstated what the Appellant told him but such a claim could not be challenged as he was unfit to attend court.

12. In reply Mr Singh on behalf of the Appellant submitted:

- (a) The Solicitors did know the basis of the Respondents challenges but the duty of the court was not to penalise the representatives. There would have been no prejudice in admitting the statement.
- (b) The core of the Respondents case was the inconsistencies between the account given by the Appellant and that given by her father.

## **The Law**

13. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

14. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigration Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence that was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration judge concludes that the story told is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration. In Mibanga v SSHD [2005] EWCA Civ 367 Buxton LJ said this in relation to challenging such findings:

"Where, as in this case, complaint is made of the reasoning of an adjudicator in respect of a question of fact (that is to say credibility), particular care is necessary

to ensure that the criticism is as to the fundamental approach of the adjudicator, and does not merely reflect a feeling on the part of the appellate tribunal that it might itself have taken a different view of the matter from that that appealed to the adjudicator.”

### **Finding on Material Error**

15. Having heard those submissions, I reached the conclusion that the Tribunal made no material errors of law.
16. Although the grounds raise other issues the permission granted by Upper Tribunal Judge Kopieczek relates only to procedural unfairness. I have considered whether the refusal to allow the Appellant’s representative to adduce a witness statement from her father at the point of her final submissions at 3pm on the appeal hearing day amounted to procedural unfairness and I am satisfied that it did not. The refusal letter was explicit in challenging the Appellant’s credibility and while it gave a number of reasons for doing so the principal one was the inconsistencies between the account of the Appellant and her father as to key events. It was these inconsistencies that the witness statement addressed.
17. The hearing in this case was 19 June 2015 but well in advance of the hearing on 17 February 2015 the parties including the Appellant’s representatives Duncan Lewis were sent the standard directions requiring them to provide witness statements on which they intended to rely 5 days prior to the hearing.
18. Mr Singh conceded that no witness statement by the father was included in the Appellant’s appeal bundle produced by the representatives in support of her appeal hearing as required by the directions. At the hearing it is argued that the Appellants representative Ms Angeli in her closing submissions sought to admit the appeal bundle of the Appellants father which she asserts in her undated witness statement included a witness statement from the Appellant’s father. There is now on file a copy of the father’s statement dated 8 May 2015 it is under cover of a fax sent by the solicitors dated 29 September 2015 and is headed with the reference numbers for his own and his wife’s appeal so it is clear that he never provided a witness statement for this Appellant’s appeal as the Judge asserts at [53].
19. Given that the inconsistencies formed a large part of the basis of the adverse credibility findings the Appellant and her representatives were therefore on notice of the issues in the case and if they wished to adduce a statement from the Appellant’s father in her appeal they had clearly been given the opportunity to do so. Mr Singh conceded that he had no explanation as to why it was only at the point of final submissions that such an application was made. I am satisfied that they were not unfairly deprived of the reasonable opportunity to call what evidence they chose but simply failed to do so in good time before the hearing or indeed on the date of the hearing.
20. I have considered the arguments as to what material impact the statement would have made even if admitted and I am satisfied that it would have made no material difference to the outcome of the case. I note of course that the Appellant’s father’s evidence would have been untested as he was unfit to travel to court. The Appellant in her own witness statement and oral evidence suggested, as he did in his

statement, that her father's account differed from hers because of his old age and poor health and because she did not tell him everything that happened and this was referred to by the Judge at [17], [18] [37] and [53] of the decision.

21. The father himself is equivocal in his witness statement saying in paragraph [2] 'She described to me what happened to her but bearing in mind my old age and my poor health *it is possible* that she has not told me about all the horrors what she has seen and gone through in order to spare me and not to put me under stress as I have ischaemic heart disease and every little stress can affect my health condition.' I note that while the medical evidence the Judge agreed to admit confirms that the father suffered from heart disease there is nothing to suggest that he suffered from memory problems as he asserts because of the medication he was taking or because of old age which would account either for any alleged problems in his own interview or in relation to his recall of what his daughter had told him.
22. I am also satisfied that these inconsistencies were not the only matters that the Judge found undermined the Appellant's credibility: the Judge found the Appellant's own evidence about what happened on 20 March 2013 was inconsistent as between her asylum interview and her oral evidence [50] ; she found that the Appellant's own evidence as to the consequences of the incident of 20 March 2013 [52]; she found that there was an inconsistency in her visa application as to her occupation [52] ; finally she found that there was no reasonable explanation for the delay in the Appellant making a claim for asylum.
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 and that the decision to refuse to admit the Appellant's father's witness statement was not procedurally unfair as they had been given a fair opportunity to present all the evidence on which they intended to rely but even had it been admitted it would have made no material difference to the outcome of the decision. .

## 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 4.1.2016

Deputy Upper Tribunal Judge Birrell