



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/09310/2014

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly
On 5 April 2016

Decision & Reasons Promulgated
On 12 May 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

VICTORIA JOHNSON
(ANONYMITY NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Johnrose

For the Respondent: Mr Harrison

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. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.

3. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Thornton promulgated on 20 March 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

4. The Appellant was born on 13 February 1976 and is a national of Russia.
5. On 29 February 2012 the Appellant and her two children were issued with family visit visas valid until 29 August 2012 and then further visas on 26 April 2013 valid until 26 October 2013. Visits to the UK took place.
6. On 15 May 2013 they arrived in the UK and although her husband had a visa he did not travel with them. The Appellant gave birth to a third child on 1 July 2013.
7. On 24 October 2013 the Appellant applied for asylum with her three children as dependents in essence because the Appellant claimed that her and her children were at risk of violence from her husband.
8. On 25 September 2014 the Secretary of State refused the Appellant's application as he claims in relation to her husband were not accepted.

The Judge's Decision

9. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Thornton ("the Judge") dismissed the appeal against the Respondent's decision. The Judge heard oral evidence from the Appellant and her sister and also had a bundle of documents before him which he indicated he took into account. The Judge found :
 - (a) That the Appellant and her sister were not credible witnesses.
 - (b) He found her claims to be inconsistent with her immigration history of repeated visits to the UK.
 - (c) He did not find her claim that her husband threatened to sacrifice their third child to Satan was credible given that he agreed to her traveling to the UK when pregnant without him.
 - (d) It was not credible that she would leave her daughter with her husband when she came to the UK on her first trip given her claims of his violence towards them and her claim that associates of his had attempted to rape her.
 - (e) He did not find it credible that the Appellant would take her daughter back to Russia in order for her to finish her school year was credible given her claims that she was at risk of violence and rape.
 - (f) He found her failure to claim asylum until her fourth visit to the UK under mined her credibility.
 - (g) He also found a number of aspects of her evidence generally to be incredible and set those out at paragraph 23(i)-(iii)
 - (h) He found inconsistencies in the Appellants sisters evidence and set those out at 24(i)-(iii)

- (i) He found that the Appellant and her sister gave inconsistent evidence of messages from the Appellants husband and set those inconsistencies out in detail
 - (j) He placed no weight on the letter purportedly from the Appellants neighbour advanced in support of the alleged rape of her daughter as it was vague and made no mention of rape but it was also written in English and was unsigned.
 - (k) The medical evidence did not support her claim.
 - (l) He found that her whole account had been fabricated to support and asylum claim.
10. Grounds of appeal were lodged arguing that:
- (a) The Judge had failed to make findings on material evidence, that of her daughter.
 - (b) The Judge failed to make a finding as to why the Appellant had changed her name and that of her children.
 - (c) The Judge applied the wrong standard of proof in using the term incredible.
11. On 15 April 2015 First-tier Tribunal Judge Cadwallader gave permission to appeal in respect of the first two grounds.
12. There is a Rule 24 response in which the Respondent argues that it is unclear how a finding in relation to the name change could have impacted on the Judge's decision and that the Judge gave sustainable reasons why he found the Appellants account lacking in credibility.
13. At the hearing I heard submissions from Mrs Johnrose on behalf of the Appellant that:
- (a) She acknowledged that there was an issue of whether the failures highlighted in the grounds were material to the outcome given the other credibility findings.
 - (b) The daughter's evidence was compelling: it was true that she did not give oral evidence but this was because the solicitors felt that she was unable to give oral evidence. Taking into account the daughter's evidence may have had an impact on her assessment of the Appellants evidence.
 - (c) In relation to the Appellants name change the Judge did not consider the relevance of the Appellant having taken the drastic step of changing her name because she was so frightened of her husband finding her.
14. On behalf of the Respondent Mr Harrison submitted that :
- (a) He relied on the Rule 24 notice.
 - (b) The Appellant provided a 15 page witness statement which contained great detail about what she alleged had happened to her and her children during the marriage.
 - (c) The daughter's witness statement was less than ½ page long and addressed her feelings rather than facts and it took the Appellants case no further.

- (d) The Appellant may well have told her daughter what she claimed had happened: without the opportunity to cross examine the daughter it was not possible to say whether her account was first or second hand.
- (e) The change of name also takes the case no further.
- (f) The Judge found a wealth of the evidence before him not to be credible.

The Law

- 15. 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.
- 16. 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 Immigrations 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..
- 17. 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

- 18. Having heard those submissions, I reached the conclusion that the Tribunal made no material errors of law.
- 19. It is argued that the Judge failed to take into account the evidence given by the Appellants daughter in refusing the appeal against a refusal of asylum. This raises two issues: did the Judge fail to take the evidence into account and would that evidence have made a material difference to his decision.
- 20. In what is a very detailed and carefully written decision the Judge stated at paragraph 7 that he took into account the Appellants indexed and paginated bundle and properly stated that he was not required to set out its contents. I see no reason why I should accept that he did not take into account the daughters letter which formed part of that bundle. Even if I am wrong about that I am satisfied that the daughters evidence would have made no difference to the outcome of the case because it did

not address any of the specific facts in issue in the case. It was as Mr Harrison noted barely ½ page long; she spoke in very vague terms about ‘horrible people’ who wanted to kill her family. It did not identify her father as one of these horrible people who was treating her or her brother or mother badly. It did not refer to the alleged rape against her or any mistreatment of her brother or anything that could have supported her mothers account. While it was suggested before me that the solicitors had decided that the daughter should not give evidence for medical/psychological reasons there was no evidence of that before the Judge. Her account therefore, such as it was, was untested and therefore taking all of these factors into account and particularly given the numerous adverse credibility findings which I have set out at 9(a)-(l) the Judge would have been entitled to attach little weight to that evidence.

21. In relation to the Judge making no specific finding about the Appellant having changed her name and that of her children I am satisfied that the Judge is not required to make a finding on every issue in the case unless it was one of significance. I am satisfied that a change of name, which was arguably a self serving action, was not a matter of significance in this case given the overall core of her claim. Even if I were wrong about this I am satisfied that in the light of the wealth of other adverse credibility findings that no finding in relation to this issue would have changed the outcome of the case.
22. 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

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

DECISION

24. **The appeal is dismissed.**

Signed

Date 9.5.2016

Deputy Upper Tribunal Judge Birrell