Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/10320/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13th July 2016	**On 27th July 2016**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

F R
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Nicholson, instructed by Lambeth Law Centre
For the Respondent: Miss Z Ahmad, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iran who was born in 1994. Her appeal against the Respondent's decision to remove her from the UK on asylum, humanitarian protection and human rights grounds was dismissed by First-tier Tribunal Judge C M Phillips in a decision promulgated on 29th April 2016.

2. The Appellant appealed on the grounds that the judge had made a material mistake of fact, had failed to put material matters to the Appellant and had misdirected herself as to the standard of proof and

misapplied HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31.

3. Permission to appeal was granted by First-tier Tribunal Judge Haynes on 25th May 2016 on the grounds that it was arguable the judge had misunderstood the evidence as to whether the Appellant and her uncle lived in the same street and it was also arguable that the reference to evidence not being convincing may indicate that the judge was applying the wrong standard of proof.

4. Having read Mr Nicholson's extensive grounds, I invited Miss Ahmad for the Respondent to deal, in particular, with the mistake of fact and the standard of proof. Miss Ahmad submitted that although the judge had stated in the decision that the Appellant's evidence was unconvincing, she had also referred on numerous occasions to the lower standard of proof. The judge had used the word unconvincing in the context that she did not accept the evidence as credible. The judge was well aware of the standard of proof and had applied the correct standard to the evidence that was before her. The judge's mistake of fact was not material because the judge had given several other reasons for why she did not find the Appellant's account to be credible.

5. Miss Ahmad relied on paragraph 5 of Secretary of State for the Home Department v Maheswaran [2002] EWCA Civ 173 which states:

> "Where much depends on the credibility of a party and when that party makes several inconsistent statements which are before the decision maker that party manifestly has a forensic problem. Some will choose to confront the inconsistencies straight on and make evidential or forensic submissions on them. Others will hope that the least said soonest mended and consider that forensic concentration on the point will only make matters worse and that it would be better to try and switch the Tribunal's attention to some other aspects of the case. Undoubtedly it is open to the Tribunal expressly to put a particular inconsistency to a witness because it considers that the witness may not be alerted to the point or because it fears that it may have perceived something as inconsistent with an earlier answer which in truth is not inconsistent. Fairness means some circumstances require this to be done but this will not be the usual case. Usually the Tribunal particularly if a party is represented will remain silent and see how the case unfolds."

6. The fact that the judge had not put any of the points on which she made adverse credibility findings to the Appellant at the hearing did not amount to an error of law. Further, the judge had given lengthy and sufficient reasons as to why she did not find the Appellant's evidence to be credible. Accordingly, there was no materiality in the judge's mistake of fact.

7. Miss Ahmad submitted that the issue was whether the other findings were sufficient to sustain the decision or whether a different conclusion could have been reached notwithstanding these findings. It was the Appellant's

own evidence that she was not opposed to the marriage and therefore the judge's overall finding was not affected by the errors of law identified in the grounds.

8. Mr Nicholson submitted that whilst the judge had set out her reasons at length there were in fact very few reasons and the judge had actually referred to and relied on the error of fact at paragraphs 57, 59 and 86 of the decision. The judge had got one of the core facts wrong and had repeatedly held it against the Appellant throughout her reasoning. This was compounded by the judge's reference in three paragraphs of the decision to the fact that she found the oral evidence of the Appellant or her mother to be unconvincing. Whilst the judge had referred to the correct standard of proof, in other paragraphs of her decision, it would appear that in assessing the oral evidence the judge had applied a higher standard of proof.

Discussion and Conclusions

9. I find that the First-tier Tribunal Judge erred in law in applying a higher standard of proof in relation to the oral evidence of the Appellant and her mother. The judge found at paragraph 44 that "the Appellant in oral evidence did not provide any convincing evidence of any opposition to the wedding".

10. At paragraph 78, the judge stated:

> "I find unconvincing the evidence that the Family Attorney was not instructed to safeguard the interests of the family on receipt of the summons. I find unconvincing the oral evidence of the Appellant's mother giving as a reason for this omission the fact that the Appellant was not in Iran and the Appellant's mother wished to bring the summons to the UK to show this to the Appellant."

11. And at paragraph 80, she stated:

> "The Appellant has been unable to provide convincing evidence of the reason for the summons because at the asylum interview the Appellant was unable to give a reason for her summons stating that because she was not in Iran she does not know what the reasons for them are."

12. Whilst the judge has referred to the correct lower standard of proof at other parts of her decision it would appear that, when she assessing the oral evidence and the Appellant's explanation for the summons, she applied a higher standard than a reasonable degree of likelihood. With several findings such as these it cannot be assumed that the judge would have come to the same conclusion had she applied the lower standard to the entirety of the evidence which was before her, including the oral evidence.

13. I also find that the judge made a material mistake of fact amounting to an error of law for the following reasons. The judge concluded at paragraph 57:

> "The fact that the Appellant was able to undertake these journeys to Turkey with her mother when according to her first witness statement they were living in the same street as her uncle undermines her claim to be at real risk on return because despite the death of her father and the proximity to her uncle the Appellant plainly had, prior to travel to the United Kingdom, enjoyed freedom of movement and the freedom to travel outside Iran and return."

14. In the Appellant's witness statement it quite clearly states that, whilst at one time the Appellant did live on the same street as her uncle, she did not at the time that she made her application for a visa and she was not living on the same street as her uncle when she came to the UK. The judge's conclusion is based on a mistake of fact.

15. This error is material because it affects the judge's credibility findings in respect of the whole of the Appellant's evidence. At paragraphs 59 and 86, the judge relies on inconsistencies in the evidence based on the fact that the Appellant and her uncle lived in the same road. The judge relies on the same mistake of fact on three occasions throughout the decision. It cannot be said that this mistake of fact was not relevant given the judge's other findings because it quite clearly is part for the judge's conclusion as to the credibility of the Appellant on the whole of the evidence.

16. Given these two errors of law, I find that the judge's credibility findings are unsafe. I have decided, in accordance with paragraph 7.2 of the Practice Statements of 25th September 2012, that the decision dated 15th April 2016 and promulgated on 29th April 2016 should be set aside and the appeal remitted to the First-tier Tribunal for a complete rehearing. None of the judge's findings of fact are preserved.

DIRECTIONS

(i) The Tribunal is directed pursuant to section 12(3) of the Tribunals, Courts and Enforcement Act 2007 to reconsider the appeal at a hearing before a First-tier Tribunal Judge other than First-tier Tribunal Judge C M Phillips.

(ii) I direct that the Appellant serve on the Respondent and the Tribunal not less than 14 days before the hearing any further evidence upon which she intends to rely.

(iii) No interpreter is required. Time estimate of three hours.

Notice of Decision

Appeal allowed and remitted to the First-tier Tribunal.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

J Frances

Upper Tribunal Judge Frances Date: 26th July 2016

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

J Frances

Upper Tribunal Judge Frances Date: 26th July 2016