



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/14200/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Liverpool

On 28th September 2017

**Decision & Reasons
Promulgated**

On 16th October 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MISS P U H
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Sadiq, Solicitor

For the Respondent: Mr G Harrison, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iraq born on 26th October 1990. The Appellant claimed asylum based on a purported fear that if she were to return to Iraq she would be killed by her brothers because she refused to marry her cousin and because of her relationship with her boyfriend. That application was refused by Notice of Refusal dated 13th December 2016.
2. The Appellant appealed and the appeal came before Judge the First-tier Tribunal McCall sitting at Manchester on 30th January 2017. In a decision

and reasons promulgated on 13th February 2017 the Appellant's appeal was dismissed on all grounds.

3. On 27th February 2017 Grounds of Appeal were lodged to the Upper Tribunal. On 8th June 2017 Designated First-tier Tribunal Judge McCarthy granted permission to appeal. Judge McCarthy noted that the Grounds of Appeal argued that the judge had erred in his assessment of the Appellant's credibility by failing to have regard to the consistency of her evidence and by failing to have proper regard to other sources of evidence. He considered that there was merit in the grounds and that the judge had made findings that the Appellant's account did not appear to be plausible but had failed to provide the evidential basis upon which he made that assessment. In addition he noted that the judge appeared to expect the Appellant to corroborate her account by obtaining other evidence whilst not considering all the evidence provided. Overall he found the findings appeared disjointed and one sided and did not reflect the assessment that is required under paragraph 339L of the Immigration Rules. This apparent failure by the judge to give cogent reasons for his negative credibility findings meant that he considered there was an arguable error of law and for that reason permission to appeal was granted.
4. On 27th June 2017 the Secretary of State responded to the Grounds of Appeal. The Rule 24 response is not a matter for due consideration bearing in mind it acknowledges that because there are no papers before the author of the Rule 24 response she is not in a position to make any conclusions one way or the other.
5. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by her instructed solicitor Mr Sadiq. The Respondent appears by her Home Office Presenting Officer Mr Harrison. I note that the First-tier Tribunal Judge granted an anonymity direction in this matter. No application is made to vary that order and consequently none is made and the anonymity direction will remain in place.

Submissions/Discussion

6. I am considerably assisted in this matter by the intervention of Mr Harrison who concedes that there are elements within the determination which make the grant of permission understandable in particular the apparent requirement/weight to be given to the Appellant not obtaining documents by the judge and the failure for the judge to give reasons for this. He further indicates that there are material errors of fact and gives as an example a finding at paragraph 24 of the decision where the judge has stated that the Appellant would be returned back to the IKR. He emphasises that that is not the position and that whilst in fact there are no returns at all being made at present return would not be to the IKR but would be to Baghdad. He indicates on the Secretary of State's behalf that he is prepared to accept that there are material errors of law in the

decision and that the correct approach is to remit the matter back to the First-tier Tribunal for rehearing afresh.

7. In such circumstances Mr Sadiq acknowledges that all he wishes to do is to rely on the Grounds of Appeal and to endorse the view expressed by Mr Harrison.

The Law

8. Areas 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 fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
9. 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 of argument. Disagreement with an Immigration Judge's factual conclusion, 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 which 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 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.

Findings on Error of Law

10. I too have had the opportunity to give due and proper consideration to the decision of the First-tier Tribunal Judge who is an extremely experienced Tribunal Judge. However I do agree in this matter that there are flaws in the judge's approach to credibility and that the First-tier Tribunal Judge has failed to take into account the credit in terms of a balanced approach towards the evidence as to factors that are positive in respect of the Appellant's credibility. That would include the failure of the Appellant to obtain documents and the failure of the judge to give reasons for his decision to weigh in the balance consistent and cogent evidence.
11. A proper approach to credibility requires an assessment of the evidencing of the general claim. In asylum claims, relevant factors are firstly the internal consistency of the claim, secondly the inherent implausibility of the claim and thirdly the consistency of the claim with external factors of the sort typically found in country guidance. It is I accept theoretically correct that a Claimant need do no more than state his claim but that claim still needs to be examined for consistent and inherent plausibility. In

nearly every case external information against which the claim could be checked will be available. That seems to be the fact in this matter but unfortunately the judge fails to have applied this approach in making his assessment on credibility. In all the circumstances I therefore find that there are material errors of law in the decision of the First-tier Tribunal Judge. Directions are set out below.

Decision and Directions

- (1) The decision of the First-tier Tribunal Judge discloses a material error of law and is set aside.
- (2) None of the findings of fact are to stand and the matter is remitted to the First-tier Tribunal sitting at Manchester to be reheard before any First-tier Immigration Judge other than Immigration Judge McCall on the first available date 42 days hence with an ELH of 3 hours.
- (3) There be leave to either party to serve and file such further additional subjective and/or objective evidence upon which they seek to rely within 28 days of the date of this decision.
- (4) The Appellant do personally attend the restored hearing.
- (5) That a Kurdish Sorani interpreter do attend the remitted hearing.

Anonymity

The First-tier Tribunal Judge granted the Appellant anonymity. No application is made to vary that order and the anonymity direction remains in place.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT FEE AWARD

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris