



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01564/2018

THE IMMIGRATION ACTS

Heard at Field House
On 18 October 2018

Determination Promulgated
On 19 November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY

Between

MS MARYAM GHAFARI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Gayle, Elder Rahimi Solicitors, London
For the Respondent: Mr Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iran born on 22 November 1979. She appealed the Entry Clearance Officer's decision of 19 January 2018 refusing her asylum, humanitarian protection and refusing her claim on human rights grounds. Her appeal was heard by Judge of the First-tier Tribunal Devittie on 12 April 2018 and was dismissed on all grounds in a decision promulgated on 23 May 2018.
2. An application for permission to appeal was lodged and permission was granted by Upper Tribunal Judge Chalkley on 6 August 2018. The permission states that the Judge finds some of the appellant's account to be implausible and some of it not to ring true. The permission states that some of these matters appear to be quite logical and believable. The permission also states that it appears that the Judge may well have failed to have regard to the witness statement of the appellant because the

appellant makes it clear in this that she thought her husband would follow her and the children to the United Kingdom. The Judge also refers to the appellant converting to Christianity instead of to the Bahai faith more than once in the decision.

The Hearing

3. The appellant's representative submitted that he is relying on the grounds of application for permission and he submitted that the Judge has missed tranches of evidence which makes his decision unsound.
4. I was referred to paragraph 8.1 of the decision and the representative submitted that when the appellant said, relating to her religious conversion, that her husband had said she should exercise care, for the Judge to say that does not ring true having regard to what is known about of the fate of those who abandon Islam, is perverse, as the appellant's husband is an atheist which is also a crime in Iran. He submitted that the appellant's evidence is that her husband supported her as long as she was careful and this is perfectly plausible. He submitted that any reference to Christianity in the decision is merely a typing error.
5. I was then referred to paragraph 8.2 of the decision in which the Judge states that it is not plausible that the appellant's husband was not involved in the appellant's decision to flee. He submitted that due to the circumstances it is understandable why the appellant's husband took no part in the decision of the appellant to take flight with her children. He submitted that when she decided to flee her husband had been playing football and had then been detained and that rather than go into hiding the appellant had decided to flee. He submitted that the appellant gave much detail about this which the Judge did not consider.
6. With regard to 8.3 of the decision the Judge states that the appellant's evidence that the appellant's friend Elana had no knowledge about what had happened to 15 people who had escaped on the day the house was raided is indicative of her account being contrived. He submitted that the Judge was not entitled to reach this conclusion.
7. In 8.4 of the decision the Judge refers to the appellant's tutor and mentor taking the stand and not knowing the circumstances that had caused the appellant to flee Iran. The Judge found that if the appellant's story is true she would not have failed to discuss this with her mentor in the Bahai faith. He submitted that this finding of the Judge is unsustainable.
8. At 8.5 he submitted that the Judge has failed to realise that the appellant's husband was detained when she decided to flee.
9. The representative submitted that the Judge has ignored compelling evidence about the genuineness of the appellant's conversion to the Bahai faith. I was asked to note the appellant's evidence and the Dorodian witness and he submitted that the Judge

had no reason for rejecting the evidence which was before him. He submitted that the decision should be set aside and the appeal remitted to the First-Tier Tribunal.

10. The Presenting Officer submitted that he is not going to defend the indefensible and there is force in the representative's submissions. He submitted that the decision is unsafe and he agrees that it should be set aside and remitted to the First-Tier Tribunal.
11. The Judge has failed to consider parts of the evidence before him and has found evidence to be implausible without giving proper reasons for this and seems to have confused some of the facts.
12. As a result, the Judge has misdirected himself in law and this is a material error of law.

Notice of Decision

As I find that there is a material error of law in the Judge's decision I direct that the decision of the First-Tier Tribunal is set aside. None of its findings are to stand other than as a record of what was said on that occasion. It is appropriate in terms of Section 12(2)(b)(i) of the 2007 Act and Practice Statement 7.2 to remit the case to the First-Tier Tribunal for an entirely fresh hearing.

The members of the First-Tier Tribunal chosen to consider the case are not to include Judge of the First-tier Tribunal Devittie.

Anonymity has not been directed.



Signed

Date 13 November 2018

Deputy Upper Tribunal Judge I A M Murray