



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/04664/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Manchester CJC

Decision &

Reasons

On 10 April 2018

Promulgated

On 13 April 2018

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

NM

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Sadiq, Adam Solicitors

For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

1. The appellant, a citizen of Iran, has appealed against a decision of First-tier Tribunal Judge Holt dated 6 July 2017, in which she dismissed

the appellant's appeal against a decision dated 3 May 2017 to refuse her international protection claim.

Summary of claim

2. The appellant claims that she has a well-founded fear of persecution in Iran because she re-commenced a sexual relationship with her ex-husband ('the first husband') after marrying her second husband, and was caught by her second husband having sexual relations with her first husband. At the hearing before the First-tier Tribunal the appellant also relied for the first time, upon her conversion to Christianity.

Appeal proceedings

3. In a carefully drafted decision, the First-tier Tribunal disbelieved the appellant's evidence and dismissed the appeal.
4. In succinct but wide-ranging grounds of appeal the appellant appealed against the decision of the First-tier Tribunal. When granting permission to appeal in a decision dated 17 October 2017, Deputy Upper Tribunal Judge Chapman observed that the First-tier Tribunal gave detailed reasons for rejecting the credibility of the appellant's account of why she left Iran and as to her alleged conversion to Christianity but nevertheless found that the grounds raised arguable errors of law.

Hearing

5. At the hearing before me Mr Sadiq relied upon the grounds of appeal and did so under two headings consistent with the two limbs of the appellant's asylum claim: conversion to Christianity and adultery. As to the conversion limb, Mr Sadiq argued that the reasons for not accepting Reverend Green's reasoning at [31] were inadequate and infected by errors of fact. Mr Sadiq also invited me to find that the First-tier Tribunal was wrong to draw adverse inferences from the appellant requesting a toilet break during cross-examination and in failing to expressly acknowledge the inconsistencies within her account.
6. Mr Bates relied upon a rule 24 notice dated 24 November 2017. He asked me to find that the factual findings were entirely open to the First-tier Tribunal and the recording of the steps taken by the judge when the appellant sought a toilet break, was precisely that - a summary of the record of proceedings at that juncture for completeness - and did not play a material role in her findings of fact.
7. After hearing from both representatives, I reserved my decision, which I now provide with reasons.

Error of law discussion

8. Although Mr Sadiq focused on the matters I have set out above, I shall consider each ground of appeal before me. The written grounds of appeal are regrettably not numbered. I have however addressed each ground in turn below.

Toilet break

9. Mr Sadiq submitted that the First-tier Tribunal erred in drawing adverse findings from the appellant going to the toilet during the course of cross-examination. This ground is misconceived. Although the First-tier Tribunal recorded under the sub-heading "*Preliminary matters*" at [5], "*for completeness*", that "*the appellant asked for a comfort break in the middle of her evidence when she was being pressed in cross-examination*", this did not form any part of the reasons provided for drawing adverse inferences. There is no reference to this whatsoever in the section dealing with credibility, under the sub-heading "*Asylum claim and credibility*" from [18] onwards.
10. When the decision is read as a whole, the First-tier Tribunal Judge has simply recorded the steps that she took to enable the appellant to have a toilet break, but in circumstances in which the appellant would not have obtained any unfair advantage. This was recorded for completeness and not as an additional reason for disbelieving the appellant's account.
11. Mr Sadiq submitted that adverse inferences should not be drawn from a witness seeking a toilet break during the course of extensive cross-examination. In principle that is not a controversial proposition. Mr Sadiq accepted that it is appropriate for a judge to take certain precautionary measures when a toilet break is sought during the course of cross-examination, but submitted that the judge should not on this occasion have assumed bad faith on the part of the appellant. Whilst the judge has recorded her concern about the appellant's demeanour and motivation in requesting a toilet break, when setting out what took place at the hearing, when the decision is read as a whole there has been no assumption of bad faith and adverse inferences have not been drawn from the appellant's break.

Positive case

12. The grounds criticise the First-tier Tribunal for failing to consider the positive aspects and consistencies in the appellant's evidence. The First-tier Tribunal has taken all relevant evidence into account having properly directed itself to the lower standard of proof at [7] and [18]. There is no cogent basis to support the assertion that the First-tier Tribunal did not have in mind the consistencies in the appellant's evidence.

Plausibility / adultery

13. The grounds criticise the First-tier Tribunal for regarding aspects of the appellant's evidence to be incredible, without considering the lengths that people go to when they consider their life to be in danger.
14. The First-tier Tribunal was entitled to be concerned about the credibility of the appellant risking being found with her first husband at a restaurant near to her home at [23] and at home at [24]. These events did not involve a life or death choice. Rather, the First-tier Tribunal has found the appellant's claim to have put herself at risk in the circumstances claimed to be incredible, particularly given the consequences of adultery in Iran. As Mr Bates emphasised during the course of his submissions, these findings were entirely open to the First-tier Tribunal, given the context of Iran. The First-tier Tribunal was entitled to find that given the dire consequences that flow from adultery in Iran, she was not satisfied that the appellant would take the risks she did in the manner claimed.
15. Having made those findings, the First-tier Tribunal was entitled to doubt the process by which the appellant was able to escape having been caught in the sexual act of committing adultery, for the reasons provided at [25 and 26].

Delay in raising conversion

16. The grounds allege that the First-tier Tribunal failed to consider the appellant's evidence that she did not raise her conversion earlier because she was unaware that it was relevant until she obtained legal advice. This ground wholly fails to address the First-tier Tribunal's detailed consideration of the appellant's explanation for not raising her conversion until the day of the hearing at [30]. The First-tier Tribunal was entitled to be concerned about the nature and extent of delay.

Reverend Green's evidence

17. The submission in the grounds of appeal that the First-tier Tribunal failed to adequately take into account the oral evidence provided by Reverend Sam Green fails to acknowledge the summary of his evidence at [28] and [31]. The First-tier Tribunal was entitled to attach little weight to his evidence for the reasons provided at [31]. In short, the First-tier Tribunal based her assessment of the genuineness of the claimed conversion on a wider range of information, unavailable to Reverend Green. When assessing the genuineness of the appellant's conversion, the First-tier Tribunal was entitled to consider all the evidence in the round. I do not accept that the First-tier Tribunal disbelieved the genuineness of conversion, because she disbelieved other aspects. All evidence was considered in the round, including the evidence provided by Reverend Green.

18. Mr Sadiq submitted that the First-tier Tribunal erred in fact in finding that Reverend Green knew the appellant for three months at most. He relied upon a letter dated 15 June 2017 from the Reverend submitted on the day of the hearing. The First-tier Tribunal referred to this letter in some detail at [28]. This indicated that the appellant began attending St Thomas Church in December 2016. Mr Sadiq acknowledged that the letter does not specifically set out when Reverend Green got to know the appellant. Indeed, the letter itself details two examples in around Easter 2017. I do not accept that the appellant has demonstrated by reference to evidence that Reverend Green knew her from the first time she attended his Church.

Decision

24. The decision of the First-tier Tribunal did not involve the making of a material error of law and I do not set it aside.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
10 April 2018