



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/07257/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 2nd October 2018**

**Decision & Reasons
Promulgated
On 25th October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

**FK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss A Radford, Counsel; instructed by Elder Rahimi Solicitors

For the Respondent: Mr C Avery, Senior Presenting Officer

DECISION AND REASONS

The Appellant appeals against the decision of First-tier Tribunal Judge Grimmett promulgated on 18th July 2018 dismissing her appeal on the basis of her asylum and human rights claims. The Appellant appealed against that decision and was granted permission to appeal by First-tier Tribunal Judge Beach in the following terms:

- “2. The grounds assert that the First-tier Tribunal Judge failed to make clear and properly reasoned findings on material issues. The grounds state that the First-tier Tribunal Judge has

misunderstood the Appellant's evidence and that she had relied on inconsistencies which did not exist. The grounds further state that the First-tier Tribunal Judge did not seek to clarify an issue with regard to the gender of the person who gave the books to the Appellant and that had she done so the Farsi interpreter would have been able to explain that the third person singular 'ou' is gender free.

3. The First-tier Tribunal Judge outlines a number of inconsistencies in her findings. Some of these remain despite the Appellant's explanations within the grounds of appeal. However, it is unclear whether some of the inconsistencies were, in fact, inconsistencies. For example, the First-tier Tribunal Judge makes reference to the Appellant stating variously that the person with whom she found the book or who gave her book was male or female. The Appellant states that had the First-tier Tribunal put this issue to her at the hearing it could have been explained that the word being used at the hearing was gender neutral. It is arguable that the point should have been put to the Appellant. The First-tier Tribunal Judge states [9] that the Appellant stated at interview that she did not know how to use the book yet the asylum interview discloses explanations by the Appellant as to how the book was used (Questions 47, 52, 55 of the AIR). It is arguable that this may have affected the First-tier Tribunal Judge's assessment of the Appellant's credibility.
4. Permission to appeal is granted."

I was not provided with a Rule 24 response by the Respondent's representative but was given the indication that the appeal was resisted.

Error of Law

In terms of the Grounds of Appeal, which were not drafted by present Counsel, Miss Radford helpfully crystallised the grounds and quantified them in the following way. Miss Radford characterised the grounds as a challenge to the procedural fairness of the judge's decision combined with inconsistencies in the judge's findings which resulted in material mistakes of fact such that the decision should be set aside. Mr Avery, in fairness, did not seek to persuade me otherwise once he had heard Miss Radford's extensive submissions, which I also accept and will set out briefly within my reasons.

It is fair to note that the decision of the First-tier Tribunal Judge is extremely concise and robust. That in and of itself is not a basis for any error, however, the danger is that it being so concise, it can lead to an inadequacy of reasoning if the reasons are unclear, and in this particular instance it is unfortunate that the decision does not carry a section setting out the history or factual summary of the Appellant's protection claim which would have helped set out the judge's view of the facts and evidence. This does not always need to be done, but in this instance, as it was not, it was left to the parties and myself to decipher the judge's understanding of the evidence she was presented with against the Decision and Reasons which are set out from paragraphs 5 to 9 of the decision and which form the only reasoning given for the refusal of the protection claim,

based primarily upon a finding that the Appellant's account is not to be accepted. Thus, this challenge was brought on the basis that the decision taken by the judge was not open to her to reach based upon a correct understanding of the facts and evidence before the Tribunal.

The first criticism noted of the judge's decision in paragraphs 5 through to 7 is that the judge has conflated the evidence given by the Appellant in interview with that given in her witness statement and oral evidence. The essence of this complaint is that the judge has criticised the Appellant's account as shifting from the alleged black magic or illegal texts being obtained by a third unnamed person - who is said to be male in the asylum interview - but who was then said to be female in the Appellant's witness statement and oral evidence. Miss Radford helpfully produced an excerpt from the University of Texas' Persian Online Resources, which sets out that the Persian language is not as complicated as other languages in that it does not have a gender as might French or Arabic, for example. The excerpts further set out that the pronouns in the Persian language are gender-neutral in that he or she will be pronounced with the sound "u" (oo). With that in mind, the Appellant submits, and I accept, that given that the Appellant in interview specified that she obtained these illegal texts from an unnamed "person", the later references at questions 55 and 62 to that person being a "him" or being a male, cannot have originated from the Appellant as her use of the 'third person' or describing this 'third person' would have been gender-neutral because the Persian language carries a gender-neutral pronoun. Consequently, Miss Radford submitted that the references to "him" must have emanated from the interpreter. Mr Avery did not seek to disagree with this analysis or assessment or the evidence on the Persian language and in my view, looking at the judge's findings, it is plain at paragraphs 5 through to 7 that the judge has placed a great deal of weight upon the shift in the Appellant's account in that the unnamed person whom she names shifted gender, from a man in the asylum interview, to a woman when she appeared before the First-tier Tribunal in her appeal.

The next criticism made (which is one which is repeated in several paragraphs) is that the judge has conflated the source of various information, in other words, the judge has confused evidence that arose from the interview, with evidence that arose from the witness statement. This would not normally be fatal in and of itself, however, the conflation combined with the context in which the judge has deployed it in her findings has led to an implied view that the judge has confused the chronology of the events as they took place in the Appellant's account. For example, in paragraph 6 it is said that the Appellant found the ancient texts herself, whereas in paragraph 7 the judge notes that the witness statement states that she did not find them on her own. Whereas according to the Asylum Interview Record, the Appellant never said that she had found the books by herself and therefore there is no consistency between this perceived account and what was actually said by her in the interview against her witness statement. They were actually consistent with one another.

In terms of paragraph 7 a further factual error arises in that the Appellant did not say at any point that the texts were in Arabic and English alone, whereas

one can see from the Asylum Interview Record that at question 51 she answered that the texts were in Arabic and Abbas. In further contrast, at page C32 of the Respondent's bundle further evidence she previously gave were that the texts were in Hebrew, Arabic and English. Therefore, the assessment of the Appellant's evidence has not been taken in the chronological order in which it developed and it is plain that in the interview the Appellant described the texts as being in Arabic and Abbas and then later clarified they were in Arabic, Hebrew and English and as such, given that the further answers given at Annex C of the Respondent's bundle were given in response to an email from the Secretary of State, it would be improper to not take that evidence into account as being the natural clarification of what was said in her Asylum Interview Record.

Turning to paragraph 8, the judge notes that the Appellant states in her witness statement that she asked a teacher to photocopy the text whereas in her oral evidence she said that she had asked a friend with whom she had originally stolen the book to give her a copy instead. This highlights a further mistake of fact in the judge's decision in that the Appellant's account is that she was given a copy of the extracts from the book ten years ago, whereas the further copies were made by a friend who was a teacher on a much later occasion. Therefore, this is not an inconsistency in respect of the copies originally given to her but a conflation as to whether the copies were originally given by the friend or by a teacher.

Finally, turning to paragraph 9, it is true that the Appellant said she did not know how to use the books but later discovered how. Questions 52 and 54 of the Asylum Interview Record, however, show that there were drawings in the text which she copied and she was also shown by a third person ("Mr T"), who showed her how to use the easier spells in the text. Thus, it is claimed that the judge has not taken a comprehensive account of her answers and her evidence before assessing whether there were any inconsistencies on this point.

Thus, given the fact that the judge found the appellant to be not credible based upon the "numerous inconsistencies" in paragraphs 5 to 9, which were said to go to the core of her account, and given that Miss Radford has pointed at length to errors in all of those numbered paragraphs, I am *just* persuaded that the decision does contain inconsistencies and mistakes of fact that are material to the judge's assessment such that it should be set aside.

That is not to say that doubts still remain over the Appellant's claim in Mr Avery's view. Although it is not a matter for this Tribunal, Mr Avery did point out that the Appellant's account was that these ancient texts were either found by her, or they were given to her by a friend which requires explanation. Mr Avery was also keen to highlight that at questions 56 and 62 the Appellant gave a different account in that she said that the books were given to her and that she would not reveal the identity of who gave them to her as she was afraid for their safety which again is quite different from her account that she and a friend found them in a shrine. Thus, several inconsistencies do still remain which require explanation upon re-hearing, however, given the material

nature of the inconsistencies in the judge's findings in paragraphs 5 to 9, I see no option but to set aside the decision of the First-tier Tribunal in its entirety.

Notice of Decision

The appeal to the Upper Tribunal is allowed.

The matter is to be remitted to the First-tier Tribunal to be heard by a differently constituted bench.

Before I conclude, I pause to remark that, notwithstanding the above errors that Miss Radford has identified and which took a great deal of time to explain, much of the Appellant's case can be fairly described as confusing at best. As such, it is difficult to not sympathise with the First-tier Tribunal and it having to decipher and piece together the Appellant's account, disjointed as it is. The evidence as presented is unhelpful to the parties and the Tribunal, and in my view, an extremely detailed chronology of events and an extremely detailed witness statement that unifies the Appellant's evidence in totality should be provided to the Tribunal if the Appellant wishes her case to be properly understood upon re-hearing. If this is not done, I could quite understand if such errors arose once more, particularly if counsel is not retained to assist the Tribunal in navigating the minefield of evidence as currently presented.

Directions

The appeal is to be remitted to IAC Birmingham.

A Farsi interpreter is to be provided.

The Appellant is presumed to be the only person who shall give evidence.

The time estimate given is 2-3 hours.

No special directions are given.

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

Date 20 October 2018

Deputy Upper Tribunal Judge Saini