Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10472/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 17 April 2018	**23 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

MISS L R
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr K Behbahani, Solicitor of Behbahani & Co Solicitors
For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant is a citizen of Iran, born on [ ] 1975, who appealed the decision of the respondent, dated 24 October 2017, to refuse the appellant's protection claim. In a Decision and Reasons promulgated on 30 November 2017, Judge of the First-tier Tribunal I Ross dismissed the appellant's appeal.

2. The appellant appeals to the Upper Tribunal. with permission from the Upper Tribunal, on the following grounds: -

Ground 1 – The judge's findings were based on material mistakes of fact, and the judge's own perception rather than actual evidence.

Ground 2 – The judge failed to give the appellant an opportunity to respond in relation to the judge's findings about the circumstances in which she was approached by an Evangelical Christian in Turkey.

Ground 3 – The judge failed to properly consider the appellant's evidence as to her personal interest in discovering about new religions and the judge was incorrect in his findings that the appellant had not provided the description of the contents of the CD. The appellant also gave reasons as to why it was decided it would not be in the children's best interests to enrol at Harrogate School and there was nothing vague in her evidence and there was no indication at [33] as to any consideration of the appellant's explanations as to why she and her husband were scared to engage in detailed communication.

Ground 4 – The judge failed to give adequate reasons for concluding, at [28], that the appellant's evidence regarding her home computer was not true and that there was no reason for her to take the CD back to Iran given that her home computer was not able to play CDs. It was also submitted that there was no reasoning behind the judge's finding that there was no reason why the authorities would not have looked for the appellant before 23 March 2017.

Ground 5 – Reaching findings unsupported by the evidence; the judge made findings in relation to the lack of evidence in relation to her husband's suspension from work and her daughter's expulsion from university, but this was not supported by the evidence and the judge was referred in oral submissions to the background evidence that the Iranian authorities often carry out visits without following official procedures.

Ground 6 – Failure to make any findings in relation to the risk of return based on imputed religious political opinion – judge was asked to consider the risk on return of the appellant as a failed asylum seeker and was referred to the Supreme Court's approach in **RT (Zimbabwe)**.

Ground 7 – Failure to attach proper weight to hearsay evidence – the judge gave little weight to hearsay evidence and had failed to give proper reasons as to why this evidence was unreliable.

The Hearing

3. Mr Behbahani submitted that the judge had made a number of mistakes of fact which were material and that this exhibited a total failure to take into account the evidence in the asylum interview and cast doubt on whether or not anxious scrutiny had been applied, given that there were a number of mistakes. Mr Behbahani submitted that the appellant had explained

what her movements were between 16 March and 23 March 2017, in the screening interview from 3.1 to 3.3, and noted that 4 April was the date of the screening but not the date of the appellant's initial contact to claim asylum. This evidence had to be considered. Mr Behbahani submitted that in light of the asylum interview from questions 89 to 110 in relation to the appellant's actions, the judge erred at [35] of the Decisions and Reasons, including that there was no reason given for the finding that there was no reason why the authorities would not look for the appellant before 23 March. It was further submitted that the judge was relying on his own perception in relation to the lack of documentary evidence about the husband's suspension from work and her daughter's expulsion from university and Mr Behbahani again emphasised the background information as to the arbitrary actions of the Iranian authorities who often do not follow their official procedures, such as they are. It was submitted that the Tribunal's findings did not follow the lower standard of proof. In relation to ground 6 Mr Behbahani submitted that the Tribunal failed to consider in the alternative how the appellant would be considered as a failed asylum seeker.

4. Ms Everett accepted that the appellant made some fair criticism in ground 1, that the judge had substituted his own inference which may be based on conjecture in relation to one or two issues. However, she submitted this was not fatal to the decision. The essence of the appellant's claim was that having spoken to an Evangelist in Turkey she took a CD about Christianity which she smuggled into Iran at great risk to herself and then watched some of it. She submitted that the judge gave cogent reasons why that was not accepted. Mr Behbahani submitted that a person was allowed to be a devout Muslim and still enquire about other religions. However, the Tribunal was being asked to accept that such interest, of a devout Muslim, was enough for the appellant to put herself at great risk by smuggling a CD into Iran which was then barely watched. The Tribunal was entitled not to accept this.

5. Equally, the Tribunal was entitled to look at why the appellant and her children were in the UK at all. Whilst Ms Everett accepted that there might be a lack of written information in relation to the appellant's husband's claimed loss of employment, there was nothing from the schools in the UK which the appellant maintained had been the only reason for coming to the UK (to look at prospective schools). Ms Everett submitted this was a case where any errors made by the judge could be ring-fenced, given the core of the claim which the Tribunal did not accept. In relation to the appellant's risk on return as a failed asylum seeker there was no evidence to suggest a failed asylum seeker is enough to attract attention and it is not contested that the appellant has remained a Muslim and therefore **HJ (Iran) and another v SSHD [2010] UKSC 31** does not bite. In answer to any question the appellant would have to answer "No" that she was not a convert and that would be the end of the enquiry. Therefore any failure to deal with this issue was not determinative.

6. In reply Mr Behbahani submitted that whilst Ms Everett was correct in her interpretation of the summary of the claim, she was wrong in stating that it was all about the CD. It was not. The appellant has maintained that she is guilty by association and complicity and there was adverse interest in her because of the difficulties her colleagues at work experienced. The appellant has maintained that she did not claim asylum when she arrived as she wanted to return home. The chronology is not about whether the appellant watched five minutes of the CD. In the same context there was little relevance in relation to the appellant's enquiries about the school in Harrogate which related to a previous visit and the appellant had said in evidence that it would not be appropriate for the children to study there and Mr Behbahani did not see the relevance of this. Equally, in relation to the children going to school in Chiswick it was known that asylum seekers were entitled to free education and therefore it is not relevant that the children might have been attending school. In relation to the risk on return Mr Behbahani accepted that there was no general risk for failed asylum seekers on return to Iran, but this was a fact-sensitive consideration that should have been undertaken in light of **RT (Zimbabwe) [2012] UKSC 38** and the appellant will be guilty by association.

Error of Law Discussion

7. The First-tier Tribunal Judge was incorrect in his contention that a number of matters had not been explained by the appellant or that they lacked detail, whereas these were dealt with to an extent in the interview (for example the appellant did give the name of the church in Turkey and had said where when and how she was approached by the man in Turkey – although the judge was correct in his finding that there was no description of this man; in addition the appellant stated at interview that she was in Shiraz for medical treatment). The First-tier Tribunal was also incorrect in substituting its own perception in stating that it would be highly unlikely that as a Muslim woman the appellant would engage in a conversation with a male stranger.

8. However I am not satisfied that such relatively errors go to the core of the appellant's claim or that they are material to the extent that the decision of First-tier Tribunal should be set aside. The Tribunal provided detailed and adequate reasons for not accepting the core of this appellant's claim. Significantly, the Tribunal did not accept the appellant's evidence about the CD, which she claimed to have smuggled from Turkey into Iran, which the judge found to be vague, non-specific and not credible. The Tribunal took into consideration the appellant was a devout Muslim with no previous association to Christian house churches and found that she gave no credible reason as to why she would take the risk of being searched and detained, travelling as she was with her children, by smuggling a CD into Iran. Whilst it was contended that the appellant had given detailed reasons of her personal interest, her evidence on this point was limited; the appellant stating at interview at [68] that in discussing at work she said she was:-

> "serious to know about other religion or curious to learn about other religions when I was in Bandari Abas there was not any other religions except Islam. I was not thinking that there was like another religion in any other areas of Iran because it was an Islamic society".

9. The appellant then went on to state when she was in Turkey, it being the appellant's case that she was in Turkey to apply for visas to the UK to look at schools, a man approached them and gave them some information and asked her to come to a church, which the appellant discussed with her husband and they decided to do so. The appellant stated that they went, took pictures, let a candle, arrived at the last part of the ceremony and she was "emotionally impressed" and brought a CD home with her in the baggage of her children.

10. In light of this evidence, the Tribunal was entitled to reach the findings it did that the appellant's evidence in relation to bringing the CD to the UK was 'extremely vague, non-specific and not credible'. There was no substance in the submission that the appellant had given detailed reasons for her personal interest in Christianity. Equally, there was no error in the Tribunal's approach, at [28] that the appellant, having stated that her home computer did not play CDs, had no reason to bring a CD back to Iran. The fact that it was submitted that the appellant volunteered this evidence about her computer at home not playing a CD is irrelevant. Equally, at [35] given that the appellant stated that her friends were arrested when she was in Shiraz, on 16 March, the judge was entitled to reach the finding that he did that there was no reason why the authorities would not have looked for her before she left on 23 March 2017, particularly given that the appellant states that she was called by her boss stating that she must return as her two colleagues had been arrested due to changing their religion and that the appellant's room was subsequently searched and the CD seized together with her tablet, her laptop and a booklet.

11. In addition, although the grounds for permission contended that the appellant had offered 'detailed explanations' of the appellant's movements between 16 March and 23 March 2017 which were repeated in her witness statement, Mr Behbahani was unable to take me to these detailed explanations. Although he referred me to questions 89 to 110 of the asylum interview (and I accept that the appellant had subsequent to the asylum interview amended the date that she became aware her husband was arrested from 7 March to 27 March 2017) and to the screening interview at 3.1 to 3.3, this was where the appellant explained that she did not intend to claim asylum (having stated at 3.1 that she left because of her problems but was just coming to the UK as her husband suggested she should go for a short break to see what happened as she already had a visa). Although the appellant, at question 72 of the asylum interview had stated that she went to Shiraz on 11 March 2017 as she had 10 days holiday there was nothing in the evidence before the First-tier Tribunal that might contradict the finding, at [35], that she failed to explain her movements between 16 and 23 March. The Tribunal also

made findings, which have not been substantively challenged, that it was not accepted that the claimed adverse events would have coincidentally occurred approximately 14 days before the expiry of the appellant's UK visa and noted that the appellant made her asylum claim just before her visa expired. Although Mr Behbahani submitted that the appointment for the screening interview had been made before 4 April 2017, that does not negate the adequacy of the judge's findings in relation to the appellant's actions in entering the UK and claiming asylum in and around the expiry of her visa.

12. The Tribunal also gave adequate reasons for finding that the appellant's evidence as to the CD content was vague, tenuous and lacking in detail (paragraph [29]). The judge found that the appellant was unable to give any credible detail about the CD at all, and equally there was no error in the judge's finding that it was not credible for the appellant only to watch the CD for five minutes at a time and that she had only seen part of it despite having it for approximately nine months between May 2016 and March 2017. The judge was entitled to find as he did that this was another attempt to deflect questions about the CD's content. The judge also found that the appellant's evidence had been inconsistent in relation to her laptop at work and this was evidence that she had given to explain away inconsistencies about not being allowed to take a laptop home, even though she had said it was her laptop. There was no error in the approach of the Tribunal. All the evidence was considered in the round and any mistakes made were peripheral to the judge's key findings which were that the appellant's case was inconsistent and lacking in credibility and that it was not accepted that she had brought home the CD as claimed or that she would be guilty by association because of claimed difficulties experienced by work colleagues.

13. The judge was entitled to attach very little weight to the hearsay evidence that the appellant was told about the arrests by her director. Although hearsay is admissible, the weight to be attached is a matter for the judge. The Tribunal did not make this finding in isolation, but considered in the round found this evidence to be unreliable. Equally, although the grounds argued that the judge ought to have raised the issue of the claimed lack of detail in relation to circumstances where the appellant claimed she was approached by an evangelical Christian in Turkey, the appellant, who was legally represented, was aware that the respondent did not accept her claim as credible, including due to the general vagueness of her evidence. It was for the appellant to demonstrate to the lower standard that her claim was true.

14. There was no error in the Tribunal's approach in making an adverse inference due to the appellant's complete failure to provide any further information or evidence in relation to the schools in the UK which she claimed she entered on a previous visit on 12 November 2016 to apply for admission for her children. The fact that Mr Behbahani submits that this related to a previous trip and that the appellant gave reasons why she and her husband decided these schools were not suitable does not adequately

address that the appellant ought to have had evidence from these schools, for example, school literature, an invitation letter or an application form, and that her evidence on this point was vague. The entire reason for the appellant both being in Turkey, where the basis of her claim began, and for the appellant having a visa to enter the UK, was predicated on the family considering sending her children to public school in England, specifically Harrogate school (which she accepted was a very expensive public school). The Tribunal was entitled to treat the complete absence of any information to support these claims, where such ought to be available, as significant and damaging.

15. Equally, the judge was entitled to find at [36] that the appellant ought to have been able to provide evidence in relation to the children attending school in Chiswick. The fact that, as submitted on behalf of the appellant, children of asylum seekers are entitled to attend school is again irrelevant and the judge was entitled to find that this was potentially relevant to the appellant's motives for coming to the UK with her children and to draw adverse inference from her failure to provide this evidence when considered in the round. Although Ms Everett accepted that there may be difficulties in providing documentary evidence that the appellant's husband lost his job, the Tribunal reached well-reasoned findings including at [33] and [34] as to the lack of adequate evidence from her husband generally. Even if they did not want to talk about these issues there was no adequate explanation for the lack of any communication particularly given the small children of the relationship and when considered in the round the lack of any evidence of either of their daughter's expulsion from university or indeed her husband losing his job, it was not credible. That was a finding properly open to the Tribunal.

16. Looked at in its entirety, the judge did apply anxious scrutiny to the case and her decision is not vitiated by any limited errors of fact or in the judge subsequently applying his own perception to a very limited extent. It does not reach the high bar of irrationality. As set out in the Tribunal's findings the evidence overwhelmingly led the Tribunal to the conclusion it reached, that the appellant had failed to discharge the burden, to the lower standard, that she was a refugee and that her case was lacking in all credibility. It was very clear why the First-tier Tribunal decided the case against the appellant and the main points in dispute were addressed. The duty to give adequate reason is not a counsel of perfection (see **MD (Turkey) [2017] EWCA Civ 1958**).

17. In relation to risk on return as a failed asylum seeker, I accept Ms Everett's submission that given that the judge had found that the appellant's case was not true, neither **HJ (Iran)** nor **RT (Zimbabwe)** have any application as there were no positive findings made and therefore as a failed asylum seeker the appellant would not be at risk on return.

Notice of Decision

18. The decision of the First-tier Tribunal does not contain an error of law, such that it should be set aside, and shall stand. The appellant's appeal is dismissed.

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: 23 April 2018

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

The appeal is dismissed and therefore there is no fee award.

Signed Date: 23 April 2018

Deputy Upper Tribunal Judge Hutchinson