



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

Appeal Number: PA/05168/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 26th February 2019**

**Decision & Reasons Promulgated
On 15th March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MS KARINE [T]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Fouladvand, Legal Representative

For the Respondent: Ms S Jones, Home Office Presenting Officer

DECISION AND REASONS

The Appellant is a citizen of Armenia born on 24th March 1958. The Appellant had applied on 16th February 2017 for asylum and humanitarian protection on the basis of her political opinion. That application was refused by Notice of Refusal dated 6th April 2018.

The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Blake, sitting at Taylor House, on 20th November 2018. In a Decision and Reasons promulgated on 31st December 2018 the Appellant's appeal was dismissed on all grounds, i.e. asylum grounds, humanitarian protection grounds and human rights grounds.

On 9th January 2019 Grounds of Appeal were lodged to the Upper Tribunal. On 21st January 2019 First-tier Tribunal Judge Osborne granted permission to appeal. Judge Osborne noted that the grounds asserted that the judge had

failed to consider material facts,
failed to consider material law,
failed to make findings in accordance with the evidence,
made irrational findings,
failed to consider Article 8 ECHR, which was pursued in the appeal.

Judge Osborne noted that in an otherwise careful and focused decision it was nonetheless arguable that the judge had failed to adequately deal with Article 8, which was raised in the Appellant's detailed skeleton argument and pursued in the appeal, and that the judge had failed to mention the well-established case of *Razgar [2004] UKHL 27* or any of its principles.

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 legal representative, Mr Foulandvand. Mr Foulandvand is very familiar with this matter. He appeared before the First-tier Tribunal and he is the author of the Grounds of Appeal. The Secretary of State appears by her Home Office Presenting Officer, Ms Jones.

Preliminary Discussion

I enquired with the parties as to the exact nature of the appeal. The reason for doing that was because it was suggested from the grant of permission that this matter seemingly was concerned solely with an appeal under Article 8. I was referred to paragraph 59 of the First-tier Tribunal Judge's decision where Judge Blake states:

"I further took into account that in the course of the hearing Mr Foulandvand submitted that he was not seeking to press ahead with the asylum claim. He stated that he wished to accent the human rights part of the appeal under Article 8 both inside and outside of the Immigration Rules on the basis of exceptional circumstances. I asked if he was going to abandon the Appellant's asylum claim but he simply repeated that he was not pressing it."

On discussion today, bearing in mind that Judge Osborne had indicated that all issues raised in the grounds were arguable, Mr Foulandvand advises that he again does not push an appeal based on asylum grounds but it is accepted both by him and Ms Jones that the arguments are based on humanitarian protection and on human rights grounds and I proceed to assess as to whether there has been a material error of law on that basis.

Submissions/Discussion

Mr Foulandvand relies on the Grounds of Appeal. He submits that the judge failed to go through the stages set out in *Razgar* and that on that basis, along with the arguments that he sets out in the Grounds of Appeal, those grounds disclose material errors of law which, he contends, should lead to a finding that the case should be remitted back to the First-tier Tribunal for rehearing.

In response, Ms Jones, in a structured approach, examines the Grounds of Appeal – which I have considered – and analyses them against the findings of the First-tier Tribunal Judge. The Grounds of Appeal initially, she points out, contend that the determination is so unreasonable as to be irrational. She submits that that is a very high threshold and points out that at no point had the Appellant’s representatives shown what it is contended is irrational nor had they produced any case law whatsoever in support of such a contention. Secondly, she comments that it was pointed out in the Grounds of Appeal that there was no medical report before the First-tier Tribunal Judge and she takes me to paragraphs 58 and 59 of the decision, noting that the judge had taken into account the fact that the Appellant’s appeal had previously been adjourned in July for the purpose of allowing the Appellant to obtain a psychiatric report and indeed that Mr Foulandvand had at that stage indicated that he only required a three week adjournment in order to obtain such a report. The judge had noted that the court had found that no psychiatric report had been provided and that this was due to difficulties of finance. This is something again that Mr Foulandvand points out to me in his submissions. She submits that the suggestion that the judge had failed to give due consideration to the medical condition consequently is one that is not sustainable and that the judge had considered firstly the issue regarding the adjournment which had been granted quite properly by the Tribunal back in July 2018 and secondly the position with regard to all medical evidence that was before the Tribunal when the matter came back before Judge Blake.

Ms Jones goes on to consider the submissions with regard to Article 8 and points out that she does not see how there could have been a material error, bearing in mind that there was no psychiatric evidence before the court and that the judge had addressed all issues. Further, she takes me to paragraphs 44 to 46, which although specifically not referring to the authority of *Razgar* – and she points out it this is not necessary to refer to every authority – addresses, she submits, in full detail the Appellant’s human rights claim and that the judge had concluded that the threshold for a breach of Article 3 had not been reached and had thereafter gone on to consider the human rights claim with regard to Article 8.

Finally, she turns to the suggestion that there has been a procedural irregularity, which is set out at paragraph (g) of the Grounds of Appeal. She comments that she fails to actually understand what it is and invites Mr Foulandvand to explain further to her. Overall, she submits that these grounds amount to no more than mere disagreement and that there is no material error of law disclosed and she asked me to dismiss the appeal. In brief response, Mr Foulandvand submits that the grounds provided are insufficient and then goes on to comment that he does not actually push the irregularity ground any further.

The Law

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.

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

The submissions made by Mr Foulandvand both orally and in writing are, with respect, vague. They seek to persuade me that the decision is irrational. I remind myself that the test of irrationality has a very high threshold and if it is to be maintained it is necessary to show what irrationality there is. With the greatest respect to the Appellant's representatives, that has not been done, there is no case law before me and there is no basis whatsoever for maintaining the stance that he has taken. In any event, I am looking at the appeal as it is constructed. This is a judge who has looked in considerable detail at the Appellant's refugee status and the qualifying Regulations, considered her evidence and then gone on when the issue is raised to note the position with regard to the Appellant's medical condition and the request for a psychiatric report.

The judge has at paragraph 59 made findings that he was perfectly entitled to. The judge considered the evidence that was before him and found that the Appellant's evidence was vague and muddled. He has taken into account the submissions that Mr Foulandvand had acknowledged that the papers provided were photocopies of documents and that he was unable to state whether or not these were in fact the same documents that had been provided by her husband in the course of a previous appeal. All issues taken by the Appellant's legal representative were considered. At paragraphs 60 to 70 the judge went on to analyse the evidence that was before him and to reach conclusions that the Appellant had not discharged the burden of proof. To submit therefore that the

judge's decision was irrational amounts to no more than an attempted disagreement. Further, the judge has considered all the facts that were available and had made findings that he was perfectly entitled to. The decision is well-reasoned and well-structured. To merely state, as Mr Fouladvand does at the end of his submissions, that the reasons given are insufficient does not in any way persuade me that there are any errors of law. The fact that the judge has not specifically referred to the authority of *Razgar* does not mean that the judge has failed to give due consideration to the human rights position and indeed he has done so in some detail at paragraphs 72 to 77. There is no procedural irregularity and ultimately, I conclude that the submissions made are little more than an attempt to re-argue the position and amount to disagreement with the findings of the First-tier Tribunal Judge. They in no way approach a threshold that could disclose any form of material error of law.

This is a well-reasoned and well-structured decision and for all the above reasons I find that there is no material error of law in the decision of the First-tier Tribunal Judge and I dismiss the appeal and uphold the decision made by the judge.

Decision

The decision of the First-tier Tribunal discloses no material error of law and the appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed

Date 12 March 2019

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 12 March 2019

Deputy Upper Tribunal Judge D N Harris