



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

Appeal Number: PA/05304/2018

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On 3rd July 2019**

**Decision & Reasons Promulgated
On 18th July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MISS R M M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Draycott (Counsel)

For the Respondent: Mr D Mills (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Graham, promulgated on 29th June 2018, following a hearing at Birmingham Priory Court on 23rd May 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a citizen of Iraq, was born on 23rd August 1985, and is a female. She appealed against the decision of the Respondent dated 10th April 2018 refusing her claim for asylum and for humanitarian protection pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is threefold. First, that she is a whistle-blower who has exposed the production of counterfeit medication, such that she would now be at risk from criminal gangs or the Iraqi authorities and have no sufficiency of protection. Second, that she is an atheist and this means that the Convention reason of "religion" is engaged and she will be at risk of ill-treatment for this reason. Third, that she is going to be exposed to "serious harm" by virtue of Article 15(b) of the Qualification Directive because she stands to suffer degrading treatment or punishment or torture or inhuman treatment upon return to Iraq for the reasons given above.

The Judge's Findings

4. The judge considered the Appellant's claim on the basis of the medical report of Dr George (at paragraph 26) who made it clear that in his opinion, if it became known that the Appellant was an atheist "she could be at real risk from religious extremists. The risk would be serious in central and southern Iraq...". First, the judge went on to say that, "I am satisfied that even if it is accepted that the Appellant is an atheist she has not detailed any incident which has brought her to the attention of the authorities regarding her failure to practise Islam" (paragraph 26).
5. Second, the judge then went on to consider the application of Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and observed that the Appellant had delayed claiming asylum for a month and that "I am satisfied this delay in claiming asylum is not consistent with the behaviour of a general refugee in need of international protection. I am satisfied that this has damaged the credibility of her account".
6. Third, the judge considered the Appellant's claim that she believed that there was in existence an arrest warrant in her name, but the judge observed that,

"The Appellant's account regarding the arrest warrant is extremely vague and lacking in detail. The Appellant is unable to say what offence she is accused of, or who complained to the authorities. She is unable to produce the arrest warrant and appears to have made no attempt to obtain a copy, despite her father and brother being resident in Baghdad" (paragraph 29).
7. Finally, the judge had regard to the views of the expert, Dr Alan George, dated 16th May 2018, who had taken the view that, although he could not rule out as implausible the Appellant's testimony that there was an arrest

warrant issued against her, this was nevertheless a surprising action on the part of her tormentors because,

“It is not obvious to me what the illicit traders might gain by having [the Appellant] arrested. Indeed, that course of action would carry a risk of her appearing in court and providing detailed evidence concerning the illicit medicine. If the objective was to silence her, a more crude course of action might have been expected, such as direct threats to her and her relatives” (paragraph 31).

8. All in all, therefore, the judge disbelieved the Appellant’s account, and disbelieved any potential risk to her on the alleged grounds. The appeal was dismissed.

Grounds of Application

9. The grounds of application state that the judge failed to have regard to the fact that the Appellant’s claim was fundamentally, in its core basis, accepted by the Respondent Secretary of State in the refusal letter of 24th November 2017. Second, the judge failed to have proper regard to the fact that the Appellant was an atheist. Indeed, no clear finding had been made on this issue. The government’s own country information and guidance report on “religious minorities”, of August 2016, made it clear that a non-Muslim would be at grave risk in Iraq. Third, the judge appears to have applied Section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004 in a determinative fashion, avoiding thereafter having to consider any other issue, by applying a template to the finding of credibility in her case.
10. On 12th November 2018, permission to appeal was granted by the Upper Tribunal.

Submissions

11. At the hearing before me on 3rd July 2019, Mr Draycott, relied on the grounds of application. He placed particular reliance on the fact that the well-known decision in **RT (Zimbabwe) [2012]** made it quite clear that the principle that “nobody should be forced to have or express political opinion in which he does not believe” applied equally to religious questions, and that if the Appellant was an atheist, she should not be required to disclose this in a way that puts her at risk, which is manifestly the case given what is said about the situation in Iraq from the government’s own sources. The Appellant had a passport. She did not have a CSID card. In the process of acquiring a CSID card, she would have to make known her religious affiliation, and this would put her at risk. Even if she did not have to say anything, and a duplicate CSID card would be made, she would still be at risk as an atheist returning back to Pakistan. The judge had not made a finding on her atheism. This was a novel point as far as returns to Iraq was concerned. It required a proper and clear decision. The judge had not made such a decision.

12. Second, the judge had applied Section 8 in a manner that was in violation of the decision in **JT (Cameroon) [2009] 1 WLR 1411** where the Court of Appeal had made it clear that the proposition that “the Section did not dictate that relevant damage to the credibility inevitably resulted; that accordingly, Section 8(1) was to be read as if the qualifying word ‘potentially’ were inserted before the word ‘damaging’”. In that case Lord Justice Pill had gone on to say (at paragraph 16) that, “I agree with the parties that there is a real risk that Section 8 matters were given a status and a compartment of their own rather than taken into account, as there should have been, as part of a global assessment of credibility”.
13. Finally, the judge wrongly criticised the Appellant on the basis that she had been unable to produce an arrest warrant. It was the Appellant’s case that she had heard that there was an arrest warrant. Nobody had seen this arrest warrant. It was certainly not the case that her family members had seen it or had possession of it. Accordingly, it was not correct for the judge to say that the failure of the Appellant to produce the arrest warrant undermined her credibility.
14. For his part, Mr Mills submitted that the judge below had not erred in law for the following reasons. First, the Appellant had never been asked whether she had a CSID card. In the circumstances, it was quite likely that she did have a CSID card because she had a passport and this was the basic documentation required for her to then procure a CSID card. This meant that even if she did not have a CSID card it would be possible to duplicate one with ease.
15. Second, the issue of her being an atheist was irrelevant because if she had a CSID card, or could procure one, she would be able to return back to Iraq and on that basis perform all the normal activities that an ordinary citizen does without having to disclose her religious affiliation or otherwise.
16. Third, she was being returned to Baghdad and there is no reason why from there she could not use the CSID card to travel around.
17. Finally, as far as the application of Section 8 was concerned, one had to look at the judge’s approach to this. What the judge makes clear is that, “I have considered the Appellant’s credibility by looking at the matter in the round” (paragraph 28). This means that the judge had looked at all the evidence, and not simply applied Section 8 as a template. He could not be criticised for coming to the conclusion that the Appellant’s evidence lacked credibility.

Error of Law

18. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law such that the decision below falls to be set aside (see Section 12(1) of TCEA 2007). My reasons are as follows.

19. First, there is the question of the Appellant's activity as a whistle-blower. The refusal letter has to a significant extent accepted the Appellant's core account. It makes it clear that the Appellant's claim that she was responsible for the sales of oncology products in the northern regions of Iraq and also the marketing projects across the whole of Iraq meant that it was her responsibility to check the stock levels of medication at all the oncology centres. The refusal letter makes it clear (see paragraphs 38 to 39), that,

"You have provided a consistent account of medication that you encountered whilst in your job role, including Arimidex which you stated was hormonal treatments for breast cancer patients, further stating the side effects of such treatment ...".
20. The refusal letter goes on to say that "your claims in regards to your job role and the medication you encountered are deemed to be consistent with the evidence you have submitted for this aspect of your claim ...".
21. The refusal letter then goes on to say (at paragraphs 41 to 44) that,

"You claim you were at the government hospital Nanakali in Erbil ... which is consistent with background information ... where you discovered counterfeit medication which was expired ... you noticed that the medication Arimidex, again a medication which is accepted that you had dealings with as part of your job role in the material fact above, had expired in January 2016, however a sticker had been placed on top of this to state that the expiry date was January 2017 ... further you noticed that there was Turkish writing on the medication ... you reported what you had found to the company you worked for and to your manager who was shocked but did not think anything could be done about it ...".
22. The refusal letter then goes on to conclude that,

"Given that it has been accepted that you worked for the (Astra) Zeneca pharmaceutical company in the material fact above that you had access to various types of medication, and given the objective evidence surrounding widespread corruption of pharmaceuticals throughout Iraq, it is deemed believable that you would encounter counterfeit medication as part of your job role ...".
23. This basic consistency in the Appellant's account should have been the starting point of the judge's evaluation of the Appellant's evidence. The Appellant did not, indeed, claim to have seen an arrest warrant. She claimed to have been very concerned about the use of counterfeit medicines, to the extent that she constantly raised this issue, and it is not beyond the bounds of probabilities, that she would have come to the unwelcome attention of the illicit traders, as referred to by Dr George in his expert report.
24. Second, there is the question of the Appellant's atheism. The judge does not actually make a clear finding as to whether the Appellant is an atheist

or not. If anything, the broad reading of paragraph 26 appears to suggest that the judge proceeds on the basis that it is accepted that the Appellant was an atheist. If this is so, it is not necessary for the Appellant to fall under risk, bearing in mind what the country guidance information from the British government itself accepts, that she had become the victim of a targeted attack for not practising Islam. The government's own reports make it quite clear that such people are at risk. The judge needed to proceed on this basis.

25. Third, there is the issue of the application of Section 8. The delay in this matter of the Appellant claiming asylum in the UK is only of one month. It is hardly contumelious delay. Yet, the judge proceeds on the basis that, "I am satisfied this delay in claiming asylum is not consistent with the behaviour of a general refugee ...", before concluding that, "I am satisfied that this has damaged the credibility of her account" (paragraph 28). This does not by any means follow.
26. Finally, there is the issue of Dr Alan George's expert report which is dealt with at paragraph 31. The judge takes the view here that Dr Alan George does not actually support the Appellant's claim, insofar as there is a reference to there being an arrest warrant. However, this overlooks the fact that in essence, Dr George supports the Appellant's case of her being at risk of persecution.
27. He makes it quite clear in his report of 16th May 2018 that,

"Atheists run a great risk of being targeted by fundamentalist Sunni and/or Shia Muslim factions, who consider it their duty to punish unbelievers ..., in my opinion, if it became known that [the Appellant] was an atheist, she could be at real risk from religious extremists. The risk would be serious in central and southern Iraq."
28. The government's Country Policy and Information Note on Iraq of September 2017 was not considered by the judge in this regard. All in all, therefore, there is sufficient error of materiality in the overall analysis of the Appellant's claim, which is fundamentally credible in its origin, to indicate that the decision should be set aside and remitted back to the First-tier Tribunal.

Notice of Decision

29. The decision of the First-tier Tribunal involved the making of an error on a point of law. I set aside the decision of the original judge. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal to be determined by a judge other than Judge Graham pursuant to Practice Statement 7.2b of the Practice Directions.
30. An anonymity direction is made.

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 him or any member of their 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.

31. This appeal is allowed.

Signed

Date

Deputy Upper Tribunal Judge Juss

12th July 2019