



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number:
PA/07860/2018

THE IMMIGRATION ACTS

Heard at North Shields

**Determination & Reasons
Promulgated**

On 1 March 2019

On 05 March 2019

**Prepared on 1 March
2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

**D. D.
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Caswell, Counsel, instructed by David Gray
Solicitors

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of Iran, entered the United Kingdom illegally, and together with her sister made a protection claim based upon their sexuality that was refused. Their appeals were dismissed by decision of Immigration Judge Fisher promulgated in October 2008.
2. A fresh protection claim was made on the basis that the Appellant had become a chronic alcoholic, who also suffered from mental ill health. This was refused on 7 June 2018. The Appellant's appeal against the refusal of this new protection claim was heard and allowed by First Tier Tribunal Judge Cope in a decision promulgated on 29 August 2018.
3. The Respondent's application for permission to appeal was granted by Designated First tier Tribunal Judge Manuell on 17 September 2018 on the basis the Judge's logic was not easy to follow, but apparently at variance with the available country background information.
4. No Rule 24 Notice has been lodged in response to the grant of permission to appeal. Neither party has applied pursuant to Rule 15(2A) for permission to rely upon further evidence.
5. Thus the matter came before me.

The grounds

6. As advanced by Mr Diwnycz, the grounds advance three challenges. First [#6] a complaint that the Judge failed to take into account relevant material evidence that was before him. Second [#2-5] a complaint that the Judge was wrong to treat alcoholism as an immutable characteristic, and thus wrong to accept that the Appellant was a member of a particular social group. Third [#7] a complaint that the Judge had failed to give adequate reasons for his conclusions.
7. There is no merit in the first complaint; the evidence which the Judge was said to have overlooked is an article taken from the New York Times of 11.9.17. That article is referred to specifically by him [56]. Moreover, the content of that article is discussed at length in the course of the expert evidence of Dr Van Engelaand, to which the Judge also expressly referred.
8. As to the second complaint, Mr Diwnycz accepts that it was not disputed before the Judge that the Appellant was by the date of the hearing recognised by the medical profession as a chronic alcoholic, who had twice attempted, and failed, to break her alcohol dependency with formal alcohol detoxification treatment. Nor was it disputed that she continued to abuse alcohol as part of her dependency. The Judge accepted the evidence that the Appellant's liver was now damaged through her abuse of

alcohol, and, the Appellant's evidence that she preferred wine, and would drink between one and three bottles a day.

9. The Respondent offered no evidence to suggest that the diagnosis of the Appellant as an alcoholic meant that she should not be treated at the date of the hearing as addicted to alcohol, or, that she could be "cured" of that addiction so that she could be placed in a position in which she had no longer had any appetite for it. The Judge accepted that the reality was that her consumption of alcohol was not a voluntary act, but a feature of her mental health [50, 71].
10. Thus, in my judgement, it was open to the Judge to conclude, as he did, that the Appellant's alcoholism was an immutable characteristic. Even if the Appellant were able to bring herself at some future date to a point of mental strength from which she could choose to abstain from alcohol, she would still need to continue to choose to do so on a daily basis in order to avoid a return to alcohol dependency; but she would remain throughout an alcoholic as that term is commonly understood. From there it was but a short step to accept, as the Judge did, that those who are alcoholics would be viewed as a distinct social group within Iran. Accordingly, the second challenge must also fail.
11. The third complaint was not strongly advanced. The test for the adequacy of reasons was restated most recently in MD (Turkey) [2017] EWCA Civ 1958; adequacy in this context is not a counsel of perfection. The obligation is simply to give adequate reasons to allow the losing party to understand why they lost. In my judgement the Judge discharged that obligation. He noted that the Appellant suffered from chronic mental health illness, and that she was a chronic alcoholic. He correctly approached the question of the risk of harm she faced upon return to Iran on that basis, by asking himself what would happen if she were to return. He concluded (and it was open to him to do so) that there was a real risk that she would seek to consume alcohol to such an extent that she would in turn face a real risk of arrest for the consumption of alcohol, and/or drunkenness [66]. Those findings were plainly open to him on the evidence. He noted the consequences by way of corporal punishment, and the risk of the death penalty, that would follow in the event of such an arrest, and conviction [67-8].
12. It is also plain from the decision that the Judge did engage with the evidence concerning the current attitudes of the Iranian state towards alcohol consumption, in both the religious and socio-political contexts. The religious context

remains clear, Islamic law prohibits intoxication, and despite the growth in the levels of alcohol consumption within the Iranian population, the religious and judicial authorities remain intolerant of it. The socio-political context, as explained by Dr Van Engelaand, is the tensions that exist between Reformist Islamic clerics on the one hand, and the Guards of the Revolution on the other. Elements of the latter have become heavily involved in the smuggling and supply of alcohol on the black market, because of the financial rewards available. The initiative of opening alcohol addiction centres has not resulted from a widespread change in the attitude of the Iranian authorities towards the need to punish those consuming alcohol for their non Islamic behaviour, and the initiative has not been followed through in the way that was anticipated in the New York Times article. The reality, as the Judge was entitled to find, is that alcohol addiction treatment would not be readily accessible to the Appellant, and is not part of the judicial system, which would still consider alcohol consumption as a reason for punishment as non Islamic. On the other hand, alcohol would be accessible by her.

13. In my judgement the Judge was entitled to rely upon the expert evidence of Dr Van Engelaand, and to prefer it to the content of the New York Times article the Respondent had relied upon, and gave adequate reasons for so doing.
14. Mr Diwnycz confirmed that he sought to advance no other argument that might be capable of distillation from the grounds.
15. It follows that in my judgement the Respondent has failed to establish any error of law in the approach taken by the Judge to the appeal that requires his decision to be set aside and remade.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 29 August 2018 contained no material error of law in the decision to allow the Appellant's appeal which requires that decision to be set aside and remade, and it is accordingly confirmed.

Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify her. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings

being brought for contempt of court.

Signed
Deputy Upper Tribunal Judge JM Holmes
Dated 1 March 2019

A handwritten signature in black ink, appearing to be 'JM Holmes', written in a cursive style. The signature is enclosed within a large, irregular, hand-drawn oval shape.