



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08361/2018

THE IMMIGRATION ACTS

Heard at Glasgow
On 24 May 2019

Decision & Reasons Promulgated
On 13 June 2019

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

F H
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Stewart, Katani & Co Solicitors, Glasgow

For the Respondent: Miss O'Bryan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against a decision of Designated Judge Murray promulgated on 7 December 2018 dismissing her appeal against a decision of the respondent made on 17 June 2018 to refuse her claim for asylum to remove her to China. The appellant's case is that she is at risk of persecution on return to China on account of her religion. She converted in February 2014 but on 10 February 2015 whilst holding a house church in her home, she was arrested by the police when it was raided and subsequently detained. On release, her parents made arrangements

for her to leave China. She arrived in the United Kingdom on 2 May 2015 and claimed asylum on 6 October 2016. She has a child born 21 December 2016 who is a Chinese national; her partner is also an asylum seeker.

2. The appellant's religion is claimed to be "Jehovah" religion although it is unclear from her interview records (she was interviewed on 21 February 2017 and again on 25 October 2017) whether she was saying she is a Jehovah's witness or not; it also appears that she was prior to that a member of Hu Han Pai.
3. The Secretary of State did not accept that the appellant was a follower of the Jehovah religion as claimed nor that she had previously been a follower of the Hu Han Pai religion. In addition, the respondent was not satisfied that the appellant was at risk on account of having had a child outside of wedlock.
4. The appellant gave evidence before the Tribunal. The respondent submitted that the appellant was not a credible witness given the inconsistencies in her account having at various times claimed to have been a Jehovah's Witness and that the translation of the Holy Scriptures had been provided to her was the version used by the Watch Tower and Jehovah's Witnesses [21]. It was noted also that she cannot explain the difference between the Jehovah's and the Hu Han Pai or the difference between Jehovah's and other Christian beliefs and could not explain key points of her religion [23]. The appellant's representative submitted that her account was credible and that consideration should have been given to the psychological report by Dr Morrison stating that the appellant has issues with her cognitive function and has a low level of intelligence; that the appellant will have problems on return; and, is very forgetful and found questions hard to understand. It was submitted this should be taken into account when deciding whether the appellant is a vulnerable adult [34].
5. The judge recorded that she had considered all of the evidence on file, some of which she may not have specifically referred to [39]. She found that there were a number of discrepancies in the appellant's account and that if she did have a religion it was that of Jehovah's Witness [40] but that she was neither a member of the Jehovah religion or Jehovah's Witnesses [41] nor was she satisfied that she was a member of Hu Han Pai given that her questions about that religion contradicted each other [41].
6. The judge also stated:-

"I have noted the psychological report by Dr Morrison from Alba Psychology which states that the appellant has significant deficits in her cognitive functioning which is likely to be related to a low intelligence compared to individuals in the normal population. The doctor concludes that this could have a significant effect on her ability to function independently and participate in the asylum process. However she came to the United Kingdom, she made her claim, she answered the questions in court, she answered the questions about interviews and I find that she has had a fair hearing and is able to fend for herself. I find that the problems with her answers are because she is not told the truth. She states that she wants to openly express her religion but she is unable to say what the beliefs of her religion are and the background evidence indicates

that the Christian religion is practiced throughout China and even if she worships and has churches it is unlikely that she will be persecuted.”

7. The judge then went on to dismiss the appeal on all grounds.
8. The appellant sought permission to appeal on the grounds that the judge had erred in her assessment of credibility in:-
 - (i) reaching an adverse credibility finding prior to assessing the psychological report, thereby failing to assess the evidence in the round;
 - (ii) failing properly to apply the Joint Presidential Guidance Note No.2: Child, Vulnerable Adult and Sensitive Appellant Guidance in that the FtT’s findings are not supported by the evidence and the judge had misinterpreted the guidance as to how a vulnerable individual is to be identified;
 - (iii) failing to give adequate reasons for rejecting the psychological report and in effect usurping its effect without any or sufficient evidential foundation.
9. On 18 March 2019 Upper Tribunal Judge Rimington granted permission stating
“It is arguable that the judge reached an adverse credibility finding (40) prior to addressing the psychological report (42) and contrary to **Mibanga [2005] EWCA Civ 367**. It is also arguable that the judge failed to apply the Joint Presidential Guidance Note No.2 in light of the consultant psychological report identifying she had ‘significant deficits in her cognitive functioning’.”
10. The respondent’s directions were made by the appellant’s previous representatives who gave no indication that there was any issue regarding possible vulnerability. The matter was later adjourned once the appellant had instructed her current representatives and on 9 October 2018 they wrote to the Tribunal requesting a further Case Management Review. There is no indication in that letter or otherwise any submission that the applicant should be treated as a vulnerable witness. This is somewhat surprising given that the report is dated 6 August 2018.
11. In that context it is important to note that in **AM (Afghanistan) v SSHD [2018] 4 WLR 78** the Court held:
 - “21. It is submitted on behalf of the appellant that the agreed basis for allowing the appeal on the merits reflects core principles of asylum law and practice which have particular importance in claims from children and other vulnerable persons namely:
 - a. given the gravity of the consequences of a decision on asylum and the accepted inherent difficulties in establishing the facts of the claim as well as future risks, there is a lower standard of proof, expressed as 'a reasonable chance', 'substantial grounds for thinking' or 'a serious possibility';
 - b. while an assessment of personal credibility may be a critical aspect of some claims, particularly in the absence of independent supporting evidence, it is not an end in itself or a substitute for the application of the criteria for refugee status which must be holistically assessed;

c. the findings of medical experts must be treated as part of the holistic assessment: they are not to be treated as an 'add-on' and rejected as a result of an adverse credibility assessment or finding made prior to and without regard to the medical evidence;

d. expert medical evidence can be critical in providing explanation for difficulties in giving a coherent and consistent account of past events and for identifying any relevant safeguards required to meet vulnerabilities that can lead to disadvantage in the determination process, for example, in the ability to give oral testimony and under what conditions (see the Guidance Note below and *JL (medical reports – credibility) (China)* [2013] UKUT 00145 (IAC), at [26] to [27]);

e. an appellant's account of his or her fears and the assessment of an appellant's credibility must also be judged in the context of the known objective circumstances and practices of the state in question and a failure to do so can constitute an error of law; and

f. in making asylum decisions, the highest standards of procedural fairness are required.

22. Although I agree with these submissions I would like to emphasise that these principles are not an exhaustive or immutable checklist. That said, the principles were not applied properly or at all in the determination of this appellant's claim for asylum either by the FtT or the UT. I recognise that this marks a failure of the system to provide sufficient and adequate protection in the asylum process for the particular requirements, needs and interests arising out of the disadvantages that the appellant has as a highly vulnerable child. There is a consensus that the critical errors arose from the focus on the credibility of the appellant's account and the failure to properly have regard to the objective evidence and to give it priority over the ability of the appellant to provide oral testimony."

12. It is evident the judge made no findings as to whether the appellant was a vulnerable adult or not. Similarly, it is unclear why what the judge made of the evidence that the appellant has difficulty in cognition and in recalling things. The latter goes to the core of the finding that the discrepancies in the appellant's account across different interviews were indicative that she was not telling the truth and thus to her credibility. This failure makes the findings unsafe and accordingly, I am satisfied this amounts to a material error of law. Given that as a result none of the findings of fact are safe, then the case will need to be remade in its entirety. In the circumstances, it is appropriate to remit the matter to the First-tier Tribunal.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. I remit the appeal to the First-tier Tribunal for it to be determined afresh on all issues.

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.

Signed

Date 10 June 2019

A handwritten signature in black ink, appearing to read 'Jeremy Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul