



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/09407/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 19 December 2018**

**Decision & Reasons
Promulgated
On 8 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

E.G.
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hodson of Elder Rahimi Solicitors

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge O'Garro promulgated on 15 November 2017 in which she dismissed the Appellant's appeal against the decision of the Respondent dated 8 September 2017 refusing asylum in the United Kingdom.
2. The Appellant is a citizen of Iran born on 18 June 1995. She arrived in the United Kingdom at Gatwick Airport on 27 March 2017 and claimed asylum on arrival. A screening interview was conducted on the following day and a substantive asylum interview held on 3 August 2017. The Appellant's application for protection was refused by the Secretary of State for

reasons set out in a 'reasons for refusal' letter ('RFRL') dated 8 September 2017.

3. The Appellant appealed to the IAC.
4. The appeal was dismissed by the First-tier Tribunal for the reasons set out in the Decision of First-tier Tribunal Judge O'Garro promulgated on 15 November 2017.
5. The Appellant applied for permission to appeal to the Upper Tribunal, which was granted by First-tier Tribunal Judge Hollingworth on 1 November 2018.
6. I am grateful to both representatives for the helpful discussion and approach taken in the hearing before me. In particular, I am grateful for Mr Bramble's realistic acknowledgement that there were difficulties with the Decision of the First-tier Tribunal, and his indication that he did not seek to resist the challenge raised by the Appellant. It seems to me that Mr Bramble's concessions were well made, and were essentially in accordance with concerns that I had identified for myself in my preliminary reading of the papers.
7. In such circumstances, I do not propose to rehearse in full detail the substance of the Appellant's immigration history. As regards the substance of her asylum claim, for present purposes the following summary suffices:
 - (i) In support of her claim for protection the Appellant relied in significant part on her account of an incident that took place on 1 February 2017, and consequent events. It was the Appellant's case that on that date she attended a meeting of a support group for persons suffering from obsessive compulsive disorder. She had previously attended such meetings on a regular basis prior to this particular occasion.
 - (ii) The meeting took place in a mosque, although it was not in itself a religious meeting. The Appellant stated "*The mosque was used mainly because it was free to hold meetings there and it was considered a safe venue for women*" (paragraph 11 of her appeal witness statement signed on 11 November 2017).
 - (iii) During the course of the meeting on 1 February 2017 the Appellant was called upon to share something of her history and experience. (She refers to this, for example, in answer to question 17 of the substantive asylum interview.)

(iv) The Appellant has given an account of a difficult upbringing and a sense of having been oppressed by a father who was a strict adherent to certain tenets of Islam. The Appellant found this to be a rigid environment, which resulted in her feeling that she was frequently living in a sinful way, and had given her a guilty conscience. She considers this background as a cause for some of her mental health difficulties.

(v) At the meeting the Appellant spoke of her concerns about the restrictions of religion, and advocated that the mothers present should not "*indoctrinate your children with Islam*" (witness statement at paragraph 11).

(vi) The Appellant also related in her asylum interview that she had told the meeting that she had "*read in a book that even Mohammed had schizophrenia*" (question 17).

(vii) The Appellant claims that other women at the meeting became angry upon hearing her words, and an altercation or fight broke out amongst the people there. She understood that somebody had made a telephone call to the police and in the circumstances, together with a friend, she left the meeting and essentially went into hiding for a limited period prior to her departure from Iran approximately one month later.

(viii) The Appellant also claims that in consequence of her behaviour and statements at this meeting, she became the subject of a court summons. She produced a purported court summons for the consideration of the Respondent, and in turn the Tribunal (Annex C of the Respondent's bundle before the First-tier Tribunal).

8. The First-tier Tribunal Judge did not believe the Appellant's account, and did not accept that the court summons produced by the Appellant was a genuine document. In the circumstances, the First-tier Tribunal Judge concluded that the Appellant had essentially concocted a story to advance in support of a false claim for asylum and dismissed the appeal accordingly.
9. Before me it is common ground between the parties that in setting out her decision the First-tier Tribunal Judge fell into error in respect of the adequacy of her reasons.
10. I note the following matters as being of particular concern.
11. The Judge refers to the court summons in these terms:

"The Appellant's court summons in the Remarks section says this:-

'You are required to attend court in respect of the complaint against you for attending davazdah ghadam meetings ...' (paragraph 34).

(In the translation of the summons, the translator makes a note that 'davazdah ghadam' literally means "twelve steps". This appears broadly consistent with the Appellant's comments at interview to the effect that the meeting was similar to the sort of meeting that is conducted by Narcotics Anonymous - see question 17.)

12. The Judge then stated:

"This clearly does not describe why the Appellant claimed that she has been summoned which she said is because she criticised the Islam religion at one public meeting and not merely because she attended meetings." (paragraph 35)

13. However, the Judge has only cited one part of the summons. It appears that she has disregarded - or otherwise failed to engage with - an earlier part of the court summons which states the following:

"Accusation: accused of apostasy; tendency towards and cooperation with anti-Islamic groups; personal complaint".

14. It is clear that the Summons on its face is not limited to an accusation of 'merely attending meetings' - which was a premise significantly material to the Judge's critical analysis and rejection of its genuineness. I accept that the First-tier Tribunal Judge's reasoning in this regard is deficient. Further, notwithstanding the potential validity of some of the Judge's other observations in respect of the conduct of court proceedings, there is a material error with regard to the evaluation of this particular document.

15. So far as the remainder of the Judge's reasoning is concerned in respect of the expectation of how court proceedings might be conducted, or indeed how a court summons might be worded, Mr Hodson drew to my attention to materials before the Judge that were 'on point', but did not seem to have been considered. In the event, it is unnecessary for me to consider those matters further: no doubt they may be the subject of further scrutiny when this decision falls to be remade in due course.

16. One further aspect of the Judge's reasoning that is problematic emerges from paragraphs 29-31. The Judge cited country information from the U.S. Department of State Report of 2016, indicating that the government *"monitored meetings, movements, and communications of its citizens and often charged persons with crimes against national security and insulting*

the regime based on letters, emails, and other public and private communications” (paragraph 29) The Judge then comments, perhaps sustainably, that the Appellant, being an educated person, would have likely been aware of the fact of the monitoring of persons by the government in Iran (paragraph 30). Putting aside that the Judge’s observation in this regard does not seem to engage with the Appellant’s comment that she considered the meeting essentially to be a ‘safe place’, what is particularly troubling is the Judge’s further observation:

“It also means, because the objective evidence says that the authorities monitor meetings, there would have been no need for the police to be called as the authorities would have been present to detain the Appellant if she had made her speech in public as she claims which would have been interpreted as being against Islam.” (paragraph 31).

17. This is to misinterpret the evidence and give it a meaning and significance it does not bear. The Judge has interpreted the evidence that the government monitors meetings, movements etc. to mean that all meetings are monitored by the government - irrespective of the persons holding such meetings or the supposed purpose of such meetings. Moreover, inherent in the Judge’s observation is that a person monitoring a meeting either is a member of the police, or otherwise has the authority to detain someone such as the Appellant, and would inevitably so act (even if that meant breaking cover) rather than permit the police to be called to any incident in the usual way. The background country information does not support the notion that there would inevitably have been some sort of government ‘watcher’ present at the meeting, or that if there had been he or she would have revealed themselves by stepping forward rather than letting other members of the citizenry contact the police in the usual way.
18. In my judgement the Judge’s comments at paragraph 31 must be perceived as being at least in part material to the Judge’s overall evaluation of the Appellant’s credibility. I find the reasoning in this regard to be unsustainable to an extent that it constitutes an error of law.
19. At paragraph 28 the Judge comments upon the Respondent’s reasons in the RFRL in these terms:

“I must say that I find the Respondent has given cogent reasons for refusing the Appellant’s claim”,

before then stating,

“Nevertheless, I will make my own assessment of the Appellant’s claim for asylum in the light of the totality of the evidence that is before me.”

20. As Mr Bramble pointed out on behalf of the Secretary of State: if it be the case that the Judge's own reasoning is not sustainable, the Decision cannot be 'saved' by the Judge's approval of the Secretary of State's RFRL in circumstances where - as Mr Bramble acknowledges - the First-tier Tribunal Judge has failed to engage with the Appellant's response to the RFRL set out over a number of pages and paragraphs in her appeal witness statement. The Judge has not otherwise particularised the reasoning of the RFRL or considered it alongside, and/or reconciled it with, the Appellant's response.
21. In all of the circumstances it is common ground between the parties that the First-tier Tribunal Judge fell into material error of law, and accordingly that the decision in the appeal is to be set aside. It is also common ground - and I accept - that the decision in the appeal should be remade pursuant to a fresh hearing before the First-tier Tribunal. It will be a matter for the Appellant, if she so wishes, to file and serve any further evidence; if she does then that should be done in accordance with the Directions that will be issued in the relisting of this appeal, (which I anticipate will likely be in standard form).

Notice of Decision

22. The decision of the First-tier Tribunal contained material errors of law and is set aside.
23. The decision in the appeal is to be remade before the First-tier Tribunal by any Judge other than First-tier Tribunal Judge O'Garro, with all issues at large.

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: 5 March 2019

Deputy Upper Tribunal Judge I A Lewis

