



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

Appeal Number: AA/01396/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 20th November 2014**

**Determination
Promulgated
On 7th January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MRS PARVANEH MOHAMMADBEGI
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Medley-Daley

For the Respondent: Ms C Johnstone, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of Iran born on 1st September 1965. The Appellant arrived at Heathrow on 8th February 2010 on a flight from Iran. She claimed she had a problem in Iran and an agent had aided her journey and retained her passport used for the journey. She claimed asylum on arrival. The Appellant's claim for asylum was based upon a fear that if returned she would face mistreatment due to her imputed political opinion. Her application was considered by the Secretary of State and by Notice of Refusal dated 10th February 2014 her application was refused.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Mulvenna sitting at Manchester on 15th May 2014. In a determination promulgated on 16th May 2014 the Appellant's appeal was dismissed on asylum and human rights grounds and the Appellant was found not to be in need of humanitarian protection. On 10th June 2014 the Appellant lodged Grounds of Appeal to the Upper Tribunal. On 23rd June 2014 Designated Judge of the First-tier Tribunal Appleyard granted permission to appeal. Judge Appleyard noted that the grounds sought permission to appeal asserting that the judge had erred at paragraph 49 of his determination where it states that

“There is no medical evidence of any underlying condition or other diagnosis which gives rise to a possibility of serious ill-health which would merit the grounds for leave to remain in the United Kingdom. I find there is no medical condition which would have a material bearing on my findings and conclusions.”

The grounds go on to assert that medical evidence was adduced at the hearing consisting of correspondence from the Appellant's GP dated 22nd February 2014 and 14th May 2014. Judge Appleyard considered the file and noted that within the Appellant's bundle there was another letter dated 22nd March 2014 with attached medical notes. He noted that that letter referred to an opinion of the doctor that

“If Mrs Beigy were to be forced to return to her country of origin that would be a significant deterioration in her mental wellbeing and she is at significant risk to herself.”

3. The judge considered that it was not clear from the file that the evidence referred to at Ground 5 was lodged at the hearing. Nonetheless on the basis of what was on the file it was arguable that the judge had erred in the consideration of the medical evidence and had failed to properly reason why such evidence as there was had been rejected.
4. On 2nd July 2014 the Secretary of State responded to the Grounds of Appeal under Rule 24. The Rule 24 response opposes the appeal submitting that the evidence relied upon in the application for permission was wholly inadequate to generate a risk of an Article 3 or Article 8 breach and that the grounds did not disclose a material error in law.
5. It is on that basis that the appeal comes before me. The Appellant appears by her instructed solicitor Mr Medley-Daley. Mr Medley-Daley is familiar with this matter having attended before the First-tier Tribunal. The Secretary of State appears by her Home Office Presenting Officer Ms Johnstone.

Submissions

6. Mr Medley-Daley acknowledges that it is not argued that there would be a breach of the Appellant's rights pursuant to Article 8 of the European

Convention of Human Rights on return and that if she does not succeed under Article 3 then there will not be a breach of Article 8. He submits that the letter of 26th March 2014 from Dunstan Village Group Practice from Dr J Burki is relevant evidence that was before the First-tier Tribunal Judge and that this letter has not been considered at all. He submits that that is a material error and more importantly that the failure to consider it when Judge Mulvenna drew conclusions is material.

7. He takes me to the evidence disclosed. His starting point is the objective report of Dr Juliette Cohen entitled "Errors of Recall and Credibility" pointing out that the section at pages 8 and 9 of the generic report show clearly that post traumatic disorders can affect memory and recall and be responsible for depression. He points out that the Appellant has shown evidence of a previous attempt at suicide. He submits that the Appellant's medical condition went to her testimony and that there is no reference within the determination of that having been taken into account.
8. He also considers that the judge has made findings on the way the Appellant has been converted to Christianity. He submits that it is inappropriate to impute paragraph 43 of the First-tier Tribunal Judge's determination on the Appellant in isolation and that it is necessary to look at the medical evidence and to take into account the fact the Appellant was at that stage at a low point in her life and seeking solace. He asked me to find that there is a material error of law in the decision of the First-tier Tribunal Judge, to set aside the decision and to either rehear the matter or remit it to the First-tier for redetermination.
9. Ms Johnstone's starting point is the Rule 24 response. She reminds me that there has been a previous hearing in this matter before Immigration Judge Lever when the Appellant was found to lack credibility. She submits that the judge set out an accurate analysis as to his approach to the law at paragraphs 32 and 33 of his determination. Further she submits that the judge has made very careful findings in this matter and at paragraph 49 of his decision made a finding that there is no medical condition which would have a material bearing on his findings and conclusions and that this is a decision the judge was entitled to reach. She points out that the letters in question are from general practitioners and not from consultant psychiatrists and that the letters have to be looked at in detail and it will be seen that the Appellant's condition has improved and that there is no suggestion that she has further current suicidal thoughts. She also points out that there is an earlier letter from the Appellant's general practitioner indicating that the proceedings were having an effect upon her mental health.
10. Ms Johnstone turns to the generic report and points out that there are no diagnoses before the Tribunal of specific PTSD or evidence of brain injury or major depression and therefore she submits the report does not assist the Tribunal so far as a recall problem is concerned and that in any event recall would not in this case affect the hearing bearing in mind the previous findings against the Appellant of her credibility.

11. Ms Johnstone points out that the Appellant went to church as a failed asylum seeker. The GP does not comment at 2012 that the Appellant was suffering from any problems of recall when interviewed and there is no suggestion she could not or did not have a fair interview. She submits that there is no error of law at paragraph 43 of the determination and that the judge was entitled to make the findings that he did and that the decision he reached was open to him. She submits there is no medical evidence before the Tribunal to say that the Appellant's conversion should be given more weight due to her mental health and that the judge has considered all issues in the round. She asked me to find that there is no material error of law and to dismiss the appeal. Mr Medley-Daley indicates that question 28 of the interview record reflects a lack of recall so that there is evidence that the Appellant was being affected and that the judge has failed to take into account the effect upon the Appellant's memory. He submits that the judge has made findings and conclusions before looking at the medical evidence and that there is a material error of law.

The Law

12. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial consideration, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
13. 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

14. Had the judge made findings and conclusions without looking at the medical evidence then I acknowledge that would constitute a material error of law. I am satisfied that he has not done this. Firstly in this instant case it has to be remembered that the starting point is the judge's analysis on the findings of credibility and fact and as mentioned above he

has followed a perfectly proper approach to the weight and consideration he has given to the findings made by Immigration Judge Lever back in April 2010. The challenges in this matter relate to his assessment thereafter of the Appellant's medical condition and her conversion to Christianity. I start initially with criticisms at paragraph 43 in the determination purely because that in chronological order is before the conclusions relating to the Appellant's medical condition. I totally disagree with the arguments put forward by Mr Medley-Daley that the assessment herein under paragraph 43 has any bearing or relationship to the Appellant's mental health. There was no medical evidence before the First-tier Tribunal to suggest that the Appellant's conversion should be given more weight as a result of her mental health and the judge has considered all issues in the round and has made findings and conclusions that he was perfectly entitled to.

15. So far as the analysis of the medical evidence is concerned the judge has made a detailed analysis of the medical evidence. He may not have specifically made reference to the letter of 26th March 2014 but that letter is a letter from a general practitioner. It is interesting to note there was seemingly no medical evidence before the First-tier Tribunal from a consultant psychiatrist and all that there were were letters from the Appellant's general practitioner. Further it is clear from those letters that the Appellant's condition had improved and that she was no longer having suicidal thoughts. Further earlier correspondence indicates that the proceedings were affecting the Appellant's mental health something that happens regularly. The report of Dr Cohen is no more than a generic overview. I agree with the comments made by Ms Johnstone that firstly the report does not help the Tribunal as to whether or not this Appellant has a recall problem and secondly that in any event I am reminded and note that there have been previous findings of adverse credibility against the Appellant. I am quite satisfied that paragraph 49 does not imply that the judge has made findings prior to considering the Appellant's medical condition and the medical evidence. In fact it is clear that he has adopted a proper approach. All paragraph 49 states is that having carried out that analysis there is no medical condition which persuades him to come down in favour of the Appellant. That is a conclusion that he was entitled to make.
16. This is a well thought-out and reasoned determination and full explanations as to the basis upon which the judge has reached his conclusions are set out therein. For all the above reasons the decision of the First-tier Tribunal Judge discloses no material error of law and the Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.
17. The First-tier Tribunal did not make an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. No application is made to vary that order and none is made.

Signed

Date 6th January 2015

Deputy Upper Tribunal Judge D N Harris