



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: AA/00050/2015

THE IMMIGRATION ACTS

**Heard at Manchester Piccadilly
On 11 March 2016**

**Decision Promulgated
On 12 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

SIMIN SALIMI

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Johnrose agent for GMIAU

For the Respondent: Mr A McVitie Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
3. This is an appeal by the Appellant against the decision of Designated Judge of the First-tier Tribunal Baird and First-tier Tribunal Judge Wedderspoon ('the Panel') promulgated on 30 April 2015 which dismissed the Appellant's appeal against a decision to remove her from the UK following a refusal of her claim for asylum on all grounds .

Background

4. The Appellant was born on 21 March 1986 and is a national of Iran.
5. On 26 December 2013 the Appellant applied for asylum. The Appellant claimed that she was at risk on return because of her political opinions as a women's rights activist at University and her religion.
6. On 4 December 2014 the Secretary of State refused the Appellant's application. The refusal letter gave a number of reasons for why it was not accepted that the Appellant was at risk on return:
 - (a) There were discrepancies in her account of how her activities came to the attention of the authorities.
 - (b) The Appellants account of what aspects of women's rights she discussed with other students was vague.
 - (c) The Appellant had not heard of Parvin Ardalan an award winning female Iranian activist.
 - (d) The Appellant could not meet the family or private life requirements of the Rules.

The Judge's Decision

7. The Appellant appealed to the First-tier Tribunal. The Panel dismissed the appeal against the Respondent's decision. The Panel found :
 - (a) They did not accept the Appellants account of her political activities or that she had come to the attention of the authorities as a result of this and gave reasons for this conclusion(paragraph 17)
 - (b) They did not accept her evidence that her uncle made her aware of her friends arrest and gave reasons for this conclusion (paragraph 18)

- (c) They did not accept that the Appellant was a genuine convert to Christianity and gave reasons for this conclusion (paragraph 19)
 - (d) They considered the country guidance case of SB Iran (risk of return-illegal exit) Iran CG UKAIT 00053 and did not accept given their rejection of the basis of her claim that she was at risk on return.
8. Grounds of appeal were lodged which argued that :
- (a) The Panel failed to give any weight to material evidence in relation to her political activities giving too much weight to a peripheral issue, the fact that she had not heard of Parvin Ardalan.
 - (b) The Panel failed to make a clear finding as to whether her political activities after 2013 put her at risk.
 - (c) The Panel failed to make a clear finding as to whether the Appellant left Iran illegally only finding that she entered the UK illegally and therefore failed to apply SB (Iran) properly.
 - (d) The Panel failed to make adequate findings in rejecting the genuine nature of her conversion placing too much weight on what they categorized as the short period before she was baptised.
9. On 21 May 2015 First-tier Tribunal Judge McCarthy gave permission to appeal on all grounds.
10. At the hearing I heard submissions from Ms Johnrose on behalf of the Appellant that :
- (a) In relation to ground 1 the Panel based their rejection of the Appellants claim to have been a political activist on her lack of knowledge of Parvin Ardalan. They failed to consider what the Appellant said in her witness statement and put this issue in context. There was no correlation between the lack of knowledge of Ardalan and being an activist.
 - (b) In relation to ground 2 the Panel's approach was inconsistent in that they rejected her claim to be politically active then found that she was limited and irregular in her activities.
 - (c) In relation to ground 3 she accepted that if the Panel did not find that the Appellant account of her activities in Iran was credible they may have rejected

her explanation for how she exited Iran. They made no clear finding on this issue.

- (d) In relation to the Appellants conversion to Christianity Ms Johnrose had raised at the CMR that the Church of the Latter Day Saints do not attend court. The basis of the rejection of her conversion appeared to be the period of time that had elapsed before she was baptised. Factually the Panel was incorrect as the Appellant attended for 8 months not 4 before being baptised. The reasoning was inadequate.

11. On behalf of the Respondent Mr Mc Vitie submitted that :

- (a) The decision was brief.
- (b) If the only basis on which the Panel rejected the Appellants claimed political activism was her lack of knowledge of Parvan Ardalan he would accept it was harsh but it was not the only reason they gave. They set out a number of reasons.
- (c) He accepted that the finding in relation to her political activities was somewhat confused but in essence they found her involvement to be limited and therefore she was not at risk.
- (d) The Panel did not find her account credible and therefore were not bound to accept that she left Iran illegally.
- (e) The Panel were entitled to find that her consideration of being baptised after 3-4 months was a very short period of time. He also suggested that the Appellant could not have succeeded as she did not meet the Dorodian 01THO1537 guidelines.

The Law

12. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or

evaluation or giving 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 under argument. Disagreement with an Immigration Judge's factual conclusions, 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 that 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 told 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. In Mibanga v SSHD [2005] EWCA Civ 367 Buxton LJ said this in relation to challenging such findings:

"Where, as in this case, complaint is made of the reasoning of an adjudicator in respect of a question of fact (that is to say credibility), particular care is necessary to ensure that the criticism is as to the fundamental approach of the adjudicator, and does not merely reflect a feeling on the part of the appellate tribunal that it might itself have taken a different view of the matter from that that appealed to the adjudicator."

14. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that
- (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision.
 - (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

Finding on Material Error

15. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.
16. The first and second grounds argue that the Panel failed to give weight to material matters and made findings that were unclear. Ground 1 argues that in rejecting the Appellants claimed political activities *'The only reason given for this is because A had no knowledge of Parvin Ardalan'* who was described by the Respondent as 'an award winning female Iranian rights activist.'
17. I am satisfied that this argument misrepresents the basis on which the Panel rejected this part of the Appellants claim as set out in paragraph 17. Albeit the reasons given are brief they encapsulate a number of reasons: they found that although the Appellant claimed to be an activist that she took from 2009 until 2013 to actually do anything which must reflect adversely on the claim to be an 'activist'; they then noted that although she claimed to be an activist her claimed activity was 'irregular' 'limited to allegedly leafletting occasionally , attending some lunch time meetings and a demonstration and creating a CD about a female political activist.' These were matters that the Panel were entitled to weigh in the balance in determining whether they accepted her claim to be a political 'activist'. I am satisfied that the Panel made a clear finding that they did not accept her account of her political activity: they were not stating they accepted her activity was limited they were stating that the limited nature of what she described was inconsistent with her claim to be an 'activist' at all.
18. In relation to the weight given to the fact that she did not know Parvin Ardalan I note that it was never argued that this lady was indeed a leading rights activist. The Panel took into account the Appellants claim that she came from a reformist family and in that context were entitled to reject her explanation for why she had not heard of Ms Ardalan. The weight they gave to that was a matter for them.
19. I also note that the Panel at paragraph 18 gave other reasons for finding that the Appellant was not a credible witness which related to her claim that her uncle made her aware of her friend's arrest and that these findings are unchallenged.

Again these are matters that the Panel was therefore entitled to weigh in the balance in their overall assessment of whether the Appellant had given a credible account of why she fled from Iran

20. It is argued that the Panel failed to apply SB in that they made no clear finding as to whether the Appellant had exited Iran illegally. I am satisfied that having rejected her claimed political activities and her conversion to Christianity they had in essence concluded that she was not a credible witness as to the circumstances in which she fled from Iran, which included the claim that she exited illegally and they made this clear at paragraph 22.
21. The final challenge was in relation to the finding made by the Panel that they did not accept that the Appellants conversion to Christianity was genuine which was at paragraph 19. There is no factual error in the decision as suggested by Ms Johnrose: the Appellant was considering baptism after 4 months of attending church albeit she was not baptised until November 2014 8 months after she started attending Church. It was open to the Panel to find that the period that elapsed before she started to *consider* baptism undermined the genuine nature of her conversion. Although no reference was made to the absence of a minister from the Church of the Latter Day Saints attending court it would have been open to the Panel to also find that the Appellant had not followed the guidance in Dorodian where it was suggested that a statement or letter giving the full designation of the minister supporting a claimed conversion should be sent to the Home Office at least a fortnight before the hearing of any appeal, which should give the Home Office time to make a basic check on the minister's existence and standing. Unless the Home Office accepted that the appellant was a committed church member, in writing in advance, the minister should invariably be called to give evidence. Such a witness could have shed light on the genuine nature of the Appellants conversion and the time scale involved. While Ms Johnrose argued that the Church of the Latter Day Saints would not attend court to give evidence this has not been my experience but more importantly there was no evidence before the Panel confirming this. There was not even evidence from another member of the congregation, if not a minister, to shed light on the Appellants attendance at the Church and her engagement with the religion.

22. I remind myself of what was said in Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC) about the requirement for sufficient reasons to be given in a decision in headnote (1): *“Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge.”*

23. I was therefore satisfied that the Panel’s determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

24. I therefore found that no errors of law have been established and that the Judge’s determination should stand.

DECISION

25. The appeal is dismissed.

Signed

Date 26.3.2016

Deputy Upper Tribunal Judge Birrell