



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04696/2017

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 23rd July 2018

Decision & Reasons Promulgated
On 21st August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MRS R.I.B.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Ahmed, Counsel

For the Respondent: Mr Tan, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan born on 5th August 1980. The Appellant had applied for asylum in the UK on the basis that she contended that she had a well-founded fear of persecution in Pakistan on the basis of her religion. That application was refused by Notice of Refusal dated 3rd May 2017.
2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Devlin sitting at Stoke on 7th December 2017. In a decision and reasons promulgated on 22nd January 2018 the Appellant's appeal was dismissed.

3. On 2nd February 2018 Grounds of Appeal were lodged at the Upper Tribunal. Those grounds contended that there had been a procedural unfairness in the proceedings in that the judge had failed to grant an adjournment thus depriving the Appellant of a fair hearing. In addition it was contended that the judge had made a misdirection of law in a material matter, namely a failure to take into account the relevant legal test and/or policy guidance.
4. On 21st February 2018 in a very lengthy reasons for decision First-tier Tribunal Judge Grant refused permission to appeal, concluding that the application had no merit in it whatsoever and that in a thorough and carefully considered decision the judge had given cogent reasons for his findings that the Appellant was not a credible witness who had fabricated her claim.
5. Renewed Grounds of Appeal were lodged on 13th March 2018. Those grounds were put slightly differently to the original grounds. The failure to grant an adjournment ground was maintained and a further ground contending that there had been a misdirection in law with regard to the judge's credibility findings was included as well as claims that the decision on sufficiency of protection/internal relocation and the claim pursuant to Article 8 of the European Convention of Human Rights were flawed.
6. On 2nd May 2018 Upper Tribunal Judge Reeds granted permission to appeal. Judge Reeds noted that the thrust of the grounds relate to the issue of procedural irregularity giving rise to arguable unfairness. In this case the failure of the First-tier Tribunal Judge to grant an adjournment of the proceedings in the light of the medical evidence provided and that this affected the fairness of the proceedings as the judge proceeded without hearing evidence from the Appellant. Judge Reeds noted that it was plain that the judge had given consideration to the letter from the general practitioner dated 6th July 2017 and that the judge, from his observations, reached the conclusion that the Appellant was feigning an inability to proceed. However, Judge Reeds was persuaded that it was arguable that the medical evidence demonstrated that the problems that the Appellant complained of were not of a minor nature and were long-standing (as set out in evidence from 2012) and that her present circumstances including her presentation could arguably be viewed differently in the light of that material.
7. Furthermore she considered that it was arguable that the judge's assessment at paragraph 46 that the appeal was "within a relatively narrow compass" and "did not raise particular complex law and fact" is not borne out by the issues identified in the decision letter and as evidenced by the length of the determination. Judge Reeds noted that the applicant was given the opportunity to provide further medical evidence but failed to avail herself of this. She set out that the Appellant would be expected to provide medical evidence for the permission hearing to be served on the Tribunal and the Respondent no later than seven days before the hearing.
8. In granting permission the judge also made an anonymity direction as the claim concerned a protection claim and involved minor children.
9. It is on that basis that the appeal comes before me to determine whether there was a material error of law in the decision of the First-tier Tribunal Judge. The Appellant

appears by her instructed Counsel, Mr Ahmed. The Secretary of State appears by Home Office Presenting Officer, Mr Tan.

Case Law

10. It is appropriate to give due consideration in this matter to the relevant case law, namely the authority of *Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC)*. That case is authority for the following:-

“If a Tribunal refuses to accede to an adjournment request, such decision could, in principle, be erroneous in law in several respects: these include a failure to take into account all material considerations; permitting immaterial considerations to intrude; denying the party concerned a fair hearing; failing to apply the correct test; and acting irrationally. In practice, in most cases the question will be whether the refusal deprived the affected party of his right to a fair hearing. Where an adjournment refusal is challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the FtT acted reasonably. Rather, the test to be applied is that of fairness: was there any deprivation of the affected party’s right to a fair hearing? See *SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284*.”

Submissions/Discussion

11. Mr Ahmed advises that the Appellant did attend the hearing but was unwell and was unable to give evidence. He states that she was expecting her representatives to attend the first hearing but they did not appear and he refers me to the up-to-date medical report provided by Dr Sonnathi. He submits that given Judge Reeds’ comments credit should be given to the Appellant for attending even though she is unable to give evidence and that she had, he contends, been left without representation and that it was appropriate for the judge to have adjourned for a short period of time and he contends that there has been consequently a procedural irregularity. He further submits that without hearing the oral evidence it has not been possible for the judge to fully address the issues in the appeal.
12. Secondly he turns to the judge’s decision on other issues and challenges the view expressed by the judge at paragraph 101 contending that this raises doubts as to the correct approach for the judge to take. Further as far as the allegations of false/forged documents are concerned he submits the burden of proof was upon the Secretary of State and was not shifted and that he maintains the contention that the FIR is genuine and that the enquiries conducted by the Secretary of State were unreliable. Overall he considers the credibility findings to be unsafe and he asks me to remit the matter back to the First-tier Tribunal for rehearing.
13. In response Mr Tan starts by stating that paragraph 101 and the personal view expressed therein by the judge is merely a statement and not specific to this case and in any event it merely sets out the judge’s perspective. Given the number of credibility issues that have been raised by the judge he submits it would not be material. He asked me to consider the credibility findings and that the judge goes on to consider the sufficiency of protection and the alternative of internal relocation at paragraphs 104 to 106.

14. As far as the FIR is concerned he refers me to annex E of the Home Office bundle, document E5. There have been no documents filed in response. It is an uncontested document report and he submits that the submissions made on the Appellant's behalf do not take the matter much further.
15. Turning to the main issue of the prospective adjournment he submits that the judge cannot be faulted for trying every avenue and that the case came down to credibility and that the judge was entitled to make the findings that he did.

The Law

16. Areas 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 fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
17. 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

18. There are two main thrusts to the Appellant's contention that there are material errors of law in the decision of the First-tier Tribunal Judge. The first relates to the suggestion that the judge has committed a procedural unfairness in failing to grant an adjournment. I have considered the guidance given in *Nwaigwe*. I have also heard the submissions and given due consideration to paragraphs 24 to 53 of the judge's decision. This is a judge who has gone to very great lengths to accommodate the position of the Appellant and he has given a very thorough explanation as to the reasons why he did not grant an adjournment. I am satisfied his approach is impeccable. Indeed the approach to the adjournment as considered by Judge Grant in refusing permission at paragraphs 3 to 7 sets out the history of this matter and the fact that the judge had to all intents and purposes bent over backwards to assist the Appellant. For all these reasons, no procedural unfairness is shown and there is no material error of law.

19. I turn to the second thrust of the Appellant's appeal, namely there are errors of law in the judge's findings on credibility. The primary thrust of such arguments is to be found in the contentions that at paragraph 101 the judge has erred in law by expressing his own personal view. As Mr Tan has said quite properly all the judge was doing was expressing his perspective and that his comments were not specific to the case in question. Even if they were, there are such damning other findings on credibility expressed within the decision that, looking at the matter in the round, it cannot be said that the judge has materially erred. A proper approach to credibility will require an assessment of the evidence and of the general claim and relevant factors would include the internal consistency of the claim, the inherent plausibility of the claim and the consistency of the claim with external factors of the sort typically found in country guidance. The judge has gone on to carry out a very thorough analysis of the Appellant's credibility and has made findings of fact which he was entitled to and findings with regard to the issue of the sufficiency of protection and of internal relocation.
20. Overall this is a very thorough decision and the view expressed by Judge Grant in refusing permission cannot be faulted, namely:-

"... the Grounds of Appeal have no merit whatsoever. In a thorough and carefully-considered decision the judge has given cogent reasons for his findings that the Appellant was not a credible witness who had fabricated her claim. Those findings were properly open to the judge on the evidence before him and the grounds disclose no arguable error of law."

21. For all the above reasons, the Appellant's appeal is consequently dismissed.

Decision

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.

On granting permission to appeal, the Upper Tribunal Judge granted the Appellant anonymity. No application is made to vary that order and none is made.

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 13 August 2018

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date 13 August 2018

Deputy Upper Tribunal Judge D N Harris