



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

Appeal Number: AA/06928/2014

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke-on-Trent
On 9th April 2015**

**Decision & Reasons Promulgated
On 22nd April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE COATES

Between

**MS ZEINAB MOHAMMADI CHELKASARI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Keith Gayle of Counsel

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The Appellant is an Iranian national who was granted a visitor's visa valid from 22nd June 2012 until 28th September 2012. The Appellant had previously entered the United Kingdom as a visitor, the first occasion being in 2010. On 28th September 2012, the day her visa expired, the Appellant applied for a variation of leave on the basis that her removal from the United Kingdom would be contrary to this country's obligations under the Refugee Convention. The Appellant also applied on humanitarian protection grounds. Her application was refused on 30th August 2014 and her appeal against that refusal and the decision to remove her from the UK was dismissed by Judge of the First-tier Tribunal Holt on 30th October 2014.

2. In summary, the Appellant's asylum claim was based on her fear of the Iranian authorities because she had written a blog which was published on the internet and which was critical of the Iranian regime.
3. It is the Appellant's case that her identity was discovered by the authorities when a female friend named Movarid was taken into detention and questioned. The Appellant believes that Movarid must have been tortured and, as a result, gave details of the Appellant's blogging activities.
4. Judge Holt made various positive credibility findings. In particular she was satisfied that the Appellant had made comments in various blogs which would be perceived as critical and disrespectful of the Iranian regime and of the disadvantaged role of women in Iran. She also found that the Iranian authorities try to control information published on the internet which is critical of the regime. Furthermore, Judge Holt was satisfied that if the Iranian regime were able to trace the author of such criticism, such as a critical blog author, then they might well be at risk of being prosecuted and punished under the Iranian so-called justice system.
5. In summary, and applying the lower standard of proof, the judge was satisfied that the Appellant had been involved in some blogging activity, that the blogs would be of the type that the Iranian regime would want to censor, although the judge stated that she had no real sense of the extent of the Appellant's blogging activities. Furthermore, she was satisfied that the Appellant's blogs were closed down by the Iranian authorities. Nevertheless, Judge Holt dismissed the appeal because she found that other aspects of the Appellant's account were not credible for the reasons which are set out in her decision and reasons.
6. The Appellant's representatives applied for permission to appeal to the Upper Tribunal. Permission was granted by Upper Tribunal Judge Deans, sitting as a Judge of the First-tier Tribunal, on 21st November 2014. The Appellant's grounds in support of the application for permission argued that the First-tier Judge's adverse credibility findings were unsound and not adequately reasoned. The Upper Tribunal Judge considered that the grounds were arguable and accordingly permission was granted.
7. Thus the matter came before me in the Upper Tribunal on 9th April 2015. The Appellant was present. Representation was as mentioned above.
8. In submissions, Mr Gayle adopted and amplified the grounds which he had submitted in support of the application for permission.
9. Mr Gayle submitted that the First-tier Judge found that the Appellant was blogging and that her blog was critical of the regime. Therefore, he submitted that the judge should have been very wary of making an adverse finding, particularly in view of the fact that the authorities had closed down the blog.
10. Mr Gayle referred to paragraph 33 of the decision and reasons where Judge Holt stated that she had no real sense of the extent of the Appellant's blogging activities. It was submitted that extracts from the Appellant's blogs were included in the appeal bundle and therefore this analysis was flawed.

11. Mr Gayle pointed out that the Appellant did not use her own email address and that the judge has clearly misunderstood the evidence in that respect. He referred to paragraph 36 of the decision where Judge Holt held that there was no evidence at all at the hearing to explain how it was that the Appellant had been able to print off and provide to her solicitors significant quantities of evidence from her blogs and yet, at the same time, provided the notice from the three blogs saying that they had been closed down. Mr Gayle submitted that the Appellant had never been asked to explain how such information had been provided. She could have answered the question if it had been asked.
12. Reference was made to paragraph 37 where the judge found that there was no corroborating evidence. In this respect it was submitted that evidence from the Appellant's brother had been ignored.
13. Mr Gayle drew my attention to paragraph 39 where the First-tier Judge found it inconsistent that the Appellant's family would apparently have somebody who was a contact and a friend of the authorities and yet the authorities, at the same time, were trying to trace and arrest the Appellant. The judge found that the evidence on that particular point was unclear. Mr Gayle complained that the judge's reasoning in this respect was confused.
14. At paragraphs 41 and 42 it was argued that the First-tier Judge ignored evidence from the Appellant's family explaining delay. This was another area in which an explanation provided by the Appellant's brother had not been taken into account.
15. Finally, referring to paragraph 44, Mr Gayle submitted that the First-tier Judge misunderstood the Appellant's evidence. It was not her case that her address had been obtained from the blog. It had always been her case that her details were disclosed by her friend, Movarid, following her arrest.
16. For the Respondent, Mr McVeety attempted to persuade me that the decision was adequate and should be upheld. Nevertheless, whilst making no concessions, he accepted that it was "less than perfect in some areas".
17. Having given the matter careful thought, I am satisfied that there is merit in the arguments advanced on the Appellant's behalf by Mr Gayle. This has been clearly set out in the Grounds of Appeal and I do not propose to repeat it in this decision. I agree with Mr Gayle that, in view of the positive findings made by the judge, considerable caution was necessary before concluding, to the low standard of proof, that the Appellant would not be at risk of serious harm on return to Iran. The judge was satisfied that she had been writing a blog which was critical of the regime, the Iranian authorities do persecute such people and they had discovered the Appellant's identity. In the light of those findings, cogent reasons would be necessary in order to satisfy the Tribunal that the Appellant would, nevertheless, not be at risk of serious harm. I find that there are problem areas in the First-tier Judge's reasoning. In particular, she does appear to have overlooked evidence which was provided by the Appellant's brother. The judge does appear to have misunderstood the evidence at paragraph 44 of the decision where contradictory findings have been made. The judge states that the Appellant claimed that the Iranian authorities had traced her blogging activity online, and had been able to pinpoint her family address, despite the use of a disguised name. This has never been the Appellant's case. The Appellant

consistently maintained that she had come to the attention of the authorities following the arrest of her friend. There was never any suggestion that she had been traced online.

18. I am satisfied that these matters amount to a material error of law which justify setting aside the decision and having the matter heard afresh. I have reminded myself of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal. In particular I refer to part 3, paragraph 7.2(b) and have concluded that this is an appropriate case for remittal to the First-tier Tribunal in order that the appeal may be heard afresh by a First-tier Judge other than Judge Holt.
19. The making of the decision by the First-tier Tribunal involved the making of a material error on a point of law. I set aside the decision and direct that the matter shall be remitted to the First-tier Tribunal for a fresh hearing. No findings are preserved.

DIRECTIONS

20. The hearing shall be listed in the First-tier Tribunal at Bennett House, Stoke-on-Trent on the first available date.
21. The time estimate is three hours.
22. A Farsi interpreter shall be provided by the Tribunal.
23. The parties are not required to re-serve evidence which has already been served. However, any new evidence or witness statements shall be served and filed not less than seven days before the substantive hearing.

No anonymity direction is made.

Signed

Date 17th April 2015

Deputy Upper Tribunal Judge Coates