Upper Tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07852/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 15 September 2015	**On 16 September 2015**

Before

Deputy Upper Tribunal Judge Pickup

Between

Maryam Sasanipour
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the appellant: Mr P Bonavero, instructed by Trott & Gentry LLP Solicitors
For the respondent: Mr P Nath, Senior Home Office Presenting Officer

ERROR OF LAW DECISION AND REASONS

1. The appellant, Maryam Sasanipour, date of birth 20.10.88, is a citizen of Iran.

2. This is her appeal against the decision of First-tier Tribunal Judge Black promulgated 12.12.14, dismissing on all grounds her appeal against the decision of the Secretary of State, dated 19.9.14, to refuse her asylum, humanitarian protection and human rights claims. The Judge heard the appeal on 12.12.14.

3. First-tier Tribunal Judge Murray refused permission to appeal on 5.2.15. However, when the application was renewed to the Upper Tribunal, Deputy Upper Tribunal Judge McGinty granted permission on 13.5.15.

4. Thus the matter came before me on 15.9.15 as an appeal in the Upper Tribunal.

Error of Law

5. For the reasons set out herein, I find no material error of law in the making of the decision of the First-tier Tribunal such as to require the determination of Judge Black to be set aside.

6. The relevant background can be summarised as follows. The appellant first came to the UK in 2009 on a visit visa. She claimed asylum on grounds that she feared she would be killed by her family on return to Iran, on account of having been filmed whilst engaging in sexual acts with two men. Her claim was rejected and she became appeal rights exhausted by April 2010. In June 2010 she lodged further representations, now alleging to be a Christian convert from Islam. That claim was also rejected. Further submissions on the same grounds were also rejected in 2011 and she was returned to Iran on 12.5.11, accompanied by medical escorts. However, in July 2012 she returned illegally to the UK and claimed asylum on arrival on 27.7.12. This further claim for asylum alleged that she feared being arrested and mistreated by the Iranian authorities on account of being a suspected spy. She also claimed that whilst in Iran she started a web blog detailing the ill-treatment of her by the Iranian authorities and the general prevalence in Iran of violence towards women. She claimed that since arriving in the UK she had posted some 16 or 17 further web blog entries critical of the Iranian regime.

7. Relying on the Devaseelan principle, Judge Black took as the starting point the decision of Immigration Judge Birkby promulgated 26.1.10, in which the appellant's claim to have been filmed whilst engaging in sexual acts with two men was found not credible and her evidence was described as vague, implausible, inconsistent and evasive. The judge did not accept that there was any such video, or that she had been threatened or blackmailed, or assaulted or raped, or attempted suicide, as claimed by the appellant. No new evidence was adduced before Judge Black as to these earlier asylum claims.

8. Judge Black also found the appellant not credible and rejected her account of being suspected of acting as a spy, and that her family had been approached by the authorities. The judge accepted the COIR evidence that the Iranian authorities prosecuted and punished bloggers expressing dissenting views and have cracked down on online activism. However, the judge concluded that there was nothing to indicate that the appellant would be perceived as an activist so as to attract the adverse attention of the authorities. In fact, the judge found the evidence of blogging activities to be vague and lacking in credibility. Overall, taking the evidence as a whole, the judge found the appellant's account not credible and thus dismissed the appeal.

9. The main complaints in the grounds of application for permission to appeal are that: the First-tier Tribunal Judge erroneously assessed the risk to the appellant from the Iranian authorities as a result of her blogging activities; wrong required corroboration in respect thereof; and failed to adequately deal with her sur place claim, also based on alleged continuation of the blogging activities. In granting permission to appeal, Deputy Upper Tribunal Judge McGinty found these issues arguably amounted to material errors of law.

10. In relation to corroboration, I do not accept Mr Bonavero's reading of the decision to the effect that the judge improperly sought corroboration. In ST (Corroboration - Kasolo) Ethiopia [2004] UKIAT 00119 the Tribunal said that it was a misdirection to imply that corroboration was necessary for a positive credibility finding. However, the fact that corroboration was not required did not mean that an Adjudicator was required to leave out of account the absence of documentary evidence, which could reasonably be expected. In particular, the Adjudicator was entitled to comment that it would not have been difficult for the Appellant to provide a death certificate concerning his brother or some evidence to support his contention that he had received hospital treatment. These were issues of fact for the Adjudicator to assess. In Gedow, Abdulkadir and Mohammed v SSHD [2006] EWCA 1342 the judge had noted that the Somali appellant claimed that an uncle had funded his journey and the referred to "the absence of any corroborative evidence by letter or any other means from his paternal uncle." The judge was attacked on appeal for erroneously requiring corroboration, but the Court of Appeal said that he was not; he was merely drawing a conclusion from the absence of corroboration; and he was entitled to do so, so long as he bore in mind the difficulties faced by asylum seekers in producing corroborative evidence. In TK (Burundi) v SSHD (2009) EWCA Civ 40 the Court of Appeal said that where there were circumstances in which evidence corroborating the appellant's evidence was easily obtainable, the lack of such evidence must affect the assessment of the appellant's credibility. It followed that where a judge in assessing credibility relied on the fact that there was no independent supporting evidence where there should be and there was no credible account for its absence, he committed no error of law when he relied on that fact for rejecting the account of the appellant. In this case the evidence concerned a partner in the UK.

11. The Qualification Directive, reflected in paragraph 339L, provides that it is the duty of the person to substantiate the asylum claim and where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation when all of the following conditions are met: (i) the applicant has made a genuine effort to substantiate his application; (ii) all material factors at the applicant's disposal have been submitted, and a satisfactory explanation has been given regarding any lack of other relevant material; (iii) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case; (iv) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; and (v) the general credibility of the applicant has been established. It is clear from the decision of the First-tier Tribunal that on any view the appellant does not meet these requirements.

12. Although it is frequently necessary to give an asylum applicant the benefit of the doubt, where there are strong reasons to question veracity, as arise in this case from the appellant's various previous claims and the other matters drawn attention to by the immigration judge, the individual can be expected to provide a satisfactory explanation for the absence of supporting evidence. In the circumstances, it was not wrong for the judge to point out, for example, that claims that the authorities visited family home because of the appellant's activities might reasonably expect to be supported by oral evidence from the appellant's sister, or an explanation offered as to why she could not assist. Neither do I find any error of law in the judge's placing no weight on emails from family members. Whilst the judge is correct to point out that these are necessarily self-serving and not independent confirmation of the appellant's account, the weight to be attached to such evidence is a matter for the judge, though he might have better suggested little weight rather than no weight.

13. There is a minor error of fact in the findings at §16, where the judge stated that the appellant made no assertion that the compromising sex video was referred to or led to problems for her at any time. At Q37 and Q46 of the asylum interview, the appellant repeated her previous claim that she was arrested because of the circulation of the CD. However, this claim had been comprehensively rejected in the previous Tribunal appeal decision, as noted at §15 of Judge Black's decision. At §16 Judge Black stated that the appellant had not adduced any new evidence to lead the Tribunal to revisit the findings made in that previous appeal decision. In the circumstances, even if the judge had taken account of the repetition of the claim in relation to the sex video, it is abundantly clear that that alone would have been insufficient to displace the previous comprehensive findings on that issue. In the circumstances, there is no error of law in this regard.

14. The judge was required to take account of the appellant's previous rejected asylum claims: her claim to have been video recorded whilst engaged in sexual acts, and that she is a Christian convert from Islam. As the judge stated at §16 the appellant adduced no evidence that led Judge Black to revisit the findings made in the first decision. Neither did the judge find her claim to have been accused of being a spy credible.

15. Mr Bonavero relies on what he claimed was an inconsistency in §17 of the decision, where the judge accepted that the circumstances of the appellant's return to Iran accompanied by escorts may have drawn attention to her at the airport, and the finding that there is no evidence to support her claim that she was detained or otherwise ill-treated, or of adverse attention to the authorities. Mr Bonavero points out that it would be difficult if not impossible to obtain evidence that she had been detained and questioned at the airport. I do not accept, however, that the judge is here requiring corroboration of her account. The judge has to assess this appellant on the basis of the previous findings of various incredible claims. Obviously, any new claim has to be regarded with the greatest degree of caution. It is not wrong for the judge to point out that there is no support for the claim, other than the appellant's own assertions. Further, the judge gives in §17 two additional reasons for rejecting this account. First, that it is not credible that if she admitted to the authorities that she

was a spy that she would be released as claimed. Second, the failure of the appellant to give consistent detailed information in interview at her earliest opportunity and that much of the claim was added in her later witness statement. Associated with this same issue, the judge also noted the appellant's sister had not given oral evidence, although she was living with the appellant in the UK.

16. Mr Bonavero also suggests that the judge was improperly seeking corroboration at §20 of the decision when it was noted that there was no independent evidence to confirm that the cyber warning purporting to be from the Iranian authorities was authentic. The judge also doubt the credibility of the evidence adduced of the first blog. I find that the judge was doing no more than pointing out the obvious, that these documents do not in and of themselves amount to independent support for the claim made by the appellant. The fact that some of the documents have the internet address of the blog on them does not demonstrate that they are necessarily genuine. Neither do I accept that the documents show the dates on which they were posted, although there is a list of dates of previous postings down the left-hand margin of A12. The translations are, in my view, very poor, difficult to understand and fail to demonstrate anything other than generalised statements. It appears that only the headings of the blogs have been translated, as well as parts of two blogs, one complaining about the spread of prostitution in Iran, which seems ironic given the appellant's claim to have worked as a prostitute herself. It is clear that the vast majority of what is written on pages A14 –A22 has not been translated, as the judge noted at §21. The judge also correctly noted that the cyber block document at A23 is dated 22.8.12, after the appellant returned to the UK. There is no evidence, as the judge noted, that this is a genuine document. As I discussed with Mr Bonavero, anyone with a computer could create such a document, or indeed the so-called blog pages. No evidence was presented to the judge to demonstrate that these pages were in fact online on the Internet. This was evidence which should have been reasonably easily obtained and produced. The judge was entitled to note the lack of such evidence and to draw conclusions relevant to credibility from the absence of such evidence.

17. The weight to be attached to the rather limited evidence was in the end a matter entirely for the First-tier Tribunal Judge, who concludes at §21 that it was insufficient to demonstrate to the lower standard of proof that this appellant set up a blog which was active in Iran between 2011 and 2012, and in the UK. Within §21 the judge set out cogent reasoning for reaching this conclusion. I find that is a conclusion open to the judge on the evidence in the appellant's bundle, including the purported blog pages, the majority of which was not translated and its source and date of creation entirely unclear. I reject the assertion that this amounted to improper requirement for corroboration. It would have been possible and reasonable to provide better evidence at least for some of the matters referred to by the judge. In the circumstances, I find no material error of law in the judge's treatment of this evidence. It is on the basis of the conclusions about this evidence that the judge came to the conclusion that there is nothing to indicate that the appellant is or would be perceived by the Iranian authorities as an activist.

18. In essence, the appellant's case turned on her credibility, which was already severely damaged by the previous asylum claims found to be entirely incredible. It is clear from §22 that the judge considered the evidence as a whole, in the round, including both the first appeal decision and the appellant's immigration history. Her claim was largely unsupported by credible confirmation evidence. The judge gave reasons for finding that the claim was in essence unsupported. There was evidence that it would have been reasonable to expect the appellant to provide to confirm or corroborate her claim, which was not produced. I find it was open to the judge on the evidence before the Tribunal to conclude that there was no reason to depart from the findings of the first Tribunal judge, and that, considered as a whole, the appellant's account was not credible and should be rejected.

Conclusions:

19. For the reasons set out herein, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

Signed

Deputy Upper Tribunal Judge Pickup

Dated

Anonymity

I have considered whether any parties require the protection of any anonymity direction. The First-tier Tribunal did not make an anonymity order. Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable and thus there can be no fee order.

Signed

Deputy Upper Tribunal Judge Pickup

Dated