



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

Appeal Number: AA/10779/2014

AA/10780/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 23 February 2016**

**Decision and
Promulgated
On 18 April 2016**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY

Between

**M S M
M G**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Gayle, Elder Rahmi Solicitors

For the Respondent: Mr Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are mother and daughter and are nationals of Iran. The first Appellant applied for asylum on the United Kingdom on the basis of her

political activities. The Respondent refused to recognise her as a refugee as her account was not believed. Her application was also refused under paragraphs 276ADE and under the adult dependent relative provisions of the Immigration Rules in a letter dated 21 November 2014. The Respondent made a decision to refuse to vary their leave to remain.

2. The Appellants appealed against that decision and their appeals were dismissed by First-tier Tribunal Judge Higgins in a decision promulgated on 6 May 2015. He found that the first Appellant had not given a credible account and dismissed her appeal against the refusal of asylum. He also found that the first Appellant did not qualify for a grant of humanitarian protection and that her rights under Articles 3 and 8 of the European Convention on Human Rights would not be breached on return.
3. The Appellants sought permission to appeal against the decision. Permission was granted by First-tier Tribunal Judge Chambers on 16 December 2015 on the basis that the First-tier Tribunal did not give clear reasons for his findings on the evidence.

The Grounds

4. The grounds assert that there was a failure to provide sustainable reasons for adverse credibility findings. At paragraph 52 and 54 the First-tier Tribunal found that it was “highly unlikely” that the first Appellant would have been chosen to distribute anti-regime leaflets by her colleagues. The first Appellant maintained that as a pregnant woman or mother with a young child she would be less likely to arouse suspicion. The grounds argue that it should have been obvious that a pregnant woman or woman with a young child did not fit the stereotypical profile of an anti-regime activists and that this core adverse credibility finding did not bear scrutiny.
5. It is further submitted that the First-tier Tribunal based an adverse credibility finding on a discrepancy concerning whether or not the first Appellant’s husband knew about her anti-regime activities. The grounds argue that this was in fact a minor discrepancy and that it did not undermine the core of her account. The first Appellant had provided, it is asserted, a consistent account of her husband’s non-involvement in her anti-regime activities and his knowledge of them was a peripheral matter. The First-tier Tribunal had been deflected by minor inconsistencies in her evidence.
6. The First-tier Tribunal, it is argued, had made an adverse credibility finding on the absence of any explanation for how the first Appellant’s family obtained an official document issued on 3 June 2012. However, the first Appellant, it is said, was not asked how her family obtained this document. It is submitted that the finding was unreasonable.

7. It is also argued that the First-tier Tribunal materially erred in suggesting that a document was a forgery as some of the words were in English which, it is submitted, is an international language and often appeared in official documents. In the absence of compelling evidence it is said that the finding is flawed. It is also asserted that in finding that the fabricated allegations contained in the “verdict” also raised concerns about its authenticity the First-tier Tribunal did not take account of the objective evidence that charges are often vague and consequently open to fabrication and exaggeration. The Judge’s decision to place no weight on the documents is said to be a material error of law.
8. It is also asserted that the Judge’s rejection of the first Appellant’s aunt’s evidence on the basis that it was “untested” was in error as there was no requirement for corroboration and the First-tier Tribunal was still obliged to give reasons for rejecting it. It is also submitted that the fact that no weight was placed on the witness evidence who attended the hearing to say that he forwarded the corroborative evidence was an error of law.

The Rule 24 Response

9. It is submitted on behalf of the Respondent that the First-tier Tribunal gave detailed reasons on the core of the first Appellant’s claim. With regard to the findings in relation to a pregnant woman attracting more attention it is said that the grounds are a disagreement with rational findings. It is said that it is unarguable that the first Appellant’s husband not knowing about her activities was minor discrepancy. The Judge was entitled to make findings as to how a document came into the possession of the first Appellant. Further, the Judge gave reasons in relation to the court document having English written on it. The Judge was aware that corroborative evidence was not required and he was entitled to state that the aunt’s evidence was untested as she did not give evidence. He accepted that the witness was honest but this did not mean that the Appellant’s account was true nor did it undo the key discrepancies. The decision was fair and balanced. The grounds are said not to disclose an error of law.

The Hearing

10. Mr Gayle submitted that it was arguable that the Judge failed to provide sustainable reasons at paragraphs 52 and 54 of the determination. The Judge found it highly unlikely that a pregnant woman would be used to distribute anti-regime leaflets. It was a perverse finding. The Judge used the term “highly unlikely” which took it to the threshold of being perverse. With regard to the knowledge her husband had of her activities, the first Appellant clarified her evidence and said that her husband did know and even without that clarification it was a minor discrepancy and the Judge materially erred by placing undue weight upon on it. In 2015 she had been separated from him for over two years and only had become separated

because she had to come here and he had been targeted in her absence. It was not surprising that she made a mistake in her evidence concerning her knowledge and she did clarify it in re-examination. At paragraph 54 the Judge said that a woman with a child would not be less likely to arise suspicion. It would be unreasonable to base an adverse credibility finding on the absence of an explanation with regard to a document. At paragraph 57 the Judge dealt with the verdict having incorrect charges on it and the Judge did not accept that the background evidence showed that the authorities were not always consistent with the charges that they put to people. The description of the offence was markedly different but the background evidence did show at A11 of the Appellant's bundle that quite often people were charged with non-political offences. The Judge was referred to this at paragraph 57. If the Appellant relied on a false document it was probable that she would have put the same charges in it. The Judge dismissed the aunt's evidence on the basis that it was not tested but there was no basis for requiring corroboration and the aunt was in Iran. The determination was unsustainable.

11. Mr Jarvis produced two decisions from Court of Appeal and submitted that plausibility could be pursued as long as it was viewed through the spectacles of context. As long as reasons were given why something was implausible then it was a lawful approach to make. First-tier Judges had busy work schedules and maybe points occurred to them after the hearing. The question of fairness was an intuitive matter for the judge himself. It was not for the judge to make the case for the other side and a judge would properly have erred if they he entered the forensic arena. The grounds were perversity challenges which did not meet the very high threshold to meet illogicality. Paragraph 5 of the grounds did not show an unfair approach by the Judge and it was open to the Judge to consider that separately and make one in the round conclusion. It was not perverse or illogical to conclude that a child would bring attention to oneself. There was no background evidence to show that this was done in Iran. At paragraph 53 of the decision, the essential point was that there was a contradiction in the evidence and the Judge dealt with this sensitively and had taken into account that giving evidence was stressful and it could not be said that this was a perverse finding. With regard to the reference to the verdict document, the Judge was entitled to conclude that the document was not in Farsi and there was no error of fact or law. The finding with regard to the untested evidence was not a strong finding by the Judge. He was pointing out the evidence and he was focussing upon what could be tested and that was where the thrust of his attention lay and there was nothing unlawful in that approach. The Judge's approach to the escalation of the offence was lawful. This was a political crime and the Judge rightly and lawfully said that this was a person who was arrested on the basis of a political claim and it was difficult to see why the authorities would have to escalate that in terms of the evidence produced. The Judge noted the lack of independence. It was another issue along the way. The background evidence did not support a suggestion that there was a material error of fact and was not perverse or irrational. The final point with regard to the false document was that there were many

cases where documents were not given weight because claimants made bad claims and produced bad evidence and there was nothing in that that caused this judgment to be unlawful.

12. Mr Gayle replied that he agreed it was important that evidence was considered in the context of the country in issue but the Judge had done that here. It was wholly likely that a pregnant woman would carry out these activities. There had to be fairness. It was impossible to raise every potential issue but the Judge must put forward concerns. Fairness was not demonstrated by raising the issue after the hearing. It was likely that documents were printed on machines that had English as an origin and it was likely that they would have English at the bottom. There was no logic to the behaviour of the Iranian authorities and the Appellant's claim was not undermined by the fact that she was convicted of offences that she did not commit. The determination was unsustainable.

Discussion and Findings

13. The grounds allege that the First-tier Tribunal failed to provide sustainable reasons for adverse credibility findings. The first impugned finding is at paragraph 52 of the decision, namely that it was "highly unlikely" that out of a group of women, the First Appellant, as a pregnant woman or a woman with a young child would be the best equipped distributing leaflets critical of the Iranian authorities.
14. The First-tier Tribunal gave reasons for this conclusion. According to the first Appellant's evidence she had distributed leaflets on a number of occasions. Firstly, when she was pregnant and secondly when her baby (the second Appellant) was 4 months old. At paragraph 52 the Judge said that he did not understand why the other women would have thought that a pregnant woman would be less likely to attract attention in a library or at a news stand than one who was not. He also considered that the behaviour of a 4 month old baby would be difficult to predict at the best of times. The Judge considered that were the second Appellant to cry at an inopportune moment, the effect would have been likely to attract attention to the First Appellant rather than deflect it. At paragraph 54 the Judge considered the fifth and final time the First Appellant distributed leaflets when her daughter would have been 2 years and 7 months and said she inserted 50 leaflets into books on the shelves of a library. The Judge again concluded that a child of this age might at any time have drawn attention to her mother.
15. It is common ground that there was no background evidence in relation to the question of the likelihood of pregnant women or women with young children distributing leaflets. Although the First-tier Tribunal does not use the word "plausible" it is clear that the Judge found it inherently implausible that out of a group of women capable of distributing women, the only one chosen to do so was the first Appellant when she was chosen on the basis that she was pregnant or had a young child. Mr Jarvis referred to the case of

In **Y v SSHD [2006] EWHC 1223** in which the court said, at paragraphs 26 and 27, that a decision maker is entitled to regard a claimant's account as incredible by drawing on his own common sense and his ability as a practical and informed person to identify what was and was not plausible, albeit that he had to take care not to reject an account as implausible because it would not seem reasonable if it happened in the UK. In essence the decision maker must look through the spectacles provided by the information he has about conditions in the country in question.

16. I consider that the First-tier Tribunal was entitled to take the view, and gave sustainable reasons for finding that it was unlikely out of group of women the appellant would be chosen because she was pregnant or had a child and that this was less likely to bring suspicion onto her. He gave rational reasons for concluding that a woman with a young child would be more likely to attract attention if the child were to cry out. Further, this was not the only point in respect of which he found the Appellant's account to be lacking in credibility.
17. The grounds also assert that the discrepancy in the first Appellant's evidence in relation to whether her husband knew about the fact that she was distributing leaflets was a peripheral matter. The First-tier Tribunal found, at paragraph 53 of the decision, that there was a contradiction in the first Appellant's account "which went to the heart of her evidence". The first Appellant had stated in her substantive interview at question 11 when asked whether her husband had been involved in the distribution of the leaflets that he had known about it but had not participated. When cross-examined, she said that her husband had been unaware that she was involved in distribution of leaflets. The Judge directed himself appropriately in relation to this inconsistency. He recognised that honest witnesses make mistakes. However, he found that there was no obvious reason why her answer might have been different in 2012 (the date of the interview) and 2015 (the date of the hearing).
18. I find that the First-tier Tribunal did not fall into error in finding that this was a discrepancy that went to the heart of her claim. It was her account that she stored the leaflets in their bedroom which she shared with her husband. Her account was not a factually complex one and the Judge was entitled to find that this was a significant discrepancy in her evidence and he gave adequate reasons for that finding.
19. The grounds also impugn the First-tier Tribunal's adverse credibility finding, at paragraph 55 of the decision, in relation to the alleged absence of any explanation for how the first Appellant's family obtained an official document issued on 3 June 2012. The grounds assert that the finding was unfair because the first Appellant was not asked how the family obtained the document. The grounds also allege further errors of law in the Judge's treatment of documents and making an adverse finding on the basis that there was English in the document. It is said that the Judge's findings that

the fabricated nature of the allegations contained in the verdict led to concerns about its authenticity were flawed.

20. The First-tier Tribunal did not, as the grounds assert, conclude that the document which recorded the first Appellant's conviction and sentence was a forgery. At paragraphs 55 to 63 the Judge considers each document individually and then concludes at paragraph 64 that having regard to the totality of the evidence and in particular to the concerns about the authenticity of the document purporting to record the conviction and sentence and his reservations about the credibility of the claim to have distributed leaflets that no weight is to be attached to the documents. He therefore directed himself in accordance with **Tanveer Ahmed (Starred) 2002 UKIAT 00439** in assessing what weight should be given to the documents in assessing the evidence in the round.
21. In assessing what weight to be placed on the documents he was entitled to consider how they were acquired. The burden of proving the reliability of the documents was on the first Appellant, including provenance. At paragraph 55 the First-tier Tribunal stated that there was no explanation as to how the document apparently issued on 3 June 2012 came into the possession of the first Appellant. That statement was factually correct. The provenance of the document had not been demonstrated. I do not consider that this was a matter that was required to be put to the first Appellant in order for the requirements of fairness to be served. As Schiemann LJ in the Court of Appeal stated in **SSHD v Maheshwaran** [2002] EWCA Civ 173 at paragraph [2] and [3] fairness does not require every matter on which an adverse finding is subsequently made to be put and judges will in general be "rightly cautious about intervening lest it be said that they have leaped into the forensic arena and lest an appearance of bias is given."
22. At paragraph 56 the First-tier Tribunal concluded that since there were English words at the foot of the court document this indicated that it was not a document obtained directly from the court on the day it was prepared as was indicated in an email from relied on by the first Appellant. The First-tier Tribunal concluded that it was more likely to have been created in some other context. The first Appellant had been able to offer no explanation as to why the references in English to "judge", "sign" and "print" appeared on the document. The matter was raised at paragraph 45 of the Reasons for Refusal Letter as a ground for refusal. The First-tier Tribunal was not referred by the first Appellant or her representatives to any evidence to show that Iranian court documents could or did include English words. The burden of proving the genuineness of the document relied on was on the first Appellant and in the absence of evidence on this point the Judge was entitled to find that the presence of words in the English language was anomalous. The First-tier Tribunal took the first Appellant's explanation as to why the document could contain English into account but rejected it with adequate reasons.

23. The Judge's findings at paragraph 57 are also criticised. There was a mismatch between the first Appellant's conviction as recorded in the "court verdict" at page 17 of her bundle and her claimed offence. She claimed to have distributed leaflets critical of the regime and the verdict recorded that she had participated in rioting and disturbing public order and national security of the Islamic Republic of Iran and promoted Western ideas and culture. She sought to explain this by reference to the tendency of judicial authorities in Iran to exaggerate the gravity of misconduct attributed to the opponents of government. The First-tier Tribunal notes that he read the materials to which he was referred by Mr Gayle and accepted that the Iranian judiciary lacked independence so might well have convicted her notwithstanding the deficiencies in the evidence. However, he found that the distribution of leaflets critical of the regime would, without more, have justified a substantial sentence. He therefore found it unclear what the authorities stood to gain by convicting her of offences she had not committed and that the fact that the description of the offences of which the first Appellant was allegedly found guilty was markedly different to the offences she allegedly committed fuelled his doubts about the authenticity of the document.
24. The evidence to which I was referred by Mr Gayle at the hearing was page A11 of the Appellant's bundle. The US State Department Report 2013 describes there how the government arrested students, journalists, lawyers, political activists, women's activists and artists and charged them with crimes such as "propaganda against the system" and "insulting the supreme leader". Also, it is reported that the government arrested, convicted and executed persons on criminal charges when their actual offence was political.
25. It is clear that the First-tier Tribunal had regard to the background evidence and gave rational and adequate reasons for finding that as the authorities had incontrovertible evidence that she had been involved in a political crime which would attract a substantial custodial sentence there was nothing to gain from convicting her of other political offences. His finding is not at odds with the background evidence. It is neither perverse nor inadequately reasoned.
26. The grounds also criticize the First-tier Tribunal's statement at paragraph 48 that the first Appellant's aunt's evidence was untested. She had submitted an email. The First-tier Tribunal did not, however, as is asserted in the grounds, reject the evidence because it was untested. The First-tier Tribunal's reasons for not attaching weight to that document are given at paragraph 64 and involved an assessment of the evidence in the round and are fully reasoned and rational. Further, it is clear from paragraph 65 of the decision that the First-tier Tribunal was fully aware that there is no requirement for an asylum seeker to corroborate his account. He says so in terms.

27. The final criticism of the First-tier Tribunal's credibility findings is that at paragraph 62 of the decision the evidence of a witness was accepted but that no weight was placed on it. At paragraph 62 the First-tier Tribunal accepted the witness' evidence that he was given an envelope to pass to the first Appellant's brother. In contrast, in paragraph 61 he found the first Appellant an unimpressive witness who was vague and evasive. The fact that the First-tier Tribunal found the witness to be telling the truth about being given an envelope does not mean that he had to accept that first Appellant's account was a truthful one. He gave clear and sustainable reasons as to why he did not accept the core of the first Appellant's case.
28. I therefore find that there was no error of law in the decision of the First-tier Tribunal. The grounds amount to no more than a disagreement with the findings of fact.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge LJ Murray