



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/00592/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Glasgow
On 4 May 2017**

**Decision Promulgated
On 16 May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

**Miss S I
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Byrne (Counsel) instructed by Latta & Co,
solicitors
For the Respondent: Ms M O'Brien, Senior Home Office Presenting
Officer

DECISION AND REASONS

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant, preserving the anonymity order made by the first-tier tribunal.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Farrelly promulgated on 15 March 2017, which dismissed the Appellant's appeal.

Background

3. The Appellant was born on 16 January 1986 and is a national of Iran. On 10 January 2017 the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Farrelly ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 4 April 2017 Judge M J Gillespie granted permission to appeal stating inter alia

I consider that there is arguable force in each of the three main grounds of appeal proposed: that the learned Judge made a finding of fact adverse to the appellant after having refused an adjournment requested to enable her to prove that fact; that he failed to address the question whether her Christian attendance and observation in the United Kingdom, even if not genuine, might nevertheless expose her to risk of harm in Iran as an apostate; and that he failed to address at all the question of how public Facebook postings concerning Christianity which would be reasonably likely to come to the attention of the authorities in Iran and might expose her a real risk of harm in Iran.

The Hearing

5. (a) Before starting his submissions, Mr Byrne sought leave to add two supplementary grounds of appeal. He conceded that there is no provision in the procedure rules for broadening the scope of permission to appeal once it is granted, however Ms O'Brien for the respondent took the pragmatic approach that the suggested supplementary grounds of appeal are nothing more than re-wording of the grounds upon which permission to appeal has been granted. It was agreed that I should exercise a degree of latitude in listening to the arguments in support of the grounds of appeal.

(b) Mr Byrne moved the grounds of appeal. He took me to [11] of the decision, where Judge records that an application was made to adjourn the hearing for production of a medical report. The Judge refused the application to adjourn because

I did not see how it would assist in assessing the truth of the claim

Mr Byrne then took me to [39] of the decision. In the final sentence there, the Judge finds

There is no evidence to support her claim that she had cancer rather than an overactive thyroid nor is there is any evidence that her state defies medical science.

Relying on the case of Hamden v SSHD 2016 CSIH 57, Mr Byrne reminded me that the test to be applied is one of fairness. He told me that the decision demonstrates that having refused the opportunity to set out one of the fundamental parts of the appellant's claim, the Judge makes a finding that the appellant has not established the nature and extent of her illness, nor the fact of recovery from illness, nor the reason for that recovery. He told me that [39] is an adverse credibility findings which stems from the refusal of the adjournment. He told me that the refusal of the adjournment unfairly disadvantaged the appellant. He told me that at [44] the Judge himself identified this particular aspect of the appellant's case as "*significant*".

(c) Mr Byrne turned his attention to the second ground of appeal and told me that inadequate consideration has been given to the appellant's *sur place* activities. He told me that at [17] the Judge records various part of the appellant's case (that she has attended an evangelical Christian church in the UK and that she has used her Facebook page to publicly proclaim her conversion to Christianity). He told me that the Judge failed to consider the principles in Danian v SSHD [1999] INLR 533.

(d) Mr Byrne turned his attention to the evidence of the appellant's Facebook activity. He referred me to AB and Others (Internet activity - state of evidence) Iran [2015] UKUT 0257 (IAC). He told me that inadequate consideration had been given by the Judge to the "pinch point" of return at Tehran airport, where, according to AB, the appellant's internet activity would be scrutinised. He told me that the facts of this case and the ratio of AB can only lead to the conclusion that there is a risk to the appellant on return. He told me that none of those factors have been considered by the Judge.

(e) Mr Byrne told me that the decision is fatally flawed by material errors of law. He urged me to set the decision aside and to remit this case to the First-tier to consider of new.

6. (a) Ms O'Brien relied on the rule 24 notice and told me that the decision does not contain errors of law, material or otherwise. She told me that the application to adjourn was made on the basis that a medical report would be produced indicating that the appellant had a miraculous recovery from illness. She told me that at [11] the Judge clearly stated his reasons for refusing the adjournment requested, and that those reasons are sustainable. She told me that having considered and refused the adjournment request, the Judge carefully considered each strand of evidence including the appellant's evidence about her medical history. She told me that what is said at [39] must be considered in the context of the credibility findings at [30] to [45] of the decision.

(b) Ms O'Brien told me that the grounds of appeal relating to *sur place* activities and risk on return created by Facebook and internet activity are not matters which were placed before the First-tier. She referred me to the six-page skeleton argument and the key passage index and told me that neither document even hints at *sur place* activities or internet activity. She told me that the Judge could only deal with the evidence that was presented to him, and could not make findings of fact on matters which are not Wednesbury obvious.

(c) Ms O'Brien urged me to dismiss the appeal is allowed the decision to stand.

Analysis

7. The 2014 Procedure Rules Rule 4(3)(h) empowers the Tribunal to adjourn a hearing. Rule 2 sets out the overriding objectives under the Rules which the Tribunal "*must seek to give effect to*" when exercising any power under the Rules. The overriding objective is deal with cases fairly and justly. This is defined as including

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal; (b) avoiding unnecessary formality and seeking flexibility in the proceedings; (c) ensuring, so far as is practicable, that the parties are able to participate fully in the proceedings; (d) using any special expertise of the Tribunal effectively; (e) avoiding delay so far as compatible with proper consideration of the issues.

8. In Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC) it was held that 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?

9. Ms O'Brien is correct to say that the Judge makes careful findings of credibility between [30] and [45] of the decision, but at [44] the Judge clearly states that the aspects that he has considered to that point in his decision are significant. One of those significant aspects of the appellant's case relates to her health, and to her belief that she has had a miraculous recovery from serious illness.

10. At [39] the judge clearly find that there is no evidence to support the appellant's claim that she had cancer, and that her recovery defies medical science. At [11] the Judge records that the application to adjourn related to a medical report and a miracle cure. On the one hand, the Judge's decision to refuse an application to adjourn (even though made late in the day) prevented the appellant from leading evidence about illness and cure, on the other, the Judge finds that he has no evidence about illness and cure - both of which are significant factors in the appellant case.

11. It is clear that the Judge viewed the account of illness and cure as one part of the appellant's case which determined her overall credibility. If that evidence had been before the Judge there the might have been a different outcome. The appellant offered to produce that evidence but was not able to do so. In her solicitors' letter of 24 February 2017 (which set out the application to adjourn) it is said that the appellant had seen a specialist within the fortnight leading to 20 February 2017 and blood test results were awaited.

12. The Judge correctly identified that one crucial aspect of the appellant's case centred on medical evidence ([39] of the decision). It also appears that medical evidence could have been available if an adjournment had been granted. Nwaigwe tells me that a failure to take into account all material considerations is a material error of law. Balancing [11] and [39] of the decision against the decision as a whole, I find that the decision is tainted by a material error of law.

13. The remaining grounds of appeal relates to *sur place* activities and risk on return created by internet activity in the UK. Mr Byrne is correct to refer me to both Danian v SSHD [1999] INLR 533 and AB and Others (Internet activity - state of evidence) Iran [2015] UKUT 0257 (IAC). Reference to the skeleton argument, the key passage index, the appellant's 377 page bundle and (what I can read of) the record of proceedings supports Miss O'Brien's position that no submissions were made driving at *sur place* activities and risk on return from internet blogging. The Judge cannot be criticised for restricting his findings to the evidence and submissions placed before him.

14. I have found that there is a material error of law. I set the decision aside. It will be for the appellant and those advising her to consider how the case is pled when it is heard again by the First-tier.

15. I have already found a material error of law in the fact-finding process carried out by the First-tier in the decision promulgated on 15 March 2017. I therefore find that I cannot substitute my own decision because of the extent of the fact-finding exercise required to reach a just decision in this appeal.

Remittal to First-Tier Tribunal

16. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

17. In this case I have determined that the case should be remitted because a new fact finding exercise is required. None of the findings of fact are to stand and a complete re hearing is necessary.

18. I remit the matter to the First-tier Tribunal sitting at Glasgow to be heard before any First-tier Judge other than Judge Farrelly.

Decision

19. The decision of the First-tier Tribunal is tainted by material errors of law.

20. I set aside the Judge's decision promulgated on 15 March 2017. The appeal is remitted to the First-tier Tribunal to be determined of new.

Signed Paul Doyle

Date 8 May 2017

Deputy Upper Tribunal Judge Doyle