



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

Appeal Number: PA/01462/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 7 December 2017**

**Decision & Reasons
Promulgated
On 16 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

**MISS Z Z
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Nollet, Counsel instructed by Migrant Legal Action
For the Respondent: Ms R Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant in this case is a citizen of Iran born on 7 September 1985 who appealed to the First-tier Tribunal against a decision of the respondent dated 27 January 2017 to refuse the appellant's asylum and protection claim. As noted by Judge of the First-tier Tribunal Devittie, who dismissed the appellant's appeal in a decision promulgated on 4 April 2017, the appellant had applied for a student visa on 22 February 2009 which was refused with a right of appeal. On 21 April 2009 she made a

further application for a Tier 4 (Student) Visa which was refused on 29 April 2009. On 13 June 2012 she made an application for a family visit visa which she withdrew on 25 June 2012. On 18 December 2014 she applied for a student visa which was refused on 21 December 2014. On 6 January 2015 she applied for a Tier 4 (Student) visa which was voided on 7 January 2015. On 29 July 2016 she arrived in the United Kingdom by plane and claimed asylum.

2. The appellant appealed the First-tier Tribunal's dismissal of her appeal on the following grounds (to the Upper Tribunal):-

Ground 1 - erroneous approach to evidence in relation to previous visa application;

Ground 2 - erroneous approach to the medical evidence;

Ground 3 - failure to make findings on material matters, namely A's claim of having joined a house church in Iran, her related arrest and detention and risk on return.

Error of Law

3. *Ground 1:* Ms Nollet submitted that the judge erred in his approach to the appellant's previous visa and in basing his negative credibility findings on the fact that there were discrepancies between the appellant's claims in her entry clearance applications and in her asylum claim. At [13(vi)] of the Decision and Reasons the judge found that the appellant's responses were generally vague and it was submitted that the judge failed to particularise what he found to be vague in her evidence. At [14] the judge found that the appellant's explanation for the inconsistencies between her previous applications and her evidence several years later when she made the claim for asylum was entirely unsatisfactory and significantly undermined the credibility of her claim regarding the controlling, Islamic-inspired and brutal behaviour of her father towards her. Ms Nollet submitted that it was unclear how the evidence was so vague as to undermine the whole claim.
4. At [16] it was submitted the judge noted erroneously that the appellant had spent two years at an English language speaking school in the United Kingdom, whereas she had spent two years in the United Kingdom from 2011 to 2013 and was not specifically asked how long she was at the school. Indeed it was noted in the refusal letter that the appellant did not assert that she could speak English and nowhere was it suggested in the Reasons for Refusal Letter that she did. This was not put to her at the hearing.
5. *Ground 2:* Ms Nollet submitted that the judge erred in her approach to the evidence, in particular the medical evidence and Ms Nollet relied on page A56 of the appellant's bundle, paragraph 6.4 of the expert's report, in that the scar was typical of this type of injury and she submitted that

although the judge recorded that an accidental cause, although possible, was less likely, the expert had said that it could not “be ruled out” and the error lay in the judge’s approach to the level of consistency of the scarring. At paragraph 7.1 of the expert report, at A56 of the appellant’s bundle, the expert noted that overall the scars were typical of injuries caused in the manner the appellant describes. However, I take into account that the judge specifically recorded the expert’s ‘overall opinion’ at [11] of the Decision and Reasons.

6. *Ground 3*: It was submitted by Ms Nollet that although the judge stated at [18] that he had regard to the evidence in the round, he had failed to have regard to material evidence in relation to the appellant’s claims to have joined a house church, in relation to her claims of her arrest and detention and subsequently absconding from bail. At [3(iv)] of the Decision and Reasons the judge recorded the appellant’s case, including that she fled her home and if returned to Iran she would be killed for converting to Christianity and fears that she is a wanted person for failing to observe the conditions of her release and therefore it was submitted the judge was aware of the appellant’s account. It was submitted that the judge failed to resolve a dispute between the parties as to whether the appellant had been a member of a house church and had been detained. The respondent had refused the appellant’s account including at paragraphs 28 and 29 of the refusal in relation to her claims as to being a member of a house church and at paragraph 41 in relation to her claims about detention. It was submitted by Ms Nollett that the judge failed to have regard to these matters and failed to resolve the dispute, including that the appellant had responded to the Secretary of State’s refusal in the witness statement, but this had not been resolved.
7. It was further submitted that the appellant had been asked a large number of questions, in the asylum interview, at [16] in relation to her claims about the house church and at [14] in relation to her detention, whereas she had not been asked about her previous applications at all. It was also submitted that although the judge made findings that the appellant’s evidence was generally vague in cross-examination in relation to her previous applications it was not identified what the difficulties were with her evidence and it was submitted that the judge failed to take into account the totality of the evidence.
8. In relation to risk on return, Ms Nollet relied on **AB & Others (internet activity - state of evidence) Iran [2015] UKUT 0257**, relying on the conclusions in that case from paragraphs 466 to 472. Although it was conceded that this related to online activity Ms Nollet submitted that in relation to the risk on return to Iran **AB** refers to a “pinch point of return”. Although a person returning on an ordinary passport, after a short period of time, would almost certainly not attract any particular attention at all, where a person’s leave to remain has elapsed and they might be travelling on a special passport there would be enhanced interest and more likely the authorities’ interest could lead to persecution; it was found in **AB** that the authorities are not concerned with a person’s motivation and it is not

relevant that the person had used the internet in an opportunistic way. Ms Nollet submitted that this was analogous to the appellant's circumstances. Even if I was not with her in relation to the other claimed errors, taking the judge's decision at its highest, he ought to have considered risk on return, given that the judge accepted the pastor's evidence and accepted that she attended church in the UK, albeit the judge found that her claim to be a Christian was contrived. Ms Nollet submitted that she could not be asked to lie and would have to confirm that she did attend church in the UK.

Discussion

9. It is not the case, reading the decision of the First-tier Tribunal as a whole, that the judge based his negative credibility findings solely on the fact that there were several unsuccessful applications for leave to enter as a student, which contained details which entirely contradicted the appellant's claim.
10. The First-tier Tribunal, at [14] of the Decision and Reasons, found the appellant's explanation for the inconsistencies between her previous applications and her evidence several years later, when she made the claim for asylum, entirely unsatisfactory. The judge went on to state that this undermined the credibility of the appellant's claim regarding the controlling, Islamic inspired and brutal behaviour of her father towards her over the years.
11. The First-tier Tribunal went on to find, at [15], that the appellant anchored her claim to have converted to Christianity on the strength of her father's conduct in general and in particular that his abuse and controlling behaviour towards her was what led her to be attracted to Christianity. However, the judge found that the unsatisfactory evidence the appellant had provided undermined her overall credibility and particularly her claim that she was a genuine convert to Christianity.
12. Although the judge may have made a minor factual error in stating that the appellant spent at least two years in an English language speaking school in the United Kingdom such is not material; it was not disputed that she had spent time as a young teenager in the UK or that there was any error in the judge's findings that there was an indication in her application form that she was willing to be interviewed in the English language. The judge was entitled to reach the conclusion that he did, that the appellant was not credible in her attempt to distance herself entirely from the information contained in her previous applications. There was no material error in that approach.
13. The judge took into account, in assessing credibility, that between 2009 and 2015 the appellant had made a concerted effort to get entry clearance to the UK which did not succeed, the last such application being shortly before her entry to the UK by unlawful means. The judge then took into consideration in the round, as a separate matter from the

contradictions between her applications and her evidence, the fact that the appellant's poor immigration history gave rise to the possibility the appellant, having again failed to gain lawful entry to the United Kingdom, eventually resorted to formulating a claim for asylum on entering the country illegally.

14. Although it was asserted that the judge's claim that the appellant's evidence about her previous applications was "generally vague" was not particularised, that is not borne out by a proper reading of the decisions. The judge went on to state "in most instances she claimed not to recall what had happened". This must be read in the context of the judge's recording, at [6(i-vi)], of the appellant's oral evidence. For example, at [6(i)], the appellant is recorded as stating that she did not know what was contained in the application after its completion, that she did not complete the first application and she did not look at the form. At [6(ii)] she was recorded as not recalling what documents she had submitted, at [6(iii)] she is recorded as stating that she had not completed the application as she did not read or write English and that she did "not know about the course". At [6(iv)] she was recorded as stating she could not recall if she asked her uncle about a subsequent application and claimed that she had not discussed any details of the application nor provided any information and that she could not recall if she had provided any documents and that she had not assisted her cousin in preparing one of the applications. Her response at [6(vi)] was recorded in relation to her cousin including specific details about an individual called Shafi whom it was indicated on her application was her spouse, whereas she stated at the hearing that this individual was her online tutor. She was unable to adequately explain why Shafi would have misrepresented the facts by stating that they were living together when they were not and she was recorded as stating that she did not know how "he got it wrong".
15. The judge was entitled therefore to reach the findings he did for the reasons he gave, that the appellant's responses in cross-examination were generally vague and that she claimed she did not recall what happened. It was a matter for the judge what weight he attached to the evidence and it was open to him to find these answers to be unsatisfactory and that they significantly undermined the appellant's credibility, considered in the context of all the evidence including her claims about her father and the fact that this is what attracted her to Christianity, and in the context of the judge's concerns about her credibility in general, including ultimately entering the UK illegally and claiming asylum.
16. It is not the case that the judge considered these matters in isolation. As already noted the judge set the medical evidence in considerable detail. Any error in misdescribing the scar in her back as consistent rather than typical of a scar from boiling tea is not material. The judge took all the medical evidence into consideration including recording the expert's conclusions at [11] of the Decision and Reasons that the overall opinion of the expert was that the appellant's scars were typical of scars that would result from ones caused in the manner the appellant describes. The judge

went on at [18] to weigh the medical evidence and the evidence of the pastor who supported the appellant's claim in relation to her claimed Christianity. Again there was no error in the judge's approach that the medical evidence did not rule out an accidental cause for scarring and that although the judge did not doubt the *bona fides* of the pastor of the church and that the appellant's responses to questions tested her knowledge of Christianity to a satisfactory level, having regard to all of the evidence in the round and the "unsatisfactory features of her evidence" the judge was satisfied that this was of such force that the appellant had failed to demonstrate to the lower standard that she was a genuine Christian convert and was satisfied that her attendance at church and Bible lessons were contrived.

17. It is implicit in these findings therefore that the judge did resolve the conflicts in the evidence against the appellant; the judge was evidently not satisfied that the appellant had been a member of a house church or that she had been detained and escaped. The judge found her credibility to be fundamentally undermined for the reasons he gave.
18. In relation to risk on return the appellant's reliance on **AB** is misconceived as this relates to internet activity. Even if this were not the case, the appellant when asked on return to Iran, will not be required to lie as her answer can go no further than to say that she was not a genuine Christian, as this is what has been found to be the case, and that she had submitted a contrived claim for asylum.

Notice of Decision

19. The decision of the First-tier Tribunal does not disclose an error of law and shall stand.

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

As the First-tier Tribunal made an anonymity direction I continue that order:

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: 8 January 2018

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

The appeal is dismissed and no fee award is made.

Signed

Date: 8 January 2018

Deputy Upper Tribunal Judge Hutchinson