



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/05680/2017

**THE IMMIGRATION ACTS**

Heard at Cardiff Civil Justice Centre  
On 10<sup>th</sup> September 2018

Decision & Reasons Promulgated  
On 20<sup>th</sup> September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

N S A  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: No representation

For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against a decision of Judge Fowell (the judge) of the First-tier Tribunal (the FtT) promulgated following a hearing on 27<sup>th</sup> July 2017.

2. The Appellant is a female Kuwaiti citizen who arrived in the UK in September 2012 to study medicine. She claimed asylum on 24 November 2016 fearing her family in Kuwait. This was because a former partner had posted photographs of her online, taken in a bedroom with a previous boyfriend.
3. The application was refused on 25<sup>th</sup> May 2017 and the Appellant appealed to the FtT.
4. The Appellant was unrepresented before the FtT. The judge heard evidence from her and found her to be a credible witness. The judge found that photographs of her had been posted online, but found that she would not be at risk of harm from her family. The appeal was dismissed on all grounds.
5. The Appellant applied for permission to appeal to the Upper Tribunal. As she was still without legal representation she was assisted by the Welsh Refugee Council. The application for permission to appeal was refused.
6. Thereafter the Appellant instructed legal representatives who submitted an application for permission to appeal on her behalf. Three Grounds of Appeal were advanced and are summarised below.
7. Firstly it was submitted that the judge erred by making a mistake as to evidence. It was contended that the judge took into account a letter written by the Appellant dated 27<sup>th</sup> February 2016, addressed to the Kuwaiti Embassy in London. This letter had been submitted to the Tribunal by the Appellant in order to obtain a fee remission.
8. Secondly, if the judge was entitled to consider the letter it was submitted that the judge erred by failing to adequately consider it.
9. Thirdly it was submitted that the judge erred in finding that the photographs were not indecent. It was submitted that the photographs would be regarded by the Appellant's family in Kuwait as indecent.
10. Permission to appeal was granted by Upper Tribunal Judge Martin in the following terms;
  - "1. It is arguable that the judge, having found the Appellant credible erred in mistaking the contents of the Appellant's letter to the Kuwaiti Embassy and failing to make findings as to whether the Appellant would be at risk on return as at the date of hearing.
  2. It appears that the Appellant will struggle to establish a Refugee Convention reason but the assessment of risk is arguably flawed in the First-tier Tribunal.
  3. It was not an error for the judge to consider all of the available documents. A judge should not close his eyes to evidence that is available to him, even if prepared for a purpose other than the appeal.
  4. It is also arguable that the judge erred in assessing the photographs with a western view of what is "indecent" rather than what the Appellant's family and other Kuwaitis may think."

11. Following the grant of permission the respondent lodged a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 contending that the judge had not materially erred in law and the grounds amounted to a disagreement with findings that were open to the judge to make.
12. Directions were issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FtT decision disclosed a material error of law such that it should be set aside.

### **The Upper Tribunal Hearing**

13. The Appellant did not attend. Initially the hearing was due to be heard at the Newport Hearing Centre and the Appellant had been advised of this by notice dated 7<sup>th</sup> August 2018. The Tribunal then issued a further notice on 4<sup>th</sup> September 2018 advising that the hearing would be heard at Cardiff Civil Justice Centre, giving the full postal address, and confirming that the hearing would start at 10.00am.
14. The case was called on at 12.15. I had caused a telephone call to be made to the Newport Hearing Centre to ascertain whether the Appellant had attended there by mistake. The response was that she had not. Mr Howells contacted his office to ascertain whether any notification of a change of address had been given. No such notification had been given.
15. The notice of hearing had not been returned to the Tribunal by the Post Office. I considered rule 38 of the 2008 Procedure Rules which provides that if a party fails to attend a hearing, the Tribunal may proceed if satisfied that the parties have been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing, and it is in the interests of justice to proceed.
16. Mr Howells submitted that it was in the interests of justice to proceed. There was no explanation for the Appellant's non-attendance and no application for an adjournment. I was satisfied that notice of the hearing had been properly given. I therefore decided that it was appropriate to proceed and consider whether the FtT had materially erred in law.
17. The first point that I dealt with was the acceptance in the Grounds of Appeal, that the application for permission to appeal to the Upper Tribunal was out of time. It was explained that a paralegal at the Welsh Refugee Council had intended to assist the Appellant in obtaining legal representation when the First-tier Tribunal refused permission, but that individual was taken ill and admitted to hospital and required surgery. There was therefore a delay in obtaining legal representation. I was satisfied that the application was out of time and there was no specific reference by Upper Tribunal Judge Martin in the grant of permission, to an extension of time. I decided that it was appropriate to extend the time for lodging the application for permission, having considered the principles in Onowu IJR [2016] UKUT 00185 (IAC).

18. The legal representatives who had prepared the application for permission, subsequently wrote to the Tribunal confirming that they were without instructions and no longer representing the Appellant.
19. I then heard submissions from Mr Howells who relied upon the rule 24 response. It was submitted that the judge had not materially erred, and made findings which were open to him to make on the evidence before him. I was asked to dismiss the appeal.
20. I reserved my decision.

### **My Conclusions and Reasons**

21. I find that ground 1 discloses no material error of law. The judge did not err in taking into account the comprehensive letter dated 27<sup>th</sup> February 2016, written by the Appellant, and which the Appellant supplied to the Tribunal.
22. I do not find that ground 2 discloses a material error of law. The judge did not fail to adequately consider evidence. In my view the decision prepared by the judge shows that all the evidence was considered with care. The judge did not misunderstand the contents of the letter dated 27<sup>th</sup> February 2016. Paragraph 14-19 of that letter are set out in the judge's decision. Paragraphs 48-49 of the judge's decision set out his conclusions having considered that letter. It was open to the judge to find that the Appellant did not fear death or other serious harm from her family if she returned to Kuwait. In my view the judge assessed the evidence not only at the date of the letter, but at the date of the hearing. The judge found the Appellant to be a credible witness and expressed sympathy for the difficulties that she had had, but concluded that she had not proved that she would be at risk from her family if she returned to Kuwait. I can ascertain no error of law in that conclusion.
23. I do not find any material error of law disclosed in ground 3. The comment about the photographs being "not indecent" was made in paragraph 2 when the judge was setting out the issues in the appeal and not when he was setting out his findings and conclusions. In paragraph 2 the judge did make reference to the photographs being such as to "scandalise her family in Kuwait". It is quite clear that the judge was aware of the nature of the photographs as he describes them. It is not the case that the judge is looking at them with a "western perspective".
24. I find that the grounds upon which permission to appeal have been granted, are a disagreement with findings made by the judge. Those findings were open to the judge to make on the evidence before him. The judge considered all material evidence, and did not take into account immaterial evidence. The grounds do not disclose a material error of law. The decision of the FtT stands.

### **Notice of Decision**

The decision of the FtT does not disclose a material error of law. I do not set aside the decision. The appeal is dismissed.

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

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her 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: 11<sup>th</sup> September 2018

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT  
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date: 11<sup>th</sup> September 2018

Deputy Upper Tribunal Judge M A Hall