



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

Appeal Number: PA/04848/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 31st January 2019**

**Decision & Reasons
Promulgated
On 6th March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MS S B
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Nicolau of Counsel, Duncan Lewis & Co Solicitors

For the Respondent: Mr Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Algeria born on 6th February 1989. The Appellant made application in the United Kingdom to be recognised as a refugee based on a purported well-founded fear of persecution in Algeria on the basis of her membership of a particular social group, namely that she is a woman. That application was refused by the Secretary of State by notice dated 29th March 2018.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Brewer sitting at Taylor House on 4th October 2018. Judge Brewer made an anonymity direction. The direction is not challenged and remains in force. In a decision and reasons promulgated on 30th October 2018 the Appellant's appeal was dismissed on all grounds.
3. Grounds of Appeal were lodged to the Upper Tribunal having been settled by Counsel on or about 13th October 2018. Those Grounds of Appeal are extensive. On 26th November 2018 First-tier Tribunal Judge Lambert granted permission to appeal. It is important to consider the grant of permission. At paragraph 3 Judge Lambert states:

“The decision discloses adequate evidence based reasons for concluding that the Appellant's evidence was not credible, that she would not be at risk on return to Algeria despite being a single mother of an illegitimate child, and that taking account of the child's best interests there was no breach of Article 8.

The over lengthy grounds take issue with the findings made by the judge on the evidence but appear to amount to no more than disagreement with those findings and an attempt to re-argue the Appellant's case”
4. The grant of permission focuses on Ground 3 which states:

“The Tribunal was procedurally unfair in not allowing the Appellant to rely on medical evidence pertaining to her son's medical condition.”

Judge Lambert notes that whilst the judge at paragraph 17 records that Counsel did not in fact apply for one, Counsel's note of the hearing indicates her understanding that the judge had considered and refused an adjournment at the 'housekeeping' stage prior to commencement of the hearing. This is directly at odds with the judge's comments at paragraph 17 that 'upon resumption of the hearing Ms Griffiths indicated that she was content to proceed today'. Judge Lambert considered that this conflict made arguable the contention of procedural unfairness at Ground 3.

5. By way of a letter dated 20th December 2018 the First-tier Tribunal Judge was invited to comment upon the grounds seeking permission. I note and fully consider Judge Brewer's response which is set out in a memorandum from Upper Tribunal Judge O'Connor who concludes that the matter would now be listed for hearing.
6. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by her instructed Counsel Ms Nicolau. The Secretary of State appears by her Home Office Presenting Officer Mr Tufan.

Preliminary Issue

7. It is raised by Ms Nicolau that there is a clear steer from the decision in *Safi and others (permission to appeal decisions) [2018] UKUT 388 (IAC)* as to guidance on interpreting the scope of decisions in which permission to appeal from the First-tier to the Upper Tribunal is granted. She refers me to the headnote:
 - “(1) It is essential for a judge who is granting permission to appeal only on limited grounds to say so, in terms, in the section of the standard form document that contains the decision, as opposed to the reasons for the decision.
 - (2) It is likely to be only in very exceptional circumstances that the Upper Tribunal will be persuaded to entertain a submission that a decision which, on its face, grants permission to appeal without express limitation is to be construed as anything other than a grant of permission on all of the grounds accompanying the application for permission, regardless of what might be said in the reasons for decision section of the document.”
8. I have consequently taken that authority into account and the submission made to me by both legal representatives and have given due consideration to what Judge Lambert has said in the grant of permission. I am however in this matter prepared to give consideration (and the parties were notified of this) to all grounds of permission. As I agreed it is best in this matter that the Upper Tribunal is seized of the matter.

Submission/Discussion

9. Ms Nicolau refers me to the witness statement of Ms G which contends that an adjournment application was made which is contrary to the view expressed by the Immigration Judge that one was not made. It is her submission that separate events in any event constituted an adjournment request and submits that it is procedurally unfair for the judge not to have granted it. She refers to Ms G’s witness statement. She reiterates in submission that a request was made and it was refused and that there had thereafter been a failure to give adequate reasons as to why it was refused.
10. She goes on to contend that the judge made a number of findings regarding the best interests of the child without evidence that would have been essential to that. She specifically directs me to two paragraphs of the decision. Firstly to paragraph 42 where she contends that the judge has made a finding that the Appellant’s child has a medical issue but that “it is not particularly significant” and secondly at paragraph 63 the judge has concluded the only real issue is the child’s overall welfare and that he is satisfied the Appellant’s medical treatment would not be impaired should he return with his mother to Algeria and made a finding that it is in the child’s best interest to remain with the mother. It is Ms Nicolau’s submission that the judge has failed to grasp the value of the medical evidence sought and that by doing so the judge falls into error.

11. Ms Nicolau further makes a brief submission solely relating to Ground 1 that the judge has made unsafe findings in respect of the Appellant's evidence and credibility, referring me to the witness statement of Counsel at paragraphs 14, 15 and 17 contending therein that as the judge has, it is submitted, made mistakes of fact there are material errors of law.
12. In response, Mr Tufan comments that he has seen the note of the Counsel and it has nothing to say or add with regard to the adjournment request and that neither the judge nor Home Office Counsel can remember it. He submits that if it was made and refused it is on the basis that the Appellant's son's condition is not serious and that the treatment connected to it is not available in Nigeria. If that were to be the case he submits that the condition approaches the threshold set out in *N*. So far as the final contention regarding the facts are concerned he is not sure what the judge has got wrong. The judge made findings of fact on the evidence which the judge was entitled to and made conclusions that were sustainable. He submits that the decision discloses no material errors of law.

The Law

13. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
14. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings of Error of Law

15. Whilst it seems clear that the way in which Judge Lambert granted permission was restricted to the refusal to grant an adjournment I have, following the guidance in *Safi* as indicated above, considered it in the best

interests of the Tribunal to adjudicate on all grounds albeit that Ms Nicolau quite properly limits the amount of arguments she makes with regards to the alternate ground. I find that there are no material errors of law disclosed in this decision.

16. I start with the main ground, namely the contention that the judge has acted procedurally unfairly in refusing to grant an adjournment for the obtaining of a medical report. It is clear from Judge Brewer's observations on 27th September 2018 the issue was discussed. I am also of the view that the judge has set out clearly as to when the case might get relisted, that there was a break for Counsel to take instructions on whether to pursue the application and that the Appellant wanted to proceed. I am satisfied that the judge has given this matter the fullest of consideration and I am not satisfied that there has been any procedural unfairness whatsoever in the approach adopted by the judge. I accept the judge and Counsel may have a different recollection. Firstly, I preferred the view expressed by the judge. It seems to me to clearly reflect the issues that were before him. Secondly, I agree with the lack of materiality as set out by Mr Tufan in his submissions that even if a medical report were obtained it is not going to reflect an issue that can in any event begin to approach the threshold as set out in N.
17. The judge has made clear findings that the Appellant's evidence was not credible. The proper approach to credibility would require an assessment of the evidence and the general claim, including the internal consistency, the inherent plausibility and factors found in country guidance. Consideration of what is a very well-constructed decision shows that this is exactly the approach that the judge has adopted and that the judge has given adequate evidence based reasons for reaching his conclusions that the Appellant was not credible and as Judge Lambert sets out in the grant of permission the Appellant would not be at risk on return despite being a single mother of an illegitimate child and that taking account of all the factors there is no breach of Article 8. However, giving due consideration to the reported factual errors which were set out at paragraph 3 of the Grounds of Appeal, firstly Mr Tufan rejects that any exist and secondly, having given due consideration to them, if they do exist as set out, I do not consider that they materially affect the findings of the judge.
18. Consequently, having given full and due consideration to the submissions made in this matter I am satisfied that the judge has made findings upon which he was entitled to and has set out full reasons. This is a decision that for all the above reasons discloses no material error of law and the Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Notice of Decision

The decision of the First-tier Tribunal Judge discloses no material error of law and the Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

The First-tier Tribunal Judge granted the Appellant anonymity. No application is made to vary that order and none is made.

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 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 06/03/19

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris