



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

Appeal Number: PA/06357/2018

THE IMMIGRATION ACTS

**Heard at North Shields
On 7 June 2019**

**Decision & Reasons Promulgated
On 12 June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

**S. A.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms Cleghorn, Counsel

For the Respondent: Mr Stainthorpe, Home Office Presenting Officer

DECISION AND REASONS

The Appellant, a citizen of Iran, entered the UK illegally and made a protection claim which was refused on 2 May 2018. The Appellant's appeal against that decision was heard, and dismissed, by First-tier Tribunal Judge Mensah, in a decision promulgated on 20 March 2019, following a hearing on 31 January 2019. The Appellant's application for permission to appeal was granted by First-tier Tribunal Judge Bird on 16 April 2019 on the basis it was arguable the Judge had made inconsistent findings of fact, and/or had gone behind a concession made by the Respondent. The Respondent reply to that grant with a Rule 24 response on 14 May 2019.

The Appellant's case was that both her father, and her sister, had been granted refugee status in the UK. She said that although they had left Iran, the family home continued to be visited by members of the Etelaat on a number of occasions. On 16 October 2017, during one such visit she said she had been the subject of a serious sexual assault by two men who she understood to be Etelaat officers, visiting the home as part of this pattern of behaviour. The assault had been filmed by them, and the Appellant had been threatened by them with further "home visits", with a clear inference that their behaviour would be repeated.

The Respondent accepted the Appellant's Iranian nationality, the immigration history of her father and sister, and, that the Appellant had been subjected to a serious sexual assault. Although the Respondent disputed that the sexual assault had been perpetrated by officers of the Etelaat he did not suggest that the assault had occurred on a different occasion, or in a different location, to that described. The Respondent offered no alternative explanation for who the perpetrators might be, or, how they came to gain access to the Appellant's family home.

The Appellant was recognised as a vulnerable witness by the Tribunal at an early stage. The appeal was made subject to an early direction that it should be heard in an all female court, given its nature. This regrettably did not however occur when the appeal was actually heard by the First tier Tribunal. The Respondent chose to be represented by a male officer, who asserted that no female officer was available to do so. The Tribunal was not alerted in advance to any staffing problems, and no adjournment was sought to allow the Respondent to comply with the direction. The Judge chose not to adjourn the appeal, noting an agreement between the representatives that the hearing could proceed if no questions were asked of the Appellant in relation to the sexual assault. The clear difficulty with that approach was that whilst the mechanics of the sexual assault might not have been the subject of questioning, it is plain that the focus of the hearing was the sexual assault. Thus it would appear the Appellant was questioned about whether Etelaat officers had previously visited the family home, and why she believed the two individuals who perpetrated the sexual assault upon her were Etelaat officers.

When the appeal was listed for hearing in the Upper Tribunal the question of an all female court was raised once again. The stance taken by the Appellant's solicitors was that they would be content for the error of law hearing to be conducted by a male judge, so long as a female interpreter was booked by the Tribunal for the hearing. The Appellant's solicitors made no concession to the Respondent once again being represented by a male officer. Regrettably, although the Upper Tribunal caseworker acceded to this request on 3 June 2019, no interpreter was in fact booked for the hearing of either sex, and the Respondent was once again represented by a male officer. Once again the Respondent failed to alert the Tribunal in advance to any staffing problems that meant he was unable to comply with the direction, and failed to seek an adjournment.

In the circumstances, when the appeal was called on for hearing before me, the Appellant was faced with a hearing which did not have in place the safeguards for her vulnerability that had been accepted by the Tribunal as necessary. That is extremely regrettable, and a copy of this decision will be provided to the Principal Resident Judge at Field House, so that any necessary lessons might be learned to avoid such a situation arising again.

Faced with the choice between proceeding in these circumstances, or, an adjournment and a further delay in the resolution of her status (with no doubt further anxiety), Ms Cleghorn advised me that since the challenge to the Judge's decision turned upon a very narrow point the Appellant would prefer to proceed. Whilst I acceded to that choice, I regret that it was one that she should not have been forced to make.

Before me the parties were agreed that the Judge described the claim that the Appellant had been subject to a serious sexual assault by Etelaat officers as plausible [19]. She then went on to reject that claim as untrue, apparently because she was unpersuaded; (a) that the Iranian authorities had any interest in the Appellant's family, and/or, (b) that two male Etelaat officers would have any sexual interest in the Appellant, a striking young woman, if they encountered her alone in her home. There are in my judgement obvious difficulties with both limbs to that approach given the applicable low standard of proof.

Worryingly, and notwithstanding the Respondent's concession, the Judge also went on to reject as untrue the Appellant's evidence that she had been the subject of a serious sexual assault [32].

Mr Stainthorpe sought to defend the Judge's approach on the basis that I should infer that the Judge had meant to express herself as finding that a sexual assault of the type described by the Appellant had occurred, but that it had been inflicted upon her by two individuals who were not Etelaat officers. I am not persuaded that this was the Judge's approach; in my judgement her rejection of the sexual assault is clear [32]. Accordingly, in my judgement, the decision discloses a clear error of law in the approach taken to the Appellant's evidence, and to the Respondent's concession.

In the circumstances it is, perhaps, unnecessary for me to comment upon the Judge's approach to the undisputed fact that the Appellant's father and sister are recognised by the Respondent as refugees from Iran. On the other hand I am concerned to note that the Judge concluded that they were of no interest to the Iranian regime, when no challenge was made before her to their refugee status, or, to the basis upon which it had been claimed. However, this finding would then appear to have been used by the Judge as the foundation for a finding that their close family members in Iran were in turn of no interest to the regime. That approach is in my judgement flawed. Moreover, however dishonest their dealings with immigration officers had been, the ability of the Appellant to use her sister's passport to enter the UK was likely to be of little evidential value in an analysis of whether it had been Etelaat officers who had

perpetrated the serious sexual assault the Respondent had accepted had occurred, or someone else.

Both parties agreed that in the event I were to find the material error of law relied upon by the Appellant, that a fresh hearing of the appeal was the only pragmatic course open. I agree. As set out above the Appellant's evidence concerning the sexual assault is unchallenged. It must stand, and it must form the foundation for the Tribunal's approach to the evidence as to whether the Appellant has made out her case, namely that there is a real risk that this assault was perpetrated by Etelaat officers, that she faces a risk of further assaults, and that this adverse attention is the result of her family connection to her father and sister.

In circumstances such as this, when it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the parties of the opportunity for their case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 13 November 2014. Moreover the extent of the judicial fact finding exercise required is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 13 November 2014.

To that end I remit the appeal for a fresh hearing by a judge other than First-tier Tribunal Judge Mensah, at the North Shields Hearing Centre.

A female Farsi interpreter is required.

The Appellant must file and serve any further evidence upon which she intends to rely in support of her appeal by 5pm 28 June 2019. If the Appellant is unable to meet this timetable she must inform the Tribunal, explaining the circumstances, and offering a new timetable that she is able to meet.

Given the history of the failure to comply with the direction for an all female court, the Appellant's solicitors must inform the Tribunal in writing by 5pm 28 June 2019 whether this direction may now be waived, or should be confirmed for any future hearing of the appeal.

The remitted appeal may not be suitable for the short warned list, and if either party considers this to be the case they must inform the Tribunal in writing by 5pm 28 June 2019. Absent any objection the Tribunal is however likely to call the appeal on for hearing at short notice after 1 July 2019.

Notice of decision

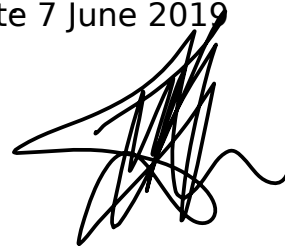
1. The decision did involve the making of an error of law sufficient to require the decision to be set aside on all grounds, and reheard. Accordingly the appeal is remitted to the First Tier Tribunal for rehearing, with the directions set out above.

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
Deputy Upper Tribunal Judge J M Holmes

Date 7 June 2019

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the left.