



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

Appeal Number: UI-2022-002255
(PA/01244/2021)

THE IMMIGRATION ACTS

**Heard at : Field House
On : 8 September 2022**

**Decision & Reasons Promulgated
On : 12 October 2022**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**CS
(Anonymity Order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Samra of Harbans Singh & Co

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision refusing her asylum and human rights claim.

2. The appellant is a citizen of Iraq, born on 1 January 1985. She claims to have arrived in the United Kingdom clandestinely on 8 August 2017 and claimed asylum on 17 August 2017. Her claim was refused on 15 February 2018 and her appeal against that decision was dismissed by the First-tier Tribunal on 19 July 2018. She became appeal rights exhausted on 3 August 2018 and then

lodged further submissions on 23 March 2020 which were considered by the respondent as a fresh claim. That claim was refused by the respondent on 19 April 2021.

3. The appellant's asylum claim was made on the basis of a fear of persecution from her family, specifically her two brothers, owing to the fact that her husband had owned a shop in Iraq which sold alcohol of which they did not approve and that she had refused their demand that she divorce her husband because of that. Her brothers had threatened to kill her and her husband, and her mother had warned her to leave the country. She feared being killed by her brothers if she returned to Iraq.

4. The appellant's appeal against the respondent's initial decision of 15 February 2018 refusing her claim was heard by First-tier Tribunal Judge Khan on 27 June 2018. The appellant was legally represented at the hearing, and she attended together with her husband, both giving oral evidence before the judge. The appellant's husband and their three children were dependent upon her claim. The judge found neither the appellant nor her husband to be a credible witness and did not find the appellant's claim to be credible, noting various discrepancies and inconsistencies in the evidence. The judge concluded that the appellant and her husband had fabricated a story about the shop and the sale of alcohol and did not accept that they left Iraq for the reasons stated. He found that the appellant had made up her account of her brothers wanting her to divorce her husband and did not accept that her brothers had threatened her. The judge concluded that the appellant and her husband were at no risk on return to Iraq and he dismissed the appellant's appeal.

5. The appellant's fresh claim was set out in submissions dated 20 March 2020 in which she produced and relied upon documentary evidence which she claimed had been sent to her husband by his lawyer in Iraq and which she claimed supported the credibility of the claim. The documents consisted of her husband's partnership contract for his business in Iraq, his tourist licence for the shop, a general authorisation from the Ministry of Justice, a letter from her husband's lawyer in Iraq and the Iraq CPIN report for August 2017 regarding honour crimes.

6. In the decision of 15 April 2021 refusing the appellant's fresh claim the respondent considered the documentary evidence but decided to accord it little weight. The respondent noted inconsistencies in dates between the partnership contract document and the other evidence provided by the appellant and her husband, a lack of explanation as to why it had not been produced for the appeal before the First-tier Tribunal, a lack of explanation how the document was obtained and an absence of any supporting identity documentation for the solicitor named in the agreement to verify his position. The tourist licence did not name the appellant's husband or demonstrate that he was a part owner of a shop in Iraq and there was no evidence to explain whose photograph appeared in the licence. The letter from the appellant's husband's lawyer did not provide any supporting identification document and referred to dates inconsistent with the date of the general authorisation document. The respondent considered the documents to be unreliable and concluded that they

did not demonstrate that the appellant was at risk in Iraq from family members. The respondent therefore rejected the appellant's claim again and found that she was at no risk on return to Iraq.

7. The appellant appealed against that decision and her appeal was heard by First-tier Tribunal Judge Dineen on 7 January 2022. The appellant was unrepresented at the hearing and appeared without her husband. She told Judge Dineen that she had ceased to instruct her solicitors in the summer of 2021 because she could not afford further representation. She had not provided a statement or skeleton argument. Judge Dineen considered the documents produced by the appellant in her submissions but concluded that they did not advance her case in any material way, and he attached no weight to them. He found no reason to depart from Judge Khan's decision and he concluded that the appellant was not entitled to asylum, humanitarian protection or to protection under Articles 2 or 3 of the ECHR. He accordingly dismissed the appeal.

8. The appellant sought permission to appeal the decision to the Upper Tribunal, out of time, with an explanation for the delay as a result of being without representation and unable to obtain legal assistance. Her grounds of challenge were that that she had not been given a fair hearing as she did not understand what was going on and had been unable to comply with directions and provide a witness statement. She should have been given more time to find assistance in order properly to present her case. She was not even aware her husband could attend and give evidence and the judge should have told her that she could request an adjournment. Her husband could have explained the documents if she had known that he could attend as a witness.

9. Permission was granted in the First-tier Tribunal, on the grounds that it was arguable that the appellant did not have a fair hearing.

Hearing and Submissions

10. The matter then came before me for a hearing. Both parties made submissions.

11. It was Mr Samra's submission that the appellant had been treated unfairly since there ought to have been an oral case management review hearing at which the appellant could have been told what was required of her for the hearing itself. Instead, the Tribunal had sent two sets of written directions to the appellant which she could not, as an illiterate and vulnerable person, be expected to understand. He submitted that there was no criticism of the judge, but he had recorded at [13] and [14] of his decision that the appellant had not understood what she was supposed to do, and it was clear that she had not known that her husband should have attended to give evidence. The appellant was never asked why her husband was not there and whether he would be able to attend if there was an adjournment.

12. Ms Cunha, in response, submitted that the appellant was well aware that her husband's evidence was necessary as he gave evidence at the previous

hearing; that there was no duty on the Tribunal to find out if the appellant was represented and make directions on that basis; and that it had been made clear to the appellant, in the refusal letter, that the respondent had concerns about the reliability of the documents and she could not therefore claim that she had no prior knowledge of the points against her. There was no evidence that the judge had acted unfairly. He was entitled to treat the documentary evidence with circumspection, given the adverse credibility findings made by the previous Tribunal

13. Mr Samra reiterated the points previously made in reply.

Discussion

14. The assertion that the appellant was treated unfairly or deprived of a fair hearing is, in my view, without any merit. I reject entirely the claim in the written grounds that the appellant was unaware that her husband was allowed to attend the hearing, that she was unaware that he could have been used as a witness to explain the documentary evidence and that she would have told him to come if she had known. Having previously attended and participated in an appeal hearing with the benefit of legal representations in 2018 she was fully aware of what was required of her and of the benefit and necessity for her husband to attend and give oral evidence as a witness. She was perfectly aware from the respondent's refusal decision that there were significant concerns about the documentary evidence, and she therefore had ample notice of the need to provide an explanation for the inconsistencies and discrepancies identified by the respondent in the documents. There was no reason why she could not have presented her own response to the discrepancies identified in the documents as she sought to do in the grounds seeking permission to appeal to this Tribunal.

15. There is, furthermore, no suggestion that the appellant asked Judge Dineen if her husband could attend or that she advised him that he could have explained the documents if an adjournment was granted. There is no suggestion that she applied for an adjournment of the proceedings. I reject the submission made by Mr Samra that an adjournment ought to have been given to the appellant in any event. The appellant had the assistance of an interpreter at the hearing, and it is plain from the judge's record at [12] of his decision that there was some discussion about her lack of legal representation. He was fully aware that she was illiterate and unrepresented and plainly had that in mind when making his decision. I have no doubt that the experienced judge would not have proceeded with the appeal if there were any doubts about the fairness of doing so in such circumstances and it seems to me that he was perfectly entitled to proceed as he did.

16. Indeed, not only had the appellant had the benefit of a previous appeal hearing at which she was legally represented but she was also issued with two sets of directions by the Tribunal, in September and October 2021, advising her what was required of her by way of evidence and witnesses for the hearing. She did not comply with either set of directions. The suggestion by Mr Samra that that was somehow the responsibility of the Tribunal, and that she ought

instead to have been invited to an oral case management hearing for all matters to be explained to her is, in my view, wholly unfounded. There is no suggestion that the appellant did not receive the directions: indeed, Mr Samra confirmed that she did receive them. If the appellant did not understand the directions, it was her responsibility to seek assistance in understanding and responding to them. Clearly, she had resources available to her to do so, as seen by the fact that she was able to initiate this appeal to the Upper Tribunal and, with assistance, prepare written grounds seeking permission to appeal. As such it seems to me that the judge was perfectly entitled to be satisfied that the appellant had been given adequate opportunity to prepare for the appeal.

17. Mr Samra focussed his submissions on procedural unfairness on the absence of an oral case management review hearing but did not direct me to any rules or regulations requiring the Tribunal to have such a hearing. Indeed, there was no duty on the Tribunal to hold an oral case management review hearing in such circumstances and neither was it usual practice for there to be one. It is relevant to note, in any event, that the appellant's appeal had previously been listed for an oral hearing on 25 November 2021, but she had not attended, despite the Tribunal confirming that a notice of hearing had been properly served on her at the address she had provided to the Tribunal. The record of that hearing refers to the judge being mindful that the appellant was unrepresented and having failed to comply with directions, and therefore considering it in the interests of justice to give her another chance to comply by adjourning the matter and re-listing it for another day with further directions made. Accordingly, the Tribunal had provided the appellant with more than ample opportunity to prepare herself for the hearing of her appeal and any suggestion that there was procedural unfairness on the part of the Tribunal is entirely unfounded.

18. As to the substantive findings made by the judge on the evidence, it seems to me that he was fully and properly entitled to attach the weight that he did to the documentary evidence. As mentioned above the appellant had had ample notice of the respondent's concerns about the documents and had had ample opportunity to provide a response. No explanation had been provided as to why the documents had not been provided in the previous appeal hearing before Judge Khan. The discrepancies in the documents were such that the judge was entitled to conclude that they were not reliable pieces of evidence and that they did not advance the appellant's case from that presented before Judge Khan. In the circumstances Judge Dineen was fully and properly entitled to conclude that there were no grounds from departing from Judge Khan's decision, in accordance with the principles in Devaseelan v Secretary of State for the Home Department [2002] UKIAT 702.

19. Accordingly, the grounds of challenge are not made out. There was no procedural unfairness: the appellant had a fair hearing before Judge Dineen and his decision contained no errors of law. The decision is upheld.

DECISION

20. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Anonymity

The anonymity direction made by the First-tier Tribunal is maintained.

Signed: S Kebede
2022
Upper Tribunal Judge Kebede

Dated: 8 September