



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-001593
First-tier Tribunal No: PA/54847/2021
IA/14716/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 16 March 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

EFDG
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Cleghorn instructed by Halliday Reeves Solicitors.
For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 18 January 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission a decision on First-tier Tribunal Judge Henderson ('the Judge') who in a decision promulgated following a hearing at Newcastle the 25th February 2022 dismissed the appellant's appeal on protection and human rights grounds.
2. The appellant is a citizen of Chile born on 27 November 1986.
3. The Judge has a reputation for ordinarily writing very clear and concise decisions in which her findings are supported by adequate reasons. In relation to the decision under challenge, however, two grounds are relied upon:

Ground 1: Paucity of Reasoning

2. In quite a lengthy decision, it's actually difficult to discern why the Appellant's appeal has been dismissed. The reason that can potentially be identified is that notwithstanding the fact that in the Appellant's screening interview, her SEF and oral evidence, she denies having been beaten on 14th and 16th October, it is recorded in her PIQ that she was. This is notwithstanding the Appellant's evidence that this was recorded in error on her PIQ [53]
3. The rest of the FTJ's determination appears to be commentary rather than findings i.e.
 - a. 'I am unclear what her role was in 2016 to come to the attention of the authorities [51];
 - b. She accepts as credible she could recognise that two men were carabinieri because of their appearance [52];
 - c. She finds it 'surprising' that no action was taken by the police and that she would not choose to leave Tomuco earlier [55] (the Appellant did go and stay with her sister and refused to allow her son to return to school [AIR. 135].
 - d. There is a limit to the background evidence [58] (this is true as little was available and despite considerable attempts in finding a country expert the Appellant's representatives were unable to find someone who would oblige).

Ground 2: Material Error of Fact

4. The FTJ states that she is 'unclear why the Appellant would need to seek out the Appellant at her son's school when they had under surveillance' [54]. In fact the evidence was not that she was being sought at her son's school it was that her son was now being targeted and they visited her son's school to get to him [see q117 AIR and para 6 WS]. In fact, the targeting of her son, was the trigger for her deciding she had to leave Chile permanently.
 5. It is submitted that the two grounds above identify material errors of law and permission to appeal is respectfully requested.
4. Permission to appeal was granted by another judge of the First-tier Tribunal on the basis it was found to be arguable, despite a full decision and consideration of the evidence, that there was a paucity of reasoning without which the appellant

does not know why it is that her appeal failed in relation to Ground 1. That permission is granted in relation to Ground 2; although this was not considered to be the strongest ground.

Error of law

5. Ms Cleghorn referred to the ground seeking permission to appeal which she drafted. When asked whether the reasons for the findings could be inferred from the decision Ms Cleghorn submitted that the problem is that the findings were not there, there were no reasons, and that "sloppy language" had been used. It was acknowledged that the structure and content of the determination was unusual for the Judge in question. Ms Cleghorn theorised that as there were not many cases relating to individuals from Chile was the Judge asking questions in relation to the evidence rather than making findings?
6. Mr Diwnycz on behalf of the Secretary of State accepted that the Judge had used passive language where there was a need to use cast-iron language in the decision to enable a reader to understand the decision and reasons for the same. He accepted there was an element of what was described as "third person language". It was accepted that the appellant would have been at a loss to see or understand what the Judge had written, and it was accepted as being properly arguable that the appellant would not have known what to make of the decision.
7. As noted above, the Judge's reputation goes before her but the high standard that this judge has set in her work needs to be demonstrated in all the decisions she writes for the First-tier Tribunal.
8. The Judge does refer to the country situation in Chile which may mean that at the end of the day any future decision is exactly the same as that the Judge reached in the determination. Notwithstanding this possibility, an individual is entitled to understand why they won or lost and that is the element missing from this determination as pleaded in the grounds, grant of permission to appeal, and as accepted by Mr Diwnycz. Justice must be seen to be done as well as being done and it is not appropriate to find that notwithstanding the appellant not being able to understand why the Judge came to the conclusions she did, Ground 1, or any issue arising in relation to Ground 2, that the appeal should be dismissed. That is unfair.
9. I set the decision of the Judge aside on the basis I accept material legal error has been made on the basis of Ground 1 in particular. There shall be no preserved findings. The appeal shall be remitted to the First-tier Tribunal at Newcastle to be heard afresh by a judge other than Judge Henderson.

Notice of Decision

10. The Judge materially erred in law. The decision set aside. The appeal is remitted to the First-tier Tribunal sitting at Newcastle to be heard *de novo* by a judge other than Judge Henderson.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Appeal Number: UI-

19 January 2023