



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/00643/2016
AA/11525/2014

THE IMMIGRATION ACTS

Heard at Manchester
On 31 July 2018

Decision & Reasons Promulgated
On 11 September 2018

Before

THE HON. MR JUSTICE LANE, PRESIDENT

Between

ZEI
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Royston, Wilson Solicitors LLP

For the Respondent: Mr McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant in this case appeals with permission against the decision of Designated Judge of the First-tier Tribunal McClure who in a decision and reasons promulgated on 3 January 2018 dismissed the appellant's appeal against decisions taken against him by the respondent and falling under the heading of appeal numbers AA/00643/2016 and AA/11525/2014.

2. The Upper Tribunal, as I have already held in a separate decision preliminary to this one, granted permission only on one of the grounds advanced by the appellant; namely, that at paragraph 127 of his decision, the Designated Judge made an error of fact, which it is said amounts to a material error giving rise to an error of law. I shall come to that alleged error in due course.
3. It is, however, important to look at the decision of Designated Judge McClure in its totality. It is a long decision. It runs to 137 paragraphs. It deals as I have said with two separate appeals. It involves not only the appellant himself but also his wife. The ambit of the judge's consideration was wide. He had to look not only at whether it would be a breach of this country's obligations under the Refugee Convention and the Human Rights Convention for the appellant to be returned to his home in Lebanon/Palestinian territories but also - and I agree with Mr Royston that this is the more likely scenario - if the respondent were to seek to remove the family to Tunisia, that being the country of nationality of the appellant's wife.
4. The decision notes in particular at paragraph 9 this about the appellant's wife:-

"Clearly the partner's account was a wholly false basis for claiming asylum and she dropped any pretence of relying on any of the facts advanced in that case. She has however referred to the fact that now she is concerned for her own and her son's safety if they were returned to Tunisia as her family are very strict and her family would be able to find her wherever she was in Tunisia. However, she has produced no evidence to show if her family have any influence or power in Tunisia. Otherwise she had admitted that she did not know how her family would react to her and her child. In essence, the allegation was the child had been born before the appellant and his partner/wife married and as such would not be accepted by the lady wife's family and she and her child would be at risk from her family."
5. The judge went through what he described at paragraph 11 as the "long complicated history" of the appellant's appeals. He dealt sequentially with the issues raised in the two appeals. He found that there was no credibility in the appellant's account of fearing harm, if he were to be returned to the Middle East. The judge set out in detail his reasons for that finding. The judge then turned again to the evidence put forward by the appellant's wife. We see at paragraph 72 and following the account given by the wife, which involved falsely claiming to the Secretary of State that she was a citizen of Iran. She also wrongly used a French passport (paragraph 73) on which she travelled to Italy. She decided to return from Italy to the United Kingdom. After that, she continued with her assertion that she was not Tunisian but, rather, Iranian. She gave an explanation that she hoped would explain that untruth.
6. The judge went on to look at other materials bearing on the appeals, including expert reports and the reports of independent social workers, which were of course highly relevant, given that the judge had to consider the Article 8 issue by reference to the family as a whole and the primacy of the best interests of children.

7. The paragraph to which I have already made reference, which is the subject of challenge in the ground upon which permission has been granted by Judge Freeman, is paragraph 127. This reads as follows:-

“With regard to the appellant’s wife’s claim whatever the lady says she attended a tribunal hearing and sought to pursue a claim to asylum based upon a wholly false basis. An examination of the determination clearly shows that she sought to maintain that through to a decision. She was willing not only to seek to deceive the Home Office but also was willing to seek to deceive the Tribunal Judge. She has produced no supporting evidence to indicate that her family have any specific power or influence in Tunisia. There was a period of time when her claim was refused, when she was not married, when she could return to Tunisia but she chose not to do so. She on her own admission was willing to travel to Italy on false documents and return to the United Kingdom pursuing a claim to asylum on a wholly false base.”

8. This finding led to the conclusion at paragraph 128 of the judge’s decision that “I can place no reliance upon the claims made by the appellant’s wife”.
9. Mr Royston submits that the findings regarding the appellant’s wife are a significant part of the decision as a whole. Any material error in those findings would accordingly have to lead to fresh fact-finding on the part of the Tribunal.
10. In the particular circumstances of this case, there is some force in what Mr Royston says. The issue, therefore, is whether there is an error in paragraph 127 and if so whether it is a material one. So far as the first of those questions is concerned, it is common ground that there is an error insofar as the words “attended a Tribunal hearing and” in paragraph 127 were in fact incorrect. If one looks at the decision of Immigration Judge A D Baker in respect of the appellant’s wife in the decision that followed a hearing in Wales on 10 March 2008, one sees this in relation to the judge’s decision to continue with the hearing and give a reasoned decision on the wife’s claim:-

“6. At the hearing I identified to the Home Office Presenting Officer that the court had received a letter, not copied to the Presenting Officers’ Unit, from the representatives for the appellant identifying that they had withdrawn from acting because they stated they were without instructions.

7. The letter continued “we can advise that we are unsure as to whether the appellant will attend at the full hearing fixed for 10 March 2008 but consider it unlikely”. At the conclusion of my list I asked the court clerk to check whether there had been any message or whether the appellant herself had arrived at court and she had not. She was not present either at 10 a.m. when the court list commenced.

8. I concluded it appropriate to proceed in the absence of the appellant and or representations from her. I noted the terms of the letter from Fursdon Knapper. I noted that she had not provided any change of address from (the judge gives an address in Exeter) and that she was notified at that address on 12 February 2008 of the full hearing date and address and further, that she had been sent notice of hearing again on 25 February 2008 together with directions from the Case Management Hearing on 25 February 2008.”

11. The judge therefore proceeded with the hearing. She considered in detail the claim of the appellant's wife and she concluded that the appellant was not Iranian as she claimed and gave reasons for that. In the light of that claim failing, the appeal was dismissed.
12. Mr Royston relies upon the judgments of the Court of Appeal in ML (Nigeria) [2013] EWCA Civ 844; in particular he draws attention to paragraph 60 where we find Sir Stanley Burnton saying this:-

"In agreement with Moses LJ, I consider it clear that a material error of fact in a determination of a tribunal will constitute an error of law. A material error of fact is an error as to a fact which is material to the conclusion. If there is any doubt as to whether or not the incorrect fact in question was material to the conclusion, that doubt is to be resolved in favour of the individual who complains of the error."
13. That is the test which I adopt. Looking at the determination and the findings of the judge in relation to the appellant's wife, is the error contained in the words "attended a tribunal hearing and" a material one? In the circumstances of this case, I firmly conclude that it is not. It is plain that the appellant's wife did not withdraw her asylum claim. That is manifest from Judge Baker's decision. It was therefore to be expected that she would have to go on in the absence of the appellant and decide the case. As I have said, the case was decided decisively against the appellant's wife.
14. Therefore, the thrust of what Designated Judge McClure is saying in paragraph 127 is entirely correct. The appellant's wife did make an asylum claim. That claim was manifestly false. It was pursued by reference to a country of which the appellant's wife was not a national. She must take responsibility for not withdrawing that asylum claim. She therefore was instrumental in the fact that Judge Baker saw fit to go on and make a decision in respect of her claim. She was willing as the Designated Judge noted at paragraph 127 not only to seek to deceive the Home Office, over a considerable period of time, but also was willing to deceive the Tribunal.
15. It is true also as the judge noted at paragraph 9 that the appellant's wife produced no supporting evidence to indicate that her family have any specific power or influence in Tunisia. It is also true that there was a period of time when the appellant's wife's claim was refused when she was not married and when she could have returned to Tunisia but she chose not to do so. It is also true as the Designated Judge says in paragraph 127 that the appellant's wife on her own admission travelled to Italy on false documents and returned to the United Kingdom pursuing a claim on a wholly false base.
16. Standing back and looking at all this, I do not consider that the slip (which it undoubtedly is) in a long and detailed determination, covering a range of matters involving both the appellant and the appellant's wife, is anything other than entirely immaterial. It would plainly have made no difference whatsoever to the Designated Judge's conclusions, had that error not occurred.

17. The totality of paragraph 127 is plain. It is also in my view overwhelming. It provided ample material upon which the judge was able to conclude at paragraph 128 that he could place no reliance upon the claims of the appellant's wife.
18. For these reasons, despite Mr Royston's very able submissions, I dismiss this appeal since there is I find no material error of law in the decision of Designated Judge McClure.

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: 3 September 2018

The Hon. Mr Justice Lane
President of the Upper Tribunal
Immigration and Asylum Chamber



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For the Respondent: Mr McVeety, Home Office Presenting Officer

RULING

1. In this case, Mr Royston, who appears on behalf of the appellant, submits that the effect of the grant of permission by Upper Tribunal Judge Freeman (UTJ Freeman) on 1 June 2018 was to give his client permission to appeal to the Upper Tribunal on each of the

four grounds which had been set out in the written application for permission. In that regard Mr Royston relies upon a passage in the Court of Appeal judgement of Ruhumuliza [2018] EWCA Civ 1178. At paragraph 12 of this, we see it recorded that it was common ground that, although the wording of the grant of permission by Upper Tribunal Judge Martin appeared to be somewhat narrower on its face than an unqualified grant of permission, nevertheless, in circumstances, it fell to be read as unqualified.

2. Mr McVeety for the respondent submits that the case of Ferrer [2012] UKUT 304 (IAC), referred to in the Court of Appeal judgment, was about the grant of permission by the First-tier Tribunal, where, if permission is granted only on limited grounds, there is under the provisions of the Procedure Rules a process for seeking permission from the Upper Tribunal in respect of the grounds which have been not admitted by the First-tier's limited grant of permission. That, I have to say, strikes me as correct. Particularly since what I have said about Judge Martin's grant of permission in Ruhumuliza seems to have been accepted by both parties without argument, I find that Mr Royston is unable to derive any material assistance from that case.
3. That is not the end of the present application, however, because Mr Royston submits that if one looks at the framework of the document produced by UTJ Freeman, one sees in the second paragraph under the heading "Notice of decision on application for permission to appeal" the words "Permission to appeal is granted". Those words were then followed by the reasons, which Mr Royston submits cannot in practice qualify what is stated in terms to be a grant of permission, which he says must be on all four grounds.
4. Construing the document as best I can, I find that UTJ Freeman granted permission only on the first of the grounds. The reason I say that is because it is manifest that this is so from the very last sentence, under the heading "Reasons". Although it might perhaps have been better if UTJ Freeman had said so expressly, nevertheless, notwithstanding that it forms part of the reasons, it is plain that permission has only been granted on that first ground.
5. If there had been any doubt about the matter, then there was an opportunity, it seems to me, for the appellant to have sought to persuade UTJ Freeman, either that his grant was not limited or, if it was, as I find that it was, that he might re-visit that issue; but that has not been done.
6. In the circumstances, given that I agree with Mr McVeety that we come here today on the basis of permission having been granted only on one ground, I do not consider that it would be procedurally fair on the respondent to hear submissions as to whether at this point further grounds might be argued.
7. For these reasons, the submission that we are not confined to ground one is rejected by me.

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Signed

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The Hon. Mr Justice Lane
President of the Upper Tribunal
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