Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06054/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 November 2019	**On 19 November 2019**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

L R
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Behbahani, Behbahani and Co. Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal comes before me following the grant of permission to appeal by Upper Tribunal Judge Finch on 4 October 2019 against the determination of First-tier Tribunal Judge Burns, promulgated on 7 August 2019 following a hearing at Taylor House on 25 July 2019.

2. The appellant is an Iranian national born on 20 March 1975. She entered the UK with her children on a visit visa in on 12 November 2016, returning to Iran two weeks later. She then re-entered with her children on 27 March 2017. She maintained that she was coming to enrol them in school but on the last day of her visa, on 4 April 2017, she applied for asylum. She originally claimed that some colleagues in Iran, who had converted from Islam to Christianity, had been arrested and that a search of the work premises revealed Christian literature which she had been given by people in Turkey and which she had brought back to Iran. for that reason, she feared that she wd be at risk on return.

3. Her appeal was heard by First-tier Tribunal Judge Ross on 15 November 2017. He found that she lacked credibility and he dismissed the appeal. Permission to appeal was refused by the First-tier Tribunal but granted by the Upper Tribunal however her appeal was dismissed at an oral hearing. She then made further submissions claiming that in 2018 she had started to attend a church and that she had been baptised on 16 December 2018. She argued that she had now converted from Islam and that regardless of the findings in the earlier appeal, she would now be at risk because of her own conversion. That application led to a second refusal and a further appeal. Judge Burns took the earlier determination as his starting point. He assessed the oral evidence from the appellant and her witness, made comprehensive adverse credibility findings and, accordingly, dismissed the appeal.

The Hearing

4. Mr Behbahani relied on the grounds in his submissions at the hearing before me on 8 November 2019.

5. Three grounds were put forward. First, it was argued that in rejecting the appellant's daughter's written evidence solely because he had rejected the appellant's evidence, the judge erred in his approach to the assessment of evidence. Moreover, he failed to have regard to what the child had said about her own feelings of Christianity, and how it had affected her life and thereby he had disregarded that evidence when considering her best interests.

6. The second ground was a criticism directed at the judge's assessment of the pastor's evidence. It was submitted that the pastor had not based his evidence simply on what the appellant had told him but on his observations of the family over a period of time.

7. Third, it was submitted that the judge had based his decision on assumptions rather than a consideration of the evidence when assessing the appellant's journey to conversion. Particular sections

of the determination (at 28, 32, 46 and 47) were singled out for criticism.

8. For the respondent, Mr Melvin relied upon the Rule 24 response. He submitted that with respect to the first ground, the child was a dependant on the claim, not a claimant herself and the evidence had only been to support the main claim. The judge was entitled to consider it as having been put forward at the behest of her mother to bolster an unworthy claim. The appellant had not been found credible in two previous appeals. there was no material error in the judge's consideration of s.55. The fact that the child was doing well in school here meant that she could also do well in school in Iran.

9. With regard to the second and third grounds, the pastor's evidence was considered at length. He had written a letter of support without having seen the previous determination. No evidence was overlooked by the judge. Paragraph 28 was not a finding but a recording of the evidence. The same applied to paragraph 32. The first refusal of her claim had been prior to her attendance at church and so the judge was entitled to find that she had started to attend in order to boost another asylum claim. It was an unconvincing and contrived claim. He relied on what was said by the Court of Appeal (at paragraph 18) of Herrera v SSHD [2018] EWCA Civ 412, that it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence. The decision should be upheld.

10. In response, Mr Behbahani submitted that whilst the child was not a claimant herself, her best interests needed protecting. She had developed her religious beliefs over the last two years, and they were now part of her life. The judge was obliged to consider this, but he did not do so. The determination was deficient in its consideration of the child's evidence. Moreover, his remarks at paragraph 71 effectively directed the child to lie. Whilst the judge had looked at the evidence from the pastor, he had not done so properly. His methodology was flawed. The judged had mixed up his recording of the evidence and his assessment of it. Mr Behbahani also pointed out that this was the appellant's second appeal and not her third as Mr Melvin had submitted. The decision should be set aside and the matter remitted to the First-tier Tribunal for a fresh decision to be made.

11. That completed submissions. At the conclusion of the hearing, I indicated that I would be setting aside the decision of the judge. I now give my reasons for doing so.

Discussion and Conclusions

12. Having considered all the evidence and the submissions made, I find that although there are several credibility issues with the appellant's claim, the adverse findings made by Judge Burns did not adequately assess the evidence from the appellant's daughter, her school teachers and the pastor.

13. Part of the evidence before the judge consisted of a letter from the appellant's 14 year old daughter in which she makes references to attending church, how this makes her happy and puts her at peace. The judge considers this very briefly in one sentence made in paragraph 69, towards the end of his determination. He states: *"This letter may well have been dictated or at least been strongly influenced in its content by the applicant for purposes of her bogus asylum claim".* The judge is heavily criticised in the grounds for this observation and rightly so. There is no basis for it, it was not a matter put to the appellant and was not something raised by the respondent. Whilst one might have argued that a child who spoke and read no English on arrival just two years ago had not written this letter, a consideration of the supporting letters from her school teachers prove otherwise. It is plain that the appellant's daughter has made remarkable progress at school, even overtaking her peers in class in English lessons. Had the judge taken account of the evidence from the child's school, and had he not simply dismissed her lengthy statement solely because he had not been impressed with her mother's evidence, it is quite possible that he would have come to a different decision.

14. I also accept Mr Behbahani's complaint that this young girl's own feelings and expressions were utterly disregarded when the judge considered her best interests. Moreover, not only does her evidence impact upon any assessment of her own welfare, but it is also important corroborative evidence of the main appellant's claim and should not have been dismissed in the summary fashion that it was (at 69). For these reasons alone, the determination is flawed and unsustainable.

15. The judge is also criticised in respect to his approach to the pastor's evidence. It is, of course, apparent that the evidence was considered but the consideration was flawed and did not follow the guidance in TF and MA [2018] CSIH 58. The evidence demonstrates that the pastor based his opinions on his own observations of the appellant and her children over the period they attended church and participated in church activities and not just on what the appellant told him.

16. Given that these criticisms are sufficient to render the determination I have no need to address the appellant's third ground.

17. The judge's determination contains material errors of law such that the decision cannot be saved. It is set aside in its entirety except as a record of proceedings.

Decision

18. The decision of the First-tier Tribunal is set aside. The matter is remitted for a fresh hearing to the First-tier Tribunal at Taylor House or Hatton Cross at a date to be arranged.

Anonymity

19. I continue the anonymity order made by the First-tier Tribunal.

Signed

Upper Tribunal Judge

Date: 14 November 2019