



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/06340/2014

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke-on-Trent
On 23rd May 2016

Decision & Reasons Promulgated
On 5th July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

HARBANS KAUR KHANEJA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Tetley of Counsel instructed by CAB (Bolton)
For the Respondent: Ms C Johnstone, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. On 1st May 2015 Upper Tribunal Judge Symes, gave permission to the appellant to appeal against the decision of Judge of the First-tier Tribunal Gladstone in which she

dismissed the appeal against the decision of the respondent to refuse asylum, humanitarian and human rights protection to the appellant, a female citizen of Afghanistan born on 1st January 1942.

2. An application for leave to appeal to the First-tier Tribunal was not been admitted on the basis that the application was out of time. However, in granting permission Upper Tribunal Judge Symes extended time.
3. Upper Tribunal Judge Symes noted that the grounds contended that the First-tier Tribunal was not entitled to come to the factual conclusions reached but thought that, in general, the arguments made amounted to disputes with the reasoned findings of fact without identifying any error of principle in the determination. However, there was seen to be one exception to this arising from paragraph 6 of the grounds, which challenged the First-tier Judge's treatment of the appellant's claimed lack of education and memory loss, particularly the conclusions set out in paragraph 129, criticising the report of a general practitioner. Judge Symes observed that, in paragraph 131, the judge had acknowledged that the appellant had repeatedly sought to raise her difficulties with memory and also referred to the matter at asylum interview. Further, she thought the judge had not made a finding on whether she accepted or rejected the appellant's evidence as to lack of education, illiteracy and memory loss as an explanation for difficulties in giving a consistent account. She considered the fact that the general practitioner had referred the appellant's case for specialist treatment gave some corroboration to the appellant's claims. It was therefore arguable that the judge had failed to take into consideration relevant considerations when reaching credibility findings.

The Hearing

4. At the hearing Mr Tetley relied upon the grounds, although concentrating upon the allegation that the judge had failed to take into consideration the appellant's claimed memory loss and lack of education. He submitted that there was no evidence to allow the judge to reject the medical view set out in the letter from the general practitioner, Dr Ahsan, having regard to the authority of the Upper Tribunal decision in *JL (Medical reports – credibility) China* [2013] UKUT 00145 (IAC). If the judge had wanted to go behind the diagnosis in that letter further detail was required in the decision. Mr Tetley also argued that the judge had not explained how he had approached inconsistencies in the appellant's evidence, particularly in the light of the expert report by Dr Giustozzi notably in paragraphs 134 and 135. All the credibility findings could have been affected by memory loss. Mr Tetley also submitted that evidence given by the appellant in screening interview should not have been relied upon.
5. Ms Johnstone reminded me of the response of 20th May 2015, which points out that in the "very detailed and thorough determination", the judge gave numerous and sustainable reasons (paragraph 129) for finding the medical evidence of no assistance and the grounds were merely a disagreement with the adverse outcome of the appeal. She also pointed out that credibility was also dependent upon evidence of the witnesses, notably the appellant's son and daughter-in-law which also revealed discrepancies. Paragraph 153 of the decision confirmed that the judge had found credibility to be an issue for both the appellant and/or witnesses.

6. In conclusion Mr Tettey argued that the appeal should be remitted to the First-tier Tribunal for hearing afresh in view of the judge's erroneous decision to reject the substantial amounts of evidence put forward.

Conclusions

7. The decision of the First-tier Judge is careful, detailed and cogently reasoned. It deals extensively with the evidence of the appellant and her witnesses and carefully analyses the expert evidence of Dr Giustozzi. The latter evidence is not rejected but referred to, notably in paragraph 138, on the basis that its conclusions can form a basis for finding the appellant's claims incredible. Significantly the appellant claimed that risk was from the Taliban in the three incidents claimed and yet that was not supported by Dr Giustozzi's report.
8. The fully reasoned conclusions of the judge run to over ten pages following a careful analysis of the evidence and prefaced by consideration of the appellant's claim to have memory issues. Strong reliance was placed by the appellant on the general practitioner's letter but this simply stated:

"I am writing to confirm this lady has significant memory issues and she has been referred to hospital for further investigation."
9. That is clearly not a full medical report of the kind envisaged by the Upper Tribunal in *JL*. It gives no reasons for stating that there are "significant memory issues" nor does it state a diagnosis of any particular illness or prognosis. The judge gives copious reasons in paragraph 129 for finding that the letter is unhelpful. That was a conclusion he was entitled to make. In noting the reasons given for the appellant's inability to fund a full medical report, the judge acknowledges, in paragraph 131, that the appellant referred to problems of memory, education and illiteracy when giving her evidence. When faced with unreliable medical evidence and mere assertions by the appellant, the judge was entitled to take into consideration the significant inconsistencies present in evidence given by both the appellant and her witnesses, to reach the conclusion that she had not given a credible account of her reasons for leaving Afghanistan. In that respect the judge does not reject the expert evidence but carefully considers it pointing out further inconsistencies between such evidence and the appellant's claims. The judge was not wrong to refer to the appellant's screening interview record for an indication of her state of health as opposed to any material elements of her asylum claim. Nevertheless, in reaching her conclusions, the judge acknowledged that the appellant had made claims of memory loss at the time of her asylum interview but was entitled to find, by inference, that such claims had not been substantiated.
10. The judge's consideration of the evidence is balanced and fair. The issue of memory loss is not ignored, seen against the background of an absence of reasoned diagnosis and significant inconsistencies in the appellant's and witnesses claims even taking into consideration the expert evidence

Notice of Decision

The decision of the First-tier Tribunal does not show an error on a point of law and shall stand.

Anonymity

The First-tier Tribunal did not make an anonymity direction nor was one requested before me.

Signed

Date: 5th July 2016

Deputy Upper Tribunal Judge Garratt