



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

Appeal Number: PA/00800/2020

THE IMMIGRATION ACTS

**Heard at Bradford (via Microsoft
Teams)
On 16 July 2021**

Decision & Reasons Promulgated

On 3 August 2021

Before

UPPER TRIBUNAL JUDGE HANSON

Between

CI

(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Greer instructed by Fisher Stone Solicitors.

For the Respondent: Mr Diwncyz, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Sills ('the Judge') promulgated on 3 December 2020, in which the Judge dismissed the appellant's appeal on all grounds.
2. Permission to appeal was granted by another judge of the First-tier Tribunal on 18 January 2021. The operative part of the grant being in the following terms:

“... The grounds in the application for permission to appeal argue that the judge erred in law on four grounds, namely committing a procedural irregularity capable of affecting the fairness of proceedings the applicability of the vulnerable witness guidance, Ground 2, failure to resolve a dispute between the parties: the Appellant’s religion, Ground 3, failure to take into account material evidence: background country material.

Counsel argues that at the beginning of the hearing, the Appellant’s advocate raised the applicability of the guidance, namely the Joint Presidential Guidance Note No 2 of 2010, providing guidance in respect of child, vulnerable adult and sensitive appellant’s and the Respondent’s advocate could not oppose that application and Judge Sills therefore granted that application. However, the determination makes no reference to the Joint Presidential Guidance Note.

I accept that this raises an arguable error of law bearing in mind the judge has not referred to the application of the guidance anywhere throughout the determination and it is difficult to state on a fair reading of the decision, to what extent the guidance has been applied in making credibility findings and in dealing with the overall evidence. This raises an arguable error of law, however all other grounds are arguable, in view of the first ground.”

3. The Secretary of State has filed a Rule 24 response and Reply to directions opposing the appeal, claiming the Judge directed himself appropriately and has given clear and cogent reasons for rejecting the appellant’s credibility that are not affected by the appellant’s social phobia.

Error of law

4. The transcript of the opening section of the hearing before the Judge, obtained by Mr Greer, clearly shows that the issue of the appellant’s vulnerability was raised and that the Judge accepted the appellant is a vulnerable witness in the terms identified in the Joint Presidential Guidance.
5. It is not suggested the Judge did not conduct the hearing in a manner that prevented the appellant from being able to participate and give her evidence, the alleged error arises on the basis the allegation the Judge paid no attention to the section of the Joint Guidance relating to the writing of the determination; which is in the following terms:

“Determination

11. An appellant is entitled to a clear decision with reasons.
12. Record whether the appellant had someone there to support him or her and the role played, if any.
13. The weight to be placed upon factors of vulnerability may differ depending on the matter under appeal, the burden and standard of proof and whether the individual is a witness or an appellant.
14. Consider the evidence, allowing for possible different degrees of understanding by witnesses and appellant compared to those are

not vulnerable, in the context of evidence from others associated with the appellant and the background evidence before you. Where there were clear discrepancies in the oral evidence, consider the extent to which 7 the age, vulnerability or sensitivity of the witness was an element of that discrepancy or lack of clarity.

15. The decision should record whether the Tribunal has concluded the appellant (or a witness) is a child, vulnerable or sensitive, the effect the Tribunal considered the identified vulnerability had in assessing the evidence before it and thus whether the Tribunal was satisfied whether the appellant had established his or her case to the relevant standard of proof. In asylum appeals, weight should be given to objective indications of risk rather than necessarily to a state of mind.
6. The Judge in the decision under challenge makes no reference to the Joint Presidential Guidance, indeed failing to make any reference to it in the section of the decision headed “legal framework” in which the Judge sets out a number of self directions in relation to the way in which the issues are to be considered.
7. At [12] the Judge states, initial consideration will be given to the factual issues before applying legal principles, but with, again, no mention of the application of the Joint Guidance.
8. The Judge in the findings from [13] refers to parts of the appellant’s evidence being inconsistent, it being difficult to understand why the appellant failed to mention an issue regarding her father’s second wife with no indication this was actually put to her as an issue, the failure to mention matters the Judge found damaged the appellant’s credibility, failure to provide a clear explanation in relation to when the appellant started attending church, inconsistency in the appellant’s evidence, inadequate explanation, and confusion. At [25] the Judge referred to answers given by the appellant in her interview, which are said on occasion to be “surprisingly vague” and that the appellant’s inability to be more specific is inconsistent with her claim to be a Christian convert [25]. At no point during any of these findings does the Judge factor in what weight is given to the identified vulnerability. It may be that no additional weight is warranted, but the determination does not say this.
9. The Judge refers to the medical evidence at [28] where it is written: *“I note the medical evidence in the Appellant’s bundle indicating the Appellant has sought treatment for symptoms of anxiety, depression, and social phobia. Whilst there has been reference to the health or developmental difficulties of the appellant’s son, no evidence in this regard has been provided”*. The Judge was clearly aware therefore of not only the need to treat the appellant as a vulnerable witness but also the evidence indicating she had sought assistance for the matters that created her vulnerability.
10. The Judge’s conclusion that he rejects the claimed conversion from Islam or having family problems or difficulties due to her Christian faith in Kyrgyzstan, can only be a conclusion safely arrived at once there has been a proper assessment of the evidence.

- 11.** It is accepted that Christian churches are present in Kyrgyzstan as the Eastern Orthodox Christian church and the Roman Catholic Church have been present for a number of generations. The specific claim made by the appellant is that she faces a real risk on return as she has converted and because her church is an evangelical Christian church. Despite this there is no indication of how this was assessed as a risk factor by the Judge when there was evidence of certain Christians being targeted for acts of violence.
- 12.** I find the appellant has established her grounds of challenge and out of an abundance of caution I set aside the decision of the First-tier Judge with specific reference to Ground 1, the fairness of the hearing. The Judge does not enable a reader of the determination to establish what weight was given to the vulnerability of the appellant in assessing her evidence.
- 13.** The decision is therefore set aside as a whole to be remitted to the First-tier Tribunal (IAC) at Bradford to be heard de novo by a judge other than Judge Sills.

Decision

- 14. The Judge materially erred in law. I set the decision aside. This appeal shall be remitted to the First-tier Tribunal sitting at Bradford to be heard afresh by Judge other than Judge Sills. There shall be no preserved findings.**

Anonymity.

- 15.** The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.
- 16.** I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated: 19 July 2021