

**Upper Tribunal**

**(Immigration and Asylum Chamber)** **Appeal Number: PA/10718/2017**

**THE IMMIGRATION ACTS**

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| **Heard at Field House** | **Decision & Reasons Promulgated** | |
| **On 25 April 2018** | **On 11 June 2018** | |
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**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS**

**Between**

**S W**

(anonymity direction made)

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Ratan of Counsel, instructed by Bentley Sterling & Co.

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Veloso promulgated on 13 December 2017 dismissing the Appellant’s protection appeal against a decision of the Respondent dated 9 October 2017.

2. The Appellant is a citizen of Pakistan born on 2 January 1975. I do not propose to rehearse at any length the background to the Appellant’s asylum application and appeal, given in particular that it is set out by way of chronology at paragraph 2 of the decision of the First-tier Tribunal, and also that in any event such matters are known to the parties. Suffice to say that the Appellant made an application for asylum on 13 April 2017 and in that application raised Refugee Convention reasons in relation to membership of a particular social group with reference to sexuality, claiming that she was a lesbian, and in respect of religion, claiming that she had been brought up as a Muslim but had become an atheist.

3. The Respondent refused the Appellant’s application for protection for reasons set out in a ‘reasons for refusal’ letter (‘RFRL’) dated 9 October 2017.

4. The Appellant appealed to the IAC.

5. The First-tier Tribunal dismissed the appeal following a hearing on 30 November 2017 for reasons set out in the Decision of Judge Veloso promulgated on 13 December 2017.

6. The First-tier Tribunal Judge concluded that the Appellant was not a lesbian. The Judge also did not accept that the Appellant was an atheist. In those circumstances the risks that the Appellant claimed that she faced if she were required to return to Pakistan were not matters that reasonably likely would manifest themselves for the reasons that she had claimed.

7. The Appellant sought permission to appeal to the Upper Tribunal. Her grounds of appeal were not drafted by a law professional but appear to have been drafted by the Appellant herself, notwithstanding that she had the advantage of representation before the First-tier Tribunal and again has the advantage of representation, albeit via a different firm of solicitors, in the proceedings before me.

8. In circumstances where grounds had been drafted by a lay person, the consideration of the application for permission to appeal appropriately went further than the ambit of the grounds themselves. The basis of the grant of permission to appeal is twofold.

(i) It is identified that at paragraph 46 of the Decision of the First-tier Tribunal the First-tier Tribunal Judge, in summarising the reasons and findings before going on to set out the basis of those findings, refers to the appeal succeeding under the Human Rights Act 1998, albeit failing under the Refugee Convention. However, from paragraphs 73 onwards the First-tier Tribunal Judge set out reasons for dismissing the appeal on human rights grounds as well as on protection grounds, and in the concluding paragraphs of the decision under the heading Notice of Decision stated in terms that the appeal was dismissed under section 6 of the Human Rights Act 1998.

(ii) At paragraph 69 of the Decision the First-tier Tribunal Judge referred to background country information by way a report dated May 2014. It was considered arguable that the Judge should have had regard to the most recent country policy and information report from the Respondent, dated June 2017. It is suggested in the grant of permission to appeal that this matter may have adversely informed the ‘in the round’ consideration of the Appellant’s case including the issues of credibility.

9. I see no merit in the point in respect of the first of these two arguments. In context the reference at paragraph 46 to the appeal succeeding under the Human Rights Act is clearly a mere slip on the part of the First-tier Tribunal Judge.

10. In considering Article 8 it is noted by the Judge that the Appellant’s grounds of appeal to the First-tier Tribunal did not refer to Article 8 at all (paragraph 73). Moreover, the Appellant’s representative *“merely left the matter to the Tribunal”* (paragraph 74). It is clear therefore that the Appellant was not pursuing Article 8 with any vigour before the First-tier Tribunal and indeed little of the evidence that was called before the First-tier Tribunal could be said to relate specifically to Article 8 rather than the protection issues.

11. Nonetheless, it is clear that the Judge essayed a consideration of Article 8, there being no express abandonment before him of Article 8, notwithstanding it had not actually been pleaded in the grounds. The Judge reached conclusions with reference to what evidence was available as to the Appellant’s private life in the United Kingdom, and had regard to such matters as the public interest considerations under section 117B of the Nationality, Immigration and Asylum Act 2002.

12. There is no suggestion that the Judge’s consideration of Article 8 is to be impugned for any reason other than the apparent reference to allowing the appeal on this basis at paragraph 46. As I say, it seems to me absolutely plain and clear that this was a mere slip. I find that there is nothing thereby that constitutes an error of law; far less is there anything that is material, or that would otherwise undermine the reasoning and conclusion expressed in respect of Article 8 in the subsequent paragraphs. Nor do I accept, as was suggested at the outset by Mr Ratan, that the Judge’s carelessness thus demonstrated is a matter that should be taken forward cumulatively into consideration of the other aspect of the challenge. I am not remotely persuaded that this mere slip is such as to undermine the Judge’s evaluation of the Appellant’s protection claim.

13. Accordingly, I reject the line of challenge made by reference to what is erroneously stated at paragraph 46 of the Decision.

14. I also find that there is nothing in the challenge in respect of the Judge’s reference to a report dating from May 2014.

15. In my judgement it is clear in context that the reason that the Judge refers to this report is because it was the report relied upon by the Appellant’s representative in the course of submissions as to the potential risk to the Appellant as an atheist. This is apparent from paragraph 68. The report itself appears at pages 92-99 of the Appellant’s bundle before the First-tier Tribunal. It is titled ‘Laws Criminalising Apostasy in Selected Jurisdictions’ and is a Law Library of Congress Report. The Appellant’s representative before the First-tier Tribunal emphasised in particular a passage from page 99 of the bundle - which the Judge has reproduced in the Decision (paragraph 68). It seems to me there can be no criticism of the Judge - and it cannot be suggested that the Judge somehow fell into error – for the bare fact that he referred to the report. The Judge was addressing the Appellant’s case as it was being presented. It is also manifest that the Judge recognised that the report was not contemporary, expressly stating it was *“over three and a half years ago”*.

16. However, the argument is advanced that notwithstanding the Appellant’s representative’s own emphasis of a report from May 2014, the Judge should have had regard to a report from June 2017, specifically the Respondent’s Country Information Guidance of June 2017.

17. It is common ground that no such report was placed before the Judge by either party to the appeal - although it is apparent that the report was referred to by the Respondent in parts of the RFRL.

18. The passages in that report which are now said to relate to the issue of risk to atheists identified by Mr Ratan - who has produced a copy of the report before the Upper Tribunal - are not referred to in the RFRL.

19. Therefore in substance the submission now being made is this: the Judge fell into material error of law by failing to take into account material that was not before him. Whilst Mr Ratan has been careful not to criticise the Judge personally for such a failure, nonetheless that is the essence of the challenge. Mr Ratan puts it this way: it is incumbent upon a decision-maker to take into account evidence that is material; material evidence includes *“reliable, relevant and referenced country of origin information”* including *“current CIG Reports (or COIS Reports)”*, (quotations he takes from asylum instructions on assessing credibility and refugee status);if such evidence is material then failure to have regard to it must be considered to be a material omission, and therefore a material error constituting an error of law justifying the setting aside of an adverse decision.

20. I reject the correctness of that submission. It seems to me an unworkable proposition. It would require a First-tier Tribunal Judge in preparing a decision to ensure that not only regard has been had to the materials that were actually filed and referred to by the parties, but also to any other materials not filed or not referred to that might be relevant and on point. Such a process might necessitate the Judge to conduct his or her own exploration of materials in libraries or on the internet - a matter which case law suggests Judges should not do of their own volition.

21. The misconception in Mr Ratan’s submission is his premise that the instructions to the Respondent’s caseworkers are in some way transferrable – even if only in principle – to the judiciary. This is to confuse the essentially investigatory role of the Respondent in evaluating an asylum application – cf. paragraph 196 of the UNHCR Handbook, “*…the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner*” – and the appellate role of the Tribunal.

22. The challenge relies upon the imposition of an impracticable working standard, without any foundation in practice or law. I do not accept absent a ‘**Robinson** obvious’ omission - that an error of law can be established in principle on the basis that a Judge failed to take into account passages in material not placed before the Tribunal and not relied upon by either party but that might nonetheless have been relevant if identified.

23. Be that as it may, on the facts of this particular case the bigger difficulty for the Appellant is that the First-tier Tribunal Judge concluded that the Appellant was not an atheist. As such the Judge’s consideration of the risk to an atheist was an ‘in the alternative’ consideration and not a necessary consideration to the ultimate disposal of the appeal.

24. In this context there is no specific challenge to the assessment of credibility - except possibly incidentally by way of the failure to have regard to all relevant country information. However, in this latter regard I do not accept for a moment that any failure to have regard to a report issued in June 2017 could be relevant to an evaluation of the Appellant’s claimed reasons for abandoning her faith. The Appellant’s claimed abandonment of faith, and therefore also her reasons for becoming an atheist, predate the June 2017 report and are not in any way contingent upon the contents of that report. I do not see that the failure to have regard to a report that was not before the Judge was in any way a material omission in the evaluation of the Appellant’s testimony with regard to whether she was or was not an atheist.

25. I have had the benefit of consideration of the material that the Judge did refer to as having been relied upon by the Appellant, and the particular passages in the 2017 report identified by Mr Ratan as being potentially relevant. Even, if there were something of substance in the premise of Mr Ratan’s submission – which I do not accept and have rejected for the reasons set out above – I am not persuaded that there is anything so materially different between the circumstances described in those reports as to warrant setting aside the decision of the First-tier Tribunal.

26. It is plain that both reports refer to potential difficulties for converts pursuant to Pakistan’s blasphemy law. The Judge, however, concluded that the Appellant’s conduct would not be such as to reasonably likely give rise to concerns in this regard because she is not a person who has conducted herself in a way that might bring attention to her as someone who does not believe in, and would wish to insult, the religion of Islam. The Judge’s findings in this regard are just as relevant or pertient whether evaluated against the 2014 report that the Judge had or the 2017 materials to which my attention has now been directed.

27. The bottom line in this case, as Mr McVeety has pointed out, is really simply this: the Appellant claimed to be at risk on the basis of sexuality and claimed to be at risk on the basis of atheism; the Judge did not accept that she was a lesbian as claimed and therefore her case to be at risk for that reason fell away; the Judge did not accept that the Appellant was an atheist and her case to be at risk for that reason also fell away. In those circumstances the failure to have regard to a document that was not before the Judge could not in any way have been a material error of law - or indeed an error of law at all.

28. I reject in its entirety the challenge to the decision of the First-tier Tribunal.

**Notice of Decision**

29. The decision of the First-tier Tribunal contained no errors of law and stands.

30. The Appellant’s appeal remains dismissed

**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 her or any member of her 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: **7 June 2018**

**Deputy Upper Tribunal Judge I A Lewis**