



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/08439/2014

THE IMMIGRATION ACTS

Heard at Newport
On 10 June 2015

Decision & Reasons Promulgated
On 17 June 2015

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

NA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Nowaparast of NLS Solicitors
For the Respondent: Mr D Mills, Home Office Presenting Officer

REMITTAL AND REASONS

1. This appeal is subject to an anonymity order by the First-tier Tribunal pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited me to rescind the order and I continue it pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

Introduction

2. The appellant is a citizen of Iran who was born on 27 September 1990. He arrived in the United Kingdom on 23 June 2014 and claimed asylum the following day. The appellant claimed to fear the Iranian authorities because he had worked as a smuggler's porter. He claimed that he had stored a number of cartons of alcohol in his cellar for the smuggler. The police had come to his house and discovered the alcohol together with some political documents which were found in the boxes stored in his cellar. He was now wanted by the authorities and was at risk of prosecution and severe punishment amounting to persecution or serious ill-treatment contrary to Art 3 of the ECHR.
3. On 12 September 2014, the Secretary of State refused the appellant's claim for asylum, humanitarian protection and under Art 8 of the ECHR. The Secretary of State rejected the appellant's account as not being credible. Consequently, on that same date, the Secretary of State made a decision to remove the appellant to Iran as an illegal entrant.
4. The appellant appealed that decision to the First-tier Tribunal. In a determination promulgated on 12 February 2015, Judge Maciel dismissed the appellant's appeal. Like the Secretary of State, she found the appellant's account not to be credible and that the appellant was not wanted as a criminal or suspected political dissident. Further, in the light of her adverse credibility finding, the judge did not accept that the appellant had exited Iran illegally.
5. The appellant sought permission to appeal to the Upper Tribunal challenging the judge's adverse credibility finding. On 31 March 2015, the First-tier Tribunal (Judge Lambert) granted the appellant permission to appeal.
6. Thus, the appeal came before me.

The Appellant's Claim

7. The appellant's claim was that he had worked as a smuggler's porter for about one and a half years prior to coming to the UK. At the request of the smuggler, H he had stored twenty cartons of alcohol in the cellar of his home. Subsequently, he was telephoned by H who stated that someone would collect ten cartons. In due course, an individual came and collected them. The appellant remained in his house for approximately three to four hours before he went to the market at the request of his mother to buy some produce. Whilst he was out, he received a telephone call from a neighbour warning him not to return home. The police had come to his home. The appellant went directly to his uncle's home where he stayed for about twenty minutes before his uncle took him to a friend's house where the appellant hid in a cellar for two to three hours before arrangements were made to take the appellant out of the country. The appellant travelled to Turkey where he remained for ten days before travelling to the UK. The appellant has contacted his uncle and was informed that his mother had been taken into detention as political documents were found in the boxes of alcohol stored in his cellar.

8. The appellant fears that he will be prosecuted. There was expert evidence before the judge that the punishment he would receive would be at least five years' imprisonment and 74 lashes with a fine of approximately £60,000.

The Judge's Decision

9. The judge found the appellant not to be credible. Her reasons are at paras 16-23 of her determination as follows:

- “16. I find that there (sic) his account did not contain discrepancy as alleged in the reasons for refusal letter in respect of him leaving the house as soon as he got a call from Mr H. I find that in interview he stated that he remained in his home for 3-4 hours after the call and left to go to the market.
17. I was urged to find that the Appellant's claim that his mother was detained was credible as he was fine prior to that and thereafter displayed symptoms of anxiety and depression. However, I find that this time also coincides with the time when his application for asylum was refused. Accordingly, the change in his health cannot be solely attributable to any news he may have received from Iran.
18. The Appellant claimed to have had contact with his uncle en route when his uncle telephoned the Appellant on the agent's telephone and he was informed that the family were well. I find that the Appellant would have kept in regular contact with his family. I do not accept that the Appellant did not make any attempt to contact his family until after the refusal as alleged. I find that this aspect of his claim has been added to exaggerate his claim. I reject his assertion that political documents were found and that he was informed of this on 22 September.
19. Further, if the authorities had discovered political documents in the Appellant's house, they would have arrested his mother immediately and would not have waited, which would mean, she would have been detained by the time the Appellant reached Turkey when his uncle is said to have informed him that all was well.
20. The Appellant states that he does not want to contact his uncle as this might bring them trouble and is therefore aware of the sophistication with which the Iranian authorities operate. This is inconsistent with a neighbour tipping him off that there were agents at his home when he said to have gone to the market. That call would have been tracked, leaving his neighbour to bear the repercussions.
21. I find that if the Iranian authorities had not found the Appellant at his home they would have immediately gone to his uncle's home where the Appellant was for some time (2 – 3 hours). They would have had intelligence of this.
22. I find that the Appellant's ability to evade the Iranian authorities to be based on too many coincidences. Despite waiting in his house for 3 – 4 hours the Iranian authorities only managed to get there after he left for the market. The Iranian authorities also did not think to look for him at his uncle's address and there was no trouble for at least 10 days when he was travelling to Turkey as that is what it is claimed he was told.
23. I accept that the home area of where the Appellant comes from is a centre for smugglers and it may be that the Appellant was involved in this business as a porter. However, I reject his evidence that there was any adverse interest in him by the Iranian authorities when he left Iran or since. I find that the Appellant claim

that the Iranian authorities did not visit his uncle or question him to undermine the background evidence that the authorities are experienced, formidable and have a far reaching intelligence service.”

10. At para 24, in the light of her adverse credibility finding, the judge did not accept that the appellant had left Iran illegally.
11. At para 25, she considered the appellant’s symptoms of depression and anxiety and noted that: “the timing of this coincides with the refusal of his claim by the respondent.”
12. Consequently, at para 26 the judge found as follows:
 - “26. In the light of my findings, I do not accept that the Appellant is a wanted criminal or suspected political dissident. I find that if required to return to Iran, the Appellant will have the support of his family who have paid for him to travel to the UK.”

Discussion

13. Ms Nowaparast, who represented the appellant, submitted that the judge’s adverse credibility finding was flawed on two bases.
14. First, the judge had misdirected herself as to the evidence and had based her reasoning upon two mistakes of fact. At para 21, the judge had doubted the veracity of the appellant’s account that he had gone to his uncle’s home and not been found there by the Iranian authorities on the basis that he had been there for “some time”, namely 2-3 hours. That, Ms Nowaparast submitted was a mistake. The appellant’s evidence was that he spent about twenty minutes in his uncle’s house (see Q123 of the asylum interview). The appellant’s reference in his evidence to a period of “2-3 hours” was, Ms Nowaparast pointed out, the time the appellant said that he spent hiding in the cellar of his uncle’s friend before arrangements were made for him to leave.
15. Also, Ms Nowaparast submitted that in para 22 the judge had been wrong to take into account that the appellant had been able to safely spend ten days travelling to Turkey undetected when that was no part of the evidence. She submitted that the reference to ten days in the appellant’s evidence was to the time he spent in Turkey rather than the time he spent reaching Turkey (see Q121 of the asylum interview).
16. Mr Mills, who represented the respondent accepted that the judge had made these two factual errors. However, he submitted that these factual errors did not amount to a material error of law on the basis of the remaining reasons given by the judge at paras 16-23 for her adverse credibility finding.
17. Turning then to Ms Nowaparast’s challenge to that part of the judge’s reasoning, particularly in paras 18-22, she submitted that the judge’s reasoning was not supported by objective evidence and amounted to inappropriate speculation. In particular, in her oral submissions, Ms Nowaparast challenged the judge’s reasoning

in para 19 that, having discovered political documents in the appellant's house, it was (in effect) implausible that the appellant's mother would not be arrested immediately. Ms Nowaparast submitted that that inference was not only not supported by the background evidence before the judge, it was in fact contrary to it. She relied upon a passage in the Danish Refugee Council's report on Iranian Kurds (September 2013) at para 1.34 where it stated that:

"Asked how the regime treats the family of someone who has been caught with a flier, UNHCR Erbil answered that the family will be harassed until the wanted person shows up. The regime will sometimes detain a family member and interrogate him for a few hours and then release him; or the regime will hold one of the family members in detention."

18. Although that passage concerned the treatment of family members of the Kurdish activist, and it is by no means necessarily inconsistent with the claimed treatment of the appellant's mother, the judge was in my judgment required to grapple with the objective evidence before inferring that the appellant's mother would have been arrested immediately if the appellant's account was true.
19. The grounds also challenged the judge's reasoning in para 20 that, given the sophistication of the Iranian authorities, again (in effect) it is implausible that a neighbour would risk phoning the appellant when that call might be tracked. The difficulty with this reasoning is that there was no evidence before the judge that the authorities were either tracking the appellant's phone or that of the appellant's neighbour. There was no evidence as to what, if any, surveillance had been placed upon the appellant prior to the raid on his home.
20. That difficulty also manifests itself in para 22 of the judge's reasoning that it was again (in effect) implausible that the Iranian authorities would wait for three to four hours after the smuggler's agent collected the alcohol to raid the house. There was simply no evidence as to the surveillance of the appellant or why it was that the Iranian authorities raided the appellant's house at the time they chose.
21. Even without the second ground upon which Ms Nowaparast relied, I am satisfied that the errors of fact made by the judge, which I have identified above (and are accepted), were material to her decision. The judge's reasoning is relatively brief and I am unable to say that she would have reached the same conclusion had she not taken into account the reasoning in paras 21 and 22. The materiality of that error is more acutely identified when regard is had to the second of Ms Nowaparast's grounds which casts doubt on other aspects of the judge's reasoning in paras 19, 20 and 22.
22. For these reasons, I am satisfied that the judge materially erred in law in reaching an adverse credibility finding and in dismissing the appellant's appeal.

Decision and Disposal

23. Consequently, the decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. That decision cannot stand and is set aside.

24. Both representatives accepted that if the appellant's grounds were established the proper course was to remit the appeal to the First-tier Tribunal for a *de novo* of the appeal.
25. Applying para 7.2 of the Senior President's Practice Statement, and having regard to the nature of the error of law and the need to make fresh findings of fact, I remit the appeal to the First-tier Tribunal for a *de novo* re-hearing before a judge other than Judge Maciel.

Signed

A Grubb
Judge of the Upper Tribunal