Upper Tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/00866/2015

THE IMMIGRATION ACTS

Heard at Manchester
On 31 March 2015

Decision & Reasons Promulgated
On 25 April 2016

Before

Deputy Upper Tribunal Judge Pickup
Between

MYSC
[Anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Ms J Mason, instructed by Broudie Jackson Canter
For the respondent: Ms R Petterson, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appeal of MYSC against the decision of First-tier Tribunal Judge Birkby promulgated 25.3.15, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 30.12.14, to refuse his asylum, humanitarian protection and human rights claims, and to remove him from the UK. The Judge heard the appeal on 4.3.15.

2. First-tier Tribunal Judge Osborne granted permission to appeal on 21.4.15.

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3. Thus the matter came before me on 31.3.16 as an appeal in the Upper Tribunal.

Error of Law

4. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the decision of Judge Birkby should be set aside.

5. In summary, the grounds assert that the First-tier Tribunal Judge undertook a review of a selection of evidence from the asylum interview on which reliance was placed to make adverse credibility findings on issues not raised during the oral evidence, such that this amounts to procedural unfairness.

6. It is also pleaded that the judge gave inadequate reasons for rejecting the appellant's claim to have travelled to Iraq and having received an offer from the Canoeing Federation of Iraqi Kurdistan. The appellant contends that the Secretary of State now accepts that detention in Iran gives rise to a real risk of persecution or article 3 ill-treatment and whether or not an asylum seeker is accepted to have left Iran illegally is not determinative given the evidence cited by the Secretary of State in her own OGN at 3.15.5. It is submitted that the key issue was whether the appellant faced a real risk of detention and that significant evidence postdating the country guidance cases pointing to such a risk was before the First-tier Tribunal Judge. It is argued

7. In granting permission to appeal, Judge Osborne considered that in an otherwise detailed and carefully reasoned decision and reasons extending to 10 pages and 47 paragraphs, "it is nonetheless arguable that the Judge has failed to adequately consider the risk to the appellant upon his being returned to Iran. It is arguable that to fail to adequately deal with this issue is a material error of law. This arguable error of law having been identified, all the issues raised in the grounds are arguable."

8. The ground of appeal alleging that the judge had used the wrong standard of proof was not pursued at the hearing before me.

9. I find no error of law in the first ground complaining that it was unfair for the judge to rely on inconsistencies in the interview to make adverse credibility findings. It is suggested that the judge should have given the appellant the opportunity to address the concerns referred to by the judge. As they were not raised during the oral hearing, it is suggested that this amounts to unfairness. It is clear from §30 that the judge carefully considered the appellant's evidence within the context of the background situation in Iran and took note of all the evidence and submissions made. The matters relied on by the judge were within the evidence put before the Tribunal. The judge found the appellant's evidence inconsistent, evasive, vague and implausible. The judge then went on to cite some examples, making clear they were not exhaustive of the concerns.

10. At §38 the judge found he was never involved in any attempt to seek information about moving to Iraq, or that he was offered a canoeing role there, or that his father was ever involved with a political party, or imprisoned, or that the appellant was

himself ever arrested, detained, ill-treated, and released on bail, with an arrest warrant issued against him. The judge did not accept that he had ever been accused of being politically involved with any party, or discriminated against because of his Kurdish ethnicity, or mistreated because of any imputed political opinion. Neither did the judge accept that the appellant left Iran illegally. In fact, the judge found that the appellant had fabricated his entire account of detention and ill-treatment in order to make a false claim for international protection.

11. It is true that some of the issues raised by the judge in the decision were not specifically addressed in the reasons for refusal letter, but it is clear from the refusal at page 5 onwards that the Secretary of State did not accept that the appellant faced charges in Iran for encouraging athletes to go to Iraq and that his general credibility was in issue. The Secretary of State asserted that his evidence claiming to suffer discrimination was inconsistent with his account of being funded in Iran in the manner claimed. The refusal decision concluded that inconsistencies in his account led to the conclusion that the circumstances around his claimed canoeing career are not as he has alleged. Inconsistencies in his interviews were also highlighted. His claim that he intended to remain in Iran to see if he was picked for the next cup was found to be inconsistent with his claim to have been discriminated against and to have been made an offer in Iraq. His claim to have returned to Iran and encouraged fellow canoeists to go to represent Iraq was also found to be inconsistent.

12. In the circumstances, I find that the judge was perfectly entitled to rely on similar inconsistencies and implausibilities in the appellant's self-contradictory accounts as part of the judge's assessment of his credibility. At §31 it is clear that the judge was considering the appellant's credibility in the round in the light of all of the evidence. There was no unfairness to the appellant in so doing. The appellant knew the evidence that was placed before the judge and cannot complain that the judge examined that evidence and found other inconsistencies and a lack of credibility that may not have been relied on by the Secretary of State.

13. In relation to the second ground relied on by Ms Mason, that of the risk on return as a failed asylum seeker. Although the judge found as a fact that the appellant had not made an unlawful exit from Iran, it was nevertheless submitted that the judge failed to consider the risk on return as an undocumented Iranian. Reliance was placed on passages in the 2013 COIR at 32.27 and OGN at 3.15.5 & 3.17.13, now very familiar to the Tribunal, citing an Amnesty International report citing in turn a report issued by a Swiss refugee agency which allegedly quotes an unnamed judge as saying that asylum seekers are interrogated on return and that this includes people who are deported back to Iran not in possession of a passport containing an exit visa, but only a document from the embassy confirming their identity.

14. In the refusal decision, the Secretary of State relied on the Country Guidance case law of SB (risk on return –illegal exit) Iran CG [2009] UKAIT 00053, and BA (demonstrators in Britain – risk on return) Iran CG [2011] UKUT 00036 (IAC), to the effect that even if they exited illegally those facing enforced return do not in general

face a real risk of persecution or ill-treatment and illegal exit is not, by itself, a real risk factor.

15. The argument is that the COIR and other background information post-dates the country guidance. However, in DSG & Ors (Afghan Sikhs: Departure from CG) Afghanistan [2013], and SG (Iran) [2012] EWCA Civ 940, it was held that unless it has been expressly superseded or replace by any later CG determination, or is inconsistent with other authority that is binding on the Tribunal, such a country guidance case is authority in any subsequent appeal, and that decision makers and Tribunal judges are required to take country guidance determinations into account, and to follow them, "unless very strong grounds supported by cogent evidence, are adduced, justifying their not doing so. To do otherwise would amount to an error of law."

16. I agree with the submission of Ms Pettersen that the COIR and Amnesty International evidence relied on by the appellants is insufficient to displace the current country guidance relied on by the judge. There are obvious shortcomings in the relied on passages. One is distinctly lacking in detail, with no examples cited, and the other refers to existing laws cited by an unnamed judge. These articles or extracts post-date the CG, but on the test for departing from CG, set out above, the background material cannot be described as cogent or amounting to strong grounds to depart from the country guidance. In the circumstances, there was no material error in the failure of the judge to consider a risk on return as an undocumented failed asylum seeker.

17. The remaining grounds of appeal are much weaker and whether taken together or as a whole do not demonstrate any error of law on the part of the judge. Much of the points made are merely a disagreement with the findings or are otherwise misguided. For example, §21 of the grounds complains that the judge does not reject the appellant's claimed Al Haq faith and failed to apply this to the risk on return assessment. However, the judge addressed this at §40 noting that on his own evidence that he did not practice his faith and had not suffered any problems as an adult in consequence of his parents adherence to this faith. The judge concluded that the appellant never suffered any serious problems in Iran because of his religion and was not satisfied that he would seek to proselytise, promote or even practice this faith on return.

Conclusions:

18. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The appeal remains dismissed on all grounds.

Signed

Deputy Upper Tribunal Judge Pickup

Dated

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue.

Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable and thus there can be no fee award.

Signed

Deputy Upper Tribunal Judge Pickup

Dated