Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/01986/2015

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke-on-Trent
On 3rd February 2016

Decision & Reasons Promulgated
On 11th February 2016

Before

UPPER TRIBUNAL JUDGE COKER

Between

ARIF KHAN

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D Chalk of Immigration and Asylum Services
For the Respondent: Ms C Johnstone, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant was granted permission to appeal on the grounds that it was arguable that the First-tier Tribunal judge had failed to give anxious scrutiny to all the evidence and that it was arguable that the judge had failed to give adequate reasons for rejecting the appellant's claim to be Hazara when the respondent had given good reasons why she accepted this.

Error of law

2. This appellant has significantly changed the basis of his claim for asylum. Initially he claimed to have been born in Afghanistan, that his father had been murdered fighting for the Taliban and that he had been taken to the mountains on two separate occasions. This, a few days before his hearing before the First-tier Tribunal, he changed and said that he had been born in Pakistan to Afghan parents who were living illegally in Pakistan, that he had gone to Iran and that when the Iranians were returning Afghans to Afghanistan his parents (who were both alive) had sent him to the UK. He claimed he had converted to Christianity. Although this changed basis of claim was notified to the Tribunal and to the respondent a few days before the hearing, the respondent plainly had no reasonable opportunity to prepare for this but nevertheless did not ask for an adjournment.

3. The grounds relied upon assert that the First-tier Tribunal judge at [22] conceded that the appellant's Hazara ethnicity had never been disputed by the respondent. This is incorrect. The judge does not make any such concession. The judge does state

> "27. Insofar as the appellant's claim to be a Hazara the only evidence as to his ethnicity is his own. There is no other evidence supporting this claim. The burden of proving his appeal rests upon the appellant to the lower standard and I am satisfied having found the appellant to be an incredible witness he has not established he is of Hazara ethnicity and therefore at risk in Afghanistan or Pakistan."

There are a number of problems with this finding. First it fails to consider the evidence that was before the First-tier Tribunal in relation to his ethnicity namely: the conclusion of the respondent in the first reasons for refusal letter dated 19th April 2013 that he spoke the Hazaragi dialect of Dari which is spoken by Hazara ethnicity; that he was aware that the Hazara people are said to be descendants of Genghis Khan and what their religious beliefs are; that it was submitted both orally and in the skeleton argument that Hazara are identifiable by their Asiatic features; the document in Bundle 1 of the appellant's documents relied upon which describes the different ethnicity characteristics of Hazaras and Pashtun. Ms Johnstone submitted that the submission by the appellant of a false birth certificate and the complete change of the basis upon which he now claimed international protection were so significant that it was open to the judge to find that the appellant was not Hazara as claimed.

4. Whilst it may be that a finding to that extent could be open to a judge on a reading of that material, it is not evident that the judge in this case had any regard to any of that material. He reached a conclusion that the appellant was not Hazara because he had already decided that the appellant was "an incredible witness". Not only does the judge reach a finding on a significant element of the appellant's claim (that he would be at risk of being persecuted by reason of his ethnicity) but does so having found that his account of the basis of his claim was incredible without taking into account the evidence before him to contradict that finding. It is by no means inevitable that another judge would have come to the same conclusion.

5. The judge did not set out the appellant's evidence but gave a summary of five contradictory claims in [23]. Although of course it is unnecessary for a judge to

set out an appellant's evidence in full in all cases, it is incumbent upon a judge, if findings are going to be made on that evidence to at least set out the gist of that evidence and cross examination where significant and serious adverse credibility findings are to be made. It cannot be disputed that the appellant has told a story that was untrue when he first claimed asylum. Nor can it be disputed that it was not until a few days before his appeal that he voluntarily changed his account to what he asserted to be the correct account. The First-tier Tribunal judge correctly directs himself to the proposition that although a person may lie about one thing it does not necessarily mean he is lying about another; he concludes that he must approach the 'new story' with considerable caution. In [35] he refers to the principal witness in support of the appellant's conversion to Christianity as accepting the appellant's conversion as genuine. The judge then refers in [36] to a written witness statement by the appellant's girlfriend (she did not attend to give oral evidence) as not referring to his conversion and not referring to him being of Hazara ethnicity. The judge concludes this significantly undermines his account of his conversion. The judge then goes on to conclude

> "37. Having considered all the material in the round I am satisfied this appellant cannot be believed and has been untruthful. He has perpetrated his lies by deceit. This deceit has continued since he came to the UK and was practiced on experienced Home Office investigators and those in Social Services who cared for him. Whilst I accept the goodwill of Mr Baillie believing as he does that this appellant has found Christianity I am satisfied that Mr Baillie has been yet another in a long line of those who this appellant has deceived. If the appellant's account is to be believed it is incredible that he still purports to be a Shia to his girlfriend of several years.
>
> …
>
> 40. … for his account to be credible even to the low standard of proof something so potentially life-changing should not be perfunctory, vague or ill thought out as his account is. Even at a young age this appellant has proved extremely resourceful travelling across Europe with the single goal that his destination was the UK. Having arrived in the UK I am satisfied the appellant engineered an elaborate story that is now accepted to be a lie. This continued for many years ... I have little doubt that if this appellant was allowed to remain in the UK he would soon fall away form his interest in Christianity."

6. Although the judge purports to have considered all the evidence in the round it does not appear that he has considered the oral and documentary evidence of Mr Baillie, Mr Baillie's position in the church or the processes and procedures undertaken by the Church to satisfy themselves as to the genuineness of conversion. Nor does the judge appear to have taken account of the appellant's evidence that the relationship between him and his girlfriend had hit a 'rocky patch' or the reasons for that. Nor does he appear to have taken account of the appellant's evidence that he was sent to the UK by his parents and the effect that that combined with his youth and the instructions he may have been given could impact upon his account. The foundation stone appears to be the lack of reference, in a written witness statement by a young woman who did not give oral evidence, to his being of Hazara ethnicity and that he had not told her he had converted. Yet that statement refers to her seeing a bible at his home and to his explanation. Of course there is no requirement for a judge to identify and make findings on every single piece of evidence that is before him. But there is

a requirement to show that significant and relevant evidence is considered and taken account of. The fact that the appellant has lied about the basis of his previous claim does not mean that those lies translate to a lie about the current basis of claim – the evidence he relied upon in support has not been adequately considered by the judge.

7. I am satisfied there has been an error of law in the decision of the First-tier Tribunal such that it be set aside to be remade; no credibility findings to be retained.

8. This appeal needs a complete re-hearing with full oral evidence and I thus remit it to the First-tier Tribunal to be re-heard.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law and I set aside the decision.

I remit the appeal to the First-tier Tribunal.

Date 3rd February 2016

Upper Tribunal Judge Coker