



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/07465/2014

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly
On 23 March 2016

Decision Promulgated
On 14 April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

[M S]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Patel counsel instructed by Adam Solicitors

For the Respondent: Ms C Johnstone Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge M Davies promulgated on 16 March 2015 which dismissed the Appellant's appeal against a decision to remove him from the UK and the refusal of asylum on all grounds.

Background

3. The Appellant was born on [] 1977 and is a national of Iran.
4. On 22 November 2013 the Appellant applied for asylum on the basis that he was at risk on return from the revolutionary guards as he was asked to falsify documents as part of a building project and both his and his wife's business licences had been withdrawn and not renewed. He believed he would be imprisoned or hanged.
5. On 11 September 2014 the Secretary of State refused the Appellant's application.

The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge M Davies ("the Judge") dismissed the appeal against the Respondent's decision.
7. Grounds of appeal were lodged arguing that :
 - (a) The Judges findings on credibility were inadequate and were contained within only two paragraphs 51 and 52.
 - (b) The findings in paragraph 51 do not relate to the core of his claim.
 - (c) The findings at 52 are inadequate.
 - (d) The Judge finds there is no documentary support for his claim when this is not a requirement but ignoring the building contracts he produced.
 - (e) The failure to grant an adjournment to translate the document from a former President of Iran was an error of law as the document went to the Appellants credibility.
8. On 2 February 2015 First-tier Tribunal Judge Fisher refused permission and the application was renewed. On 19 May 2015 Upper Tribunal Judge King gave permission to appeal.

9. At the hearing I heard submissions from Ms Patel on behalf of the Appellant that
 - (a) The findings at paragraph 51 were wholly inadequate and the Judge did not explain why the explanation he gave in his witness statement as to why he agreed to take part in the building project were not considered.
 - (b) The Judge failed to consider the explanation he gave for why he could not expect help from his father in law again.
 - (c) She suggested that the Judge failed to make findings about whether the Appellant had exited illegally although I pointed out to her that this was not one of the grounds of appeal. She argued that it was part of the claim that the Judge had not dealt with things properly.
 - (d) The Judge in stating that there was no documentary evidence made no reference to the fact that in the bundle at page 5-8 was a Court Judgement from a court in Iran which corroborated both his account of events prior to his flight to Germany but in relation to the building contract. This would clearly put him in one of the risk categories in SB Iran.
 - (e) The findings at paragraph 51 did not relate to the core of his claim and the Judge ignored the explanation that he had given at paragraph 9 of his witness statement.
 - (f) The Judge was not entitled to conclude that he could deal with the appeal justly without an adjournment to have the document translated from French.
10. On behalf of the Respondent Ms Johnstone submitted that:
 - (a) She objected to the new ground being raised in relation to illegal exit: it was not argued before the first tier nor was it in the grounds.
 - (b) The Judge gave valid reasons why he refused the adjournment and there was no indication of how the document could be material to the outcome of the decision.
 - (c) The Judge gave clear reasons for not finding the Appellant to be a credible witness

Finding on Material Error

11. Having heard those submissions, I reached the conclusion that the Tribunal made material errors of law.

12. The challenge to the Judge's refusal of an adjournment application is without merit. I am satisfied that the Judge gave adequate reasons for refusing the adjournment given that there is of course, no automatic entitlement to have a case adjourned. The Judge took into account that the Appellant had claimed asylum a year prior to the date of hearing so was entitled to conclude that he had had ample time to prepare his case and produce evidence he asserted was supportive of his claim. While he does not specifically refer to the Case Management Review he would also have been entitled to note that only two weeks prior to the date of the substantive hearing but there was no suggestion that there was documentary evidence outstanding that might need translating. Given that the letter in issue refers to correspondence going back to May 2014 it might be argued that the Appellants Representatives did not alert the court of the possibility of an adjournment request before the date of hearing. Moreover even had the Judge been wrong in this I am satisfied that it would have made no material difference to the outcome of the case. The letter and its translation was provided to me. It is a letter dated 24 October 2014 from former President Bani Sadr of Iran. It is plain that Mr Bani Sadr does not know the Appellant personally. What he knows of him comes from a third party [AM] who lives in Switzerland and there is no information about whether [AM] knew the Appellant personally or had also received his information second hand. I am satisfied that no Judge would have given any weight to this letter in the light of the lack of clarity about the source of the information.

13. The Judges credibility findings are challenged. I note that at paragraph 54 the Judge made unchallenged findings about the manner in which the Appellant gave evidence: prevaricating, not answering simple questions. In relation to the credibility findings at paragraph 51 there is no suggestion in the decision that the Judge views this as central to the Appellants claim in fact he identifies the core claim at paragraphs 21-22. Nevertheless the general credibility of the Appellant was a matter the Judge was entitled to consider in determining whether the core claim was credible. The Appellant claimed to have fled from Iran on two occasions both because he claimed

to have come to the adverse attention of the Iranian authorities. On the first occasion he claimed he fled because he was a financial supporter of the Green Movement and had attended two demonstrations he was notified that the authorities had raided his home while he was on holiday in Thailand. It was open to the Judge to conclude that against the background information about the attitude of the authorities to those who supported the Green movement and as someone who claimed his home had been raided, as a mature successful businessman the Appellant had the financial resources and therefore could have sought advice in Thailand about seeking international protection or indeed claim in Sweden where he was explicitly given the opportunity to do so in the 12 days he spent there. There was apparently no explanation for this failure either in oral evidence or in his witness statement other than an implicit suggestion that he followed the Agents advice and the Judge was entitled to reject this.

14. Similarly it was open to the Judge to find that the Appellant gave no explanation as to why having failed to claim asylum in either Thailand or Sweden he chose to do so in Germany and this was not explained in either the witness statement or oral evidence. It was also open to the Judge to make an adverse credibility finding that having claimed asylum in Germany it was not credible for the Appellant to go back to Iran where he claimed that his life was at risk. The Judge took into account the claim made about the influence of his father in law in securing his safe return at paragraph 52 so it could not be said he did not take this information into account he simply did not accept it because the Appellant relied on it inconsistently: it secured his safe return from Germany but could not assist him now.
15. I accept however that the Judge appears to have misunderstood the contents of the court document relied on by the Appellant the translation of which is at pages 6-7 of the Appellants bundle. This I accept was potentially an important document capable of supporting his whole account and putting him at risk on return if found to be reliable.
16. I note that the HOPO unhelpfully summarised it as relating to the time when the Appellant went to Germany and not his claimed current fears arising out of the building contract and this was the reason why it was rejected by the Judge at paragraph 55. In fact the document relates to both the events that led to his flight to

Germany, the financial support for Moussavi, but on the second page relates to his involvement in the building project where he states he was forced to produce false invoices which underpins his present claim. The court judgement finds both events proved and sets out the punishment he faces. The failure of the First-tier Tribunal to address and determine whether this document was reliable on the correct factual basis of its contents constitutes a clear error of law. This error I consider to be material since had the Tribunal conducted this exercise the outcome could have been different as this could have impacted on all of the credibility findings as it would not have been open to the Judge to say that he did not find the Appellant credible and therefore rejected the court documents as unreliable. Therefore all credibility findings are potentially tainted. That in my view is the correct test to apply.

17. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

18. In this case I have determined that the case should be remitted because the Appellant did not have a fair hearing due to the failure to properly consider a document which on its face supported his whole account. In this case none of the findings of fact are to stand and the matter will be a complete re hearing.

19. I consequently remit the matter back to the First-tier Tribunal sitting at Manchester to be heard on a date to be fixed before me.

Signed

Date 7.4.2016

Deputy Upper Tribunal Judge Birrell