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Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/09576/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 March 2016	**On 6 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE A M BLACK

Between

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(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Eaton, counsel
For the Respondent: Ms Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. This matter comes before me for consideration as to whether or not there is a material error of law in the determination of First-tier Tribunal Judge Ghani ("the FTTJ") promulgated on 12 May 2015, in which the FTTJ dismissed the appellant's appeal against the refusal of his asylum claim.

Background

2. The appellant is a citizen of Iran. He claims to be an Ahwazi Arab and a Sunni Muslim. Both are minority groups which experience discrimination in Iran. The appellant claimed to have distributed pamphlets to raise awareness of the problems faced by Arabs in and around Ahwaz. It is claimed the appellant's home was raided by the authorities, as was that of his

parents. Some of his possessions were confiscated and his wife, brother and father were detained. As a result of this the appellant fled with his wife and two children, travelling to the UK where they claimed asylum.

3. The appellant's asylum claim was refused on various grounds, including the fact that the appellant's asylum interview was conducted in Farsi and there were discrepancies in the appellant's account for which he was unable to provide a reasonable explanation.

4. Permission to appeal was granted in the following terms:

> "2. Given that the core issue in the appellant's case was that he was at risk of persecution in Iran due to his being an Ahwazi Arab activist it is arguable that the Judge erred by failing to take into account in his consideration of the Appellant's ethnicity the fact that the Appellant gave his evidence at the hearing in Arabic and not in Farsi. In such circumstances it is arguable that the Judge's failure to have regard to material evidence amounted to an error of law.
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> 3. It is also arguable that the Judge erred by failing to deal with issues raised by the Appellant in his skeleton argument and to give reasons why he rejected the submissions.
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> 4. The Judge's consideration of the best interests of the children at para 50 of his decision is woefully inadequate and amounts to a clear error of law [sic].
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> 5. For these reasons both the grounds and the decision disclose arguable errors of law."

5. Thus the matter comes before me.

Submissions on Error of Law

6. Mr Eaton, for the appellant, referred to the findings of the FTTJ with regard to the language spoken by the appellant (paragraph 42). He submitted that those findings ignored the fact that the appellant had given all his oral evidence at the hearing, for over an hour, in Ahwazi Arabic. It was perverse for the FTTJ to find that the appellant did not speak Ahwazi Arabic in such circumstances. If the FTTJ had found as a fact that the appellant had not spoken Arabic when giving his oral evidence, the FTTJ should have said as much and given his reasons for such a finding. This issue also impacted on the FTTJ's findings generally on the appellant's credibility.

7. Mr Eaton also submitted that the FTTJ had failed to make findings with regard to the appellant's wife's claimed detention and her evidence generally. She was not giving third party evidence; she herself had suffered persecution. She had provided a witness statement. The FTTJ refers only to her detention and release being a "mystery". A finding of fact was required because her evidence was material to the risk of persecution on return. Her detention was the single most material part of the claim and proved that the family was of interest to the authorities.

8. With regard to the appellant's associations with the Ahwazi community in the UK, Mr Eaton submitted insufficient reasons had been given for discounting the docuemntary evidence as to the appellant's ethnicity. The Ahwazi Copmmunity Association in the UK had a degree of

expertise on the issue. Mr Eaton also submitted that the plausibility findings in paragraph 43, with regard to the distribution of leaflets, were perverse and speculative. It was not clear from the decision why the FTTJ had found the appellant's account and explanations incredible. The FTTJ was concerned at the lack of corroboration but this is often the case in asylum appeals; the FTTJ found it perverse that the appellant's computer was kept at home and not at a community centre yet no explanation is provided for this and it could be considered that a home is more secure than a community centre which was accessible to others. It was said in the decision to be implausible that other family members did not know what the appellant was doing but the reverse is true, given the nature of the appellant's activities: they were illegal. Mr Eaton summarised that the FTTJ had failed to engage with the appellant's evidence given by way of explanation eg his using an internet café for skype calls because he feared these conversations might be tapped.

9. In summary, Mr Eaton submitted that there were a number of plausibility findings and matters of speculation which were based on what the FTTJ thought would have happened and not the appellant's own account.

10. For the respondent, Ms Willocks-Briscoe relied on the R24 response to the effect that the FTTJ had assessed all the evidence in the round, having identified inconsistencies in the appellant's evidence regarding his ethnicity and ability to speak Farsi and Arabic. The FTTJ's credibility findings were based on "the discrepancies cumulatively". Credibility was primarily a question of fact and the FTTJ had provided sustainable findings. Ms Willocks-Briscoe said that it was not outside the realms of possibility that, having lived in Ahwaz, the appellant spoke Ahwazi Arabic. She agreed that there was no finding with regard to the weight to be given to the Ahwazi Community Association document. She accepted that there should have been reasons for discounting this document. She submitted that, instead, the FTTJ relied on a combination of factors in dismissing the appellant's claim to be an Ahwazi Arab. The FTTJ had noted inconsistencies with regard to the appellant's evidence of his language abilities. Ms Willocks-Briscoe agreed that, in many instances, the FTTJ had not set out the basis on which the appellant's explanations were found to be inadequate. She also agreed that there was no finding by the FTTJ that the appellant's wife's evidence had been rejected. She submitted that, having found the core of the account incredible, the rest of the claim fell away. Finally, even if there was a material error of law, the FTTJ had made an alternative finding that, as an Arab, the appellant was not at risk on return.

Discussion

11. I showed the parties' representatives the first page of the FTTJ's record of proceedings which refers to the attendance of an interpreter in Arabic (Middle East). There is no reference in that record to the dialect being Ahwazi Arabic. However, the tribunal file contains a letter from the appellant's representatives requesting an Ahwazi Arabic interpreter for the hearing and the tribunal issued a notice that "an appropriate interpreter will be arranged". The decision of the FTTJ makes no mention of the appellant's oral evidence being given through any interpreter (irrespective of language). Given that the reasons for refusal of the asylum claim make it clear that a principal issue for the respondent was the fact he spoke Farsi in the asylum interview, this is surprising. Thus there are several potential inconsistencies: the appellant requested an Ahwazi Arabic interpreter; the Tribunal confirmed an "appropriate interpreter" would be arranged; the appellant spoke through an interpreter in the hearing; the record of proceedings refers to an "Arabic (ME)" interpreter being present, it is submitted the appellant gave oral evidence through an interpreter speaking Ahwazi Arabic and the decision makes no reference to the use of any interpreter at all. The respondent does not dispute the use of an interpreter

and this is consistent with the content of the record of proceedings. However, it is not clear in what language the appellant gave his oral evidence at the hearing, whether Ahwazi Arabic or not. Given that the quality of the appellant's Arabic language skills is central to an assessment of his ethnicity, and had been identified as such by the respondent, I would expect the FTTJ to have taken into account, in making his findings on his ethnicity, the appellant's use of an interpreter during the hearing. This is not a matter which can be discounted from an overall assessment of the appellant's credibility as regards his ability to speak Arabic. The FTTJ has identified various inconsistencies in the appellant's evidence but has failed to take this central issue into account in concluding that the appellant is not an Ahwazi Arab. The failure of the FTTJ to do so and to make a fully reasoned finding on the appellant's ability to speak Arabic is a fundamental flaw in the assessment of the appellant's evidence as regards his ethnicity.

12. I note the respondent's submission that the FTTJ made an alternative finding about the risk on return for an Iranian Arab such as the appellant, but this is premised on a flawed finding that the appellant's account was wholly unreliable (including as regards the claim to have been persecuted previously) and that he was not therefore at risk on return as a result of his activities. The findings with regard to his activities were made "in the round" and that assessment included a negative finding with regard to the appellant's ethnicity. That ethnicity finding, for the reason stated, is flawed. Thus the alternative finding about risk on return for an Iranian Arab is also flawed.

13. For these reasons, the decision of the First-tier Tribunal contains a material error of law in the assessment of the evidence on credibility and the FTTJ's decision on asylum grounds must be set aside in its entirety. All parties were agreed that, in such circumstances, it was appropriate for the appeal to be decided afresh in the First-tier Tribunal. Given this finding I have not considered the remaining grounds of appeal to this tribunal.

Decision

14. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside in its entirety. The appeal is remitted to the First-tier Tribunal, to be dealt with afresh, pursuant to Section 12(2)(b)(i) of the Tribunal Courts and Enforcement Act 2007 and Practice Statement 7.2(v), before any judge aside from FTTJ Ghani.

15. Given the outcome of this appeal and my findings, below, an anonymity order is appropriate.

A M Black
Deputy Upper Tribunal Judge Dated: 19 March 2016

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 him or any member of their 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.

A M Black

Deputy Upper Tribunal Judge Dated: 19 March 2016