



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/05882/2016

THE IMMIGRATION ACTS

**Heard at Manchester
On 1st June 2017**

**Decision & Reasons Promulgated
On 12th June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**AMA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Schwenk of Counsel instructed by IAS (Manchester)
For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant is a male Iranian citizen who appeals against the decision of Judge P J Holmes of the First-tier Tribunal (the FtT) promulgated on 26th October 2016.

2. The Appellant arrived in the United Kingdom illegally in November 2015. He claimed to be under 18 years of age and made an asylum claim. He is of Kurdish ethnicity, and feared the Iranian authorities because he had been working for a Kurdish political group against the Iranian authorities. He contended that he had been detained in Iran, and that his father had been killed because of his involvement in politics.
3. The Respondent refused the Appellant's asylum and human rights claim on 22nd May 2016 and the Appellant appealed to the FtT.
4. The appeal was heard on 20th September 2016. The FtT found the Appellant to be an incredible witness. It was not accepted that he had proved his Iranian nationality. It was not accepted that he was under 18 years of age when he claimed asylum, and the FtT found that his evidence could not be relied upon. The appeal was dismissed on all grounds.
5. The Appellant applied for permission to appeal to the Upper Tribunal and permission to appeal was granted by Judge Hodgkinson. I set out below, in part, the grant of permission;
 2. The grounds argue that the judge erred, in [15] of his decision, in his assessment of the Appellant's nationality, essentially by not satisfactorily considering the available evidence and by also engaging in speculation on matters not in evidence before him.
 3. All of the grounds have arguable merit, and it cannot be said that the judge's findings in relation to the Appellant's nationality did not, in turn, impact upon his other adverse credibility findings. Consequently, the judge's decision reveals arguable errors of law.
6. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008. It was contended, in summary, that the FtT directed itself appropriately, and the FtT provided adequate reasons for findings, and the grounds seeking permission to appeal amount to a mere disagreement. It was noted the grounds focused upon the findings in relation to the Appellant's nationality, and not on the adverse findings concerning the core of the Appellant's claim, which the FtT considered in the alternative from paragraph 16 onwards.
7. Directions were issued making provision for there to be a hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision should be set aside.

The Upper Tribunal Hearing

8. Mr Schwenk relied and expanded upon the grounds contained within the application for permission to appeal and the submissions are summarised below.

9. It was contended that the FtT failed to consider and give weight to evidence which weighed in favour of the Appellant's case, and engaged in speculation.
10. At paragraph 15 the FtT found that there was no evidence, in the materials before the Tribunal, of the exclusion of Kurds from access to primary education. It was submitted that this was an incorrect approach which called for corroboration of the Appellant's account and the FtT had failed to take into account the Appellant's rural heritage when considering the likelihood of him attending school.
11. The FtT was inconsistent in making a finding that the Appellant may be, as he claimed, illiterate, and on the other hand making a finding that he would have attended school. The FtT ignored the fact that the Appellant not speaking Farsi, was consistent with his account of not having been to school.
12. The FtT overlooked the Home Office Country Information and Guidance Report at page 97 of the Appellant's bundle which provides at paragraph 2.3.1 that;

"Kurds in Iran face institutional discrimination which affects their access to basic services such as housing, employment and education".
13. It was contended that the FtT had erred when considering the description of Iranian currency. The FtT found at paragraph 15 that people in Iran may well refer to the currency as toman rather than rials and did not attach weight to the Respondent's point that a description of the Iranian currency as toman rather than rials adversely the Appellant's credibility. It was submitted that the FtT had erred in law by not attaching weight, and should in fact have attached weight to the fact that referring to the currency as toman demonstrated colloquial local knowledge of Iran.
14. It was further submitted the FtT at paragraph 15 had engaged in speculation when considering the issue of schooling for Kurds in Iran, by concluding that it might be counter productive for the Iranian government to exclude Kurds from education.
15. It was argued that but for the errors summarised above, the FtT might have reached a different conclusion on the issue of the Appellant's nationality, and a positive finding in relation to his nationality would impact upon his credibility generally.
16. Mr Schwenk argued that the decision of the FtT should be set aside, and remitted to the FtT to be considered afresh with no findings preserved.
17. Mr Harrison relied upon the rule 24 response but accepted that the FtT had placed considerable weight upon the issue of nationality. Mr Harrison commented that there was an element of speculation contained within paragraph 15 and on that point it would be possible to find in favour of the

Appellant. However, no concession was made as reliance was placed upon the rule 24 response.

18. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

19. I do not find that the FtT materially erred in law for the following reasons.
20. In my view the FtT considered the evidence in the round, and made findings open to it on the evidence, and provided adequate reasons.
21. With reference to paragraph 15 I do not find that the FtT was requiring corroboration of the Appellant's evidence. The FtT does note that no documentary evidence had been submitted to support the Appellant's claim to be Iranian, but I do not find, without more, that this amounts to a legal requirement of corroboration. The FtT is entitled to note and record the absence of documentary evidence. I do not find that the FtT made a negative credibility finding simply because there was no documentary evidence to prove nationality.
22. There is an element of speculation within paragraph 15 in that the FtT notes that it may be "natural for the authorities to see primary schooling as a means of exercising cultural imperialism over the next generation of ethnic Kurdish citizens, so that to exclude them from access might be counter productive from the government's point of view".
23. The FtT appears to have overlooked paragraph 97 of the Appellant's bundle, when making the comment that "I am unable to find in the materials before me any evidence of the exclusion of Kurds from access to primary education". I have already set out the relevant extract from page 97.
24. I do not however regard the above as material errors for the following reasons.
25. I reject the submission that the FtT did not consider the Appellant's rural heritage when considering the likelihood of him attending school. This is specifically considered at paragraph 19 of the FtT decision.
26. So far as the description of the currency is concerned, I find that the weight to be attached to the description of the currency as toman rather than rials, is a matter for the FtT, and the FtT did not err on this issue.
27. The FtT was entitled to place weight upon the answers given by the Appellant to questions 27 and 28 of his interview noting that although the Appellant had been able to state his claimed date of birth with precision, he was unable to even state the year when he left Iran.

28. I note the absence of any specific challenge to the credibility findings made by the FtT at paragraphs 16-21, the case being made on behalf of the Appellant, is that the finding by the FtT that the Appellant had not proved his Iranian nationality, adversely affected those findings. I do not find that those findings were adversely affected by the conclusion that the Appellant is not Iranian.
29. My reading of the FtT decision is that each element of the Appellant's claim was considered carefully, and considered in the round. The FtT noted at paragraph 16 the inconsistency as to the identity of the group for whom the Appellant claimed to have been delivering leaflets. The FtT quite correctly pointed out the inconsistency that in interview the Appellant claimed he had only helped the Komala Group, whereas a different group was identified in his screening interview record, the age assessment report, and the health assessment medical report. The FtT was entitled to find that this significant inconsistency had not been satisfactorily explained.
30. At paragraph 17 the FtT records further inconsistencies, in the Appellant's own accounts. These relate to the number of times that he made deliveries, and the number of friends he was with.
31. At paragraph 18 the FtT records a relevant inconsistency in relation to the Appellant's father and his alleged involvement in politics.
32. At paragraph 19 the FtT takes into account the Appellant's age, his education, the fact that he came from a rural village, and did not find that there was any credible explanation for the internal inconsistency of the Appellant's account.
33. The FtT also considered the Appellant's claim to be under the age of 18 when he made his asylum claim. This claim was rejected and adequate reasons given at paragraphs 13 and 24. The FtT considered the age assessment report to be reliable, and did not find that any substantial evidence had been produced on behalf of the Appellant to challenge the conclusions in that report. Therefore the Appellant had not been truthful when claiming to be under the age of 18.
34. In summary, the FtT erred in engaging in speculation in paragraph 15, and in overlooking part of the objective evidence, which related to discrimination affecting the access of Kurds to education.
35. However, when the decision is read as a whole, these errors are not material, and the FtT was entitled to reach the adverse credibility findings that are set out in the decision, and adequate reasons for those findings have been given. The FtT did not materially err in law and therefore the FtT decision stands.

Notice of Decision

The making of the decision of the FtT did not involve the making of a material error of law such that the decision must be set aside. I do not set aside the decision. The appeal is dismissed.

Anonymity

I have decided to make an anonymity direction because the appeal involves a claim for international protection. Unless 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 his 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. This direction is made pursuant to rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date

5th June 2017

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date

5th June 2017

Deputy Upper Tribunal Judge M A Hall