



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02432/2016

THE IMMIGRATION ACTS

Heard at Manchester
On 16 May 2018

Decision & Reasons Promulgated
On 24 May 2018

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MR A M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Schwenk, Counsel instructed by Freedom Solicitors
For the Respondent: Mr C Bates, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. In a decision sent on 25 January 2017 Judge Devlin of the First-tier Tribunal (FtT) dismissed the appeal of the appellant, who claims to be a national of Iran, against the decision made by the respondent on 26 February 2016 refusing his protection claim.
2. The appellant advances four grounds, submitting that the judge erred in (1) failing to adjourn the hearing; (2) failing to make a finding on nationality; (3) inverting the

burden of proof in assessing credibility; and (4) failing to make a finding on whether the appellant left Iran illegally.

3. I express my gratitude to both Mr Schwenk and Mr Bates for their very full and careful submissions. Before I address the grounds, I would observe that the judge's decision has much to commend it. The judge was clearly concerned to ensure the hearing before him was effective and his decision is very thorough.
4. I will deal briefly with grounds (2)-(4) since there was broad acceptance on both sides that these lacked cogency.
5. In relation to ground (2), I see no merit in the contention that the respondent erred in failing to make a finding on nationality. There is in general no obligation on a judge in an asylum appeal to make a positive finding on nationality. Further, the contention is academic in this case because, despite considering the appellant's nationality "doubtful", the judge went on to assess the issue of whether he faced a real risk of persecution by reference to Iran, i.e. the country of which the appellant claimed he was a national.
6. Ground 3 seeks to argue that the judge wrongly inverted the burden of proof by requiring the appellant to disprove the case against him and in that context reference is made to the judge's remarks in paras 211 and 214 to the "negative pull" of certain features of his evidence. Not only did the judge correctly state early on in his determination that the burden of proof rested on the appellant, it is also clear from the judge's assessment of credibility that all he meant to convey was that balanced against a number of positive features or factors, these were negative ones.
7. As regards ground (4), it was not pursued before me by Mr Schwenk and it was for the appellant to establish that he left illegally and on the judge's findings he had not done so.
8. I come then to ground (1).
9. The essence of Mr Schwenk's submissions on this ground was that the judge's decision was procedurally unfair, first because of his failure to accede to the appellant's application for an adjournment and second, because having decided to press on, the judge relied crucially on inadequacies in the documentary evidence - evidence that had not been properly translated.
10. There is an initial dispute between the parties as to whether the appellant's application to adjourn was made simply on the basis that he needed more time to get certain documents translated or also on the basis that he needed more time to obtain legal representation. Neither the judge's decision nor the Record of Proceedings make this clear. However, in my view, the judge was clearly aware that the appellant had made an application for an adjournment and should also have been aware that the appellant's difficulties in obtaining translations of certain documents

were interconnected with the fact that he was presently unrepresented. Paragraph 17 noted that the appellant up to two or so weeks ago been represented and that the appellant had made unsuccessful efforts in the interim period to obtain another representative. Mr Bates submitted that the judge's refusal of the appellant's request to adjourn so that he could get documents translated was justified because the appellant himself had said he had sought to obtain translations but had been quoted a price he could not afford (paras 12 and 16). However, the judge cannot have been unaware that if the appellant had been able to obtain representation he may have had the resources to obtain translations.

11. The question remains whether the refusal of an adjournment was fair in the circumstances of the appellant's case. In submitting that it was fair, Mr Bates points to the fact that at paras 14 and 15 the judge noted that there had been a CMR in November 2016 and that the appellant had not given a satisfactory explanation for why the documents said to need translation had not been obtained earlier than October 2016. He pointed out that the appellant had indicated in his asylum interview (Qs 171-172) that he would try and get all documents relating to his ID card from his uncle as soon as possible. The difficulty I have with Mr Bates' argument is that it presupposes that the judge afforded the appellant a proper opportunity to explain when he had received the various documents he had produced in time for the hearing. It would appear the judge assumed that none had been sent until October 2016 without hearing from the appellant as to whether that was the case. Whilst I lack full particulars it strikes me as most unlikely that if no documents had been obtained by the date of the CMR hearing the appellant's solicitors would not have flagged that at the CMR. Indeed, if the appellant had taken no steps to obtain any further documents since his asylum interview that would be a very serious matter weighing heavily against him. There is nothing on the face of the decision or the Record of Proceedings to indicate the appellant was afforded an opportunity to give an answer dealing with when he received the various items of documentation.
12. The issue of the refusal to adjourn cannot, however, be looked at in isolation from the judge's subsequent treatment of the appellant's case. It is here that I locate the main difficulties in the way of the respondent's defence of the judge's decision.
13. There are three particular aspects of the judge's subsequent treatment of the appellant's case that are troubling. The first is that the judge decided to admit the untranslated documents into evidence and to rely on the translation of them by the interpreter. The judge explained this decision in the following terms:
 19. I suggested that a court appointed interpreter – other than the one assisting at the hearing before me, should orally translate the documents, in order that I should have a road idea as to what they said. In this way, I hoped to avoid delay without compromising the proper consideration of the issues.
 20. This expedient being agreed upon (with some reservations on the part of the Home Office Presenting Officer) I refused the adjournment request and proceeded to hear the appeal."

14. Leaving aside whether the appellant could properly be taken to have positively agreed to this course (for he would have known that the only alternative proposed by the judge was to take no account of the untranslated documents at all), the Home Office Presenting Officer had expressed reservations and one would have expected the judge to consider those with some care. I do not know in what terms the Home Office Presenting Officer expressed his reservations but it is well-established that the only expertise of interpreters is to interpret; they are not there as experts in the art of translation (indeed an illiterate interpreter may be capable of being a perfectly able interpreter).
15. The second troubling aspect is that the judge did not seek to obtain full translations but only a "broad" or "rough" idea of what they said (the parties agreed that "road" 'is a typo either for "broad" or "rough"). Mr Schwenk, whose Rule 15(2) notice included translation of all relevant documents, accepts that the judge's decision does not reveal that there were any translation inaccuracies in the interpreter's renditions, but contended that there was still manifestly a failure to consider the full details of these documents. In my view, that is an important point, dovetailing with my third concern to which I now turn.
16. Perhaps the most troubling aspect of the judge's subsequent treatment of the documents is that they clearly played a very decisive role in his assessment that the appellant was not credible. Leaving aside the documents for a moment, the judge noted several positive features of the appellant's account - that "his account has remained by and large consistent throughout" (para 190), and that the judge did not identify any respect in which it was externally inconsistent (at para 158). The judge considered that the appellant's account of the Iranian authorities viewing adversely suspected members of the Kurdish party tallied with country information about that. He also noted that "some of the events described by him... are events of a kind that might well happen in Iran" (para 188). The judge also noted that he did not find well-founded some points raised by the respondent: see e.g. para 116-125 and para 160.
17. When one asks what were the reasons the judge nevertheless concluded the appellant's account was not credible, a significant number pertain to the reliability or otherwise of the appellant's documents (see paras 183-187, 194-202, 213). Furthermore, even though in respect of some of the documents (the Medical Insurance booklet (paras 183, 185) and the arrest warrant/verdict document (paras 195-198) in particular), he noted positive features, the reason he gave for placing little weight on them ultimately was that they had not been independently verified (para 186, 198, 213). Yet, as Mr Schwenk persuasively submitted, the task of independent verification is not something a layperson was likely to appreciate and, even though he was previously represented, he was now seeking to prove his case on his own.
18. The ultimate question I have to ask is whether the judge's treatment of the appellant's case was procedurally fair. Viewing the decision as a whole, I consider that considered cumulatively there were three failings rendering the decision unfair.

First, there was the judge's failure to base his decision not to adjourn on a insufficient inquiry of the appellant's reasons for failing to produce documents earlier. Second, there was an insufficient understanding of the disadvantage the appellant would be placed under in dealing with the issues surrounding his documentary evidence if he was not represented. Third, there was the fact that for the judge the perceived shortcomings in the appellant's documentation were a very important component of his reasons for rejecting the appellant's credibility, even though on his own admission he had only a "rough"/"broad" idea of their contents via an interpreter who was not a qualified translator. These failings were potentially very relevant to the outcome of the appellant's appeal.

19. For the above reasons I set aside the judge's decision for material error of law. None of the judge's findings of fact can be preserved.
20. I see no alternative to the case being remitted to the FtT, not before Judge Devlin. The next judge will be in a much better position to consider and assess the documentary evidence as the appellant has now given a Rule 15(2) notice containing certified translations, as well as a statement from the appellant regarding when and how he received these documents.
21. Given the importance attached by the previous FtT judge to the lack of independent verification. the appellant's representatives should consider (1) establishing with the respondent whether the now-translated documents are accepted as reliable; (2) if some or all remain disputed, whether to obtain an independent report from an expert in a position to comment on their authenticity.

To conclude:

The decision of the FtT judge is set aside for material error of law.

The case is remitted to the FtT (not before Judge Devlin).

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.

Signed:

Date: 23 May 2018



Dr H H Storey
Judge of the Upper Tribunal