



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03042/2017

THE IMMIGRATION ACTS

Heard at Liverpool
On 26 June 2018

Decision & Reasons Promulgated
On 19 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR A M S A

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Chohan, UK & Co solicitors
For the Respondent: Ms Aboni, Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq, born on 1.11.84. He arrived in the United Kingdom on 24 July 2016 and claimed asylum the following day on the basis that he feared persecution from his former employers, F H. He appealed against this decision and his appeal came before First tier Tribunal Judge Tobin for hearing on 19 July 2017. In a decision and reasons promulgated on 16 August 2017, he dismissed the appeal.

2. Permission to appeal was sought, in time, on the basis that the Judge had materially erred:

(i) in failing to make a finding in respect of a material fact and in failing to provide adequate reasons in respect of whether the Appellant was employed by the company, F H;

(ii) in failing to take into account a material matter at [37] that the police station was a special branch of F H;

(iii) in failing to take into account a material matter at [38] *viz* failing to assess the Appellant's evidence properly and failing to provide reasons for this;

(iv) in failing to take into account a material matter *viz* the expert evidence on as to the corruption of government companies including the Appellant's former employers and the newspaper articles where the ongoing case was publicly known.

3. Permission to appeal was granted by Upper Tribunal Judge Clive Lane in a decision dated 20 December 2017, on the basis that [38] of the decision and reasons indicates that the Judge arguably adopted a flawed approach to the evidence and that all the grounds may be argued.

Hearing

4. Mr Chohan, on behalf of the Appellant, adopted the grounds of appeal. He submitted that he had been unable to see any reference to the Judge putting his concerns about how the Appellant obtained the documents he submitted. In terms of the cheques, the Appellant did explain how he obtained these. He made reference to the photographs before the First tier Tribunal which at E45 and E46 show the Appellant's boss with the President of Iraq. The Judge found the whole scenario implausible but did not put this to the Appellant to give him the opportunity to explain. The Appellant has emails with the documents attached which he would have told the Judge had he been asked.

5. Mr Chohan submitted that it is clear from the terms of the grant of permission to appeal that the whole approach is misguided. He submitted that it was not possible to see where there are any purported inconsistencies: the Appellant was consistent as to when he left Iraq and why. He left his family behind because he was the one they were after and the parent company took his car and his house. P was a smaller company which is part of the holding company. The Appellant utilized a false Greek passport via an agent who told him not to use his Iraqi passport and he was honest about this, that he was advised to do this for his safety. It goes to his credit that he did not say he was threatened en route.

6. Mr Chohan also submitted that the judge further erred in his treatment of the expert report at [24] and that his approach was contrary to that set out in Mibanga [1997] EWCA Civ 367, although he acknowledged that this point had not been expressly raised in the grounds of appeal. He submitted that the reason the contract was in English was because the owner is a white British

woman. When considered overall there are clear issues of procedural fairness as points adverse to the Appellant were not put to him by the Judge. Mr Chohan submitted that the determination is flawed and should be set aside for a hearing *de novo*.

7. In her submissions, Ms Oboni acknowledged that no rule 24 response had been lodged although the appeal was opposed. She submitted that the First tier Tribunal Judge had directly himself appropriately and made findings that were open to him. It does appear that the reasoning as to leaving the wife and child behind is flawed but that this is not a material error in light of the adverse credibility findings in the determination. She submitted that adequate reasons had been provided for not accepting the Appellant's claim at [31] where the Judge found him to be evasive and wholly unconvincing. Ms Oboni submitted that the Judge considered the documents relied on and gave reasons for rejecting their authenticity. At [42] he set out his conclusion as to credibility. She submitted that there was no material error in the determination, which should stand.

8. In reply, Mr Chohan focused on [31] of the Judge's decision and reasons and submitted that if one looked at the cheques and contracts it is a very large company and the Judge has not approached it in the right manner and has failed to explain his findings. It may be the Appellant did not understand and his evidence was through an interpreter. It is clear from his screening and asylum interviews that he was not being evasive so there was no reason why he would go to a hearing and be evasive in response to the same questions: Q. 47 at B11 and B9 at 24. Q58 where the Appellant is clear and not evasive. He submitted that the Judge's approach to the appeal is flawed.

9. I found material errors in the decision and reasons of First tier Tribunal Judge Tobin. I now give my reasons.

Findings

10. Firstly, it is of concern that at the outset of his consideration, at [29] the Judge stated that he did not find the Appellant's story to be credible and that "*his account is so incredible that I doubt everything he has told me.*" However, no reasons are provided for this finding.

11. Whilst at [30]-[42] when considering the Appellant's account under the heading of humanitarian protection, the Judge did provide reasons for his findings, I find that these reasons are undermined by his flawed approach to the evidence, as identified in the grant of permission of appeal, with reference to [38] where the Judge held, in respect of the fact that the Appellant fled Iraq without his wife and child: "*to leave his immediate family in such predictable danger is unfathomable. By this stage I doubted everything the appellant told me so I regard his account as not being credible.*" As Mr Chohan submitted and I accept,

it was the Appellant rather than his family that was at risk, taking his account at its highest.

12. The Judge further erred in failing to make a clear finding at [42] as to whether or not the Appellant worked for F H, which was the key plank in his claim. The Judge further failed to provide any reasons as to why he did not consider if the Appellant did work for the company he could have either embezzled or come under suspicion of fraud or theft.

13. Further, the Judge's finding at [42] that there was no information presented to suggest that F H was run by criminals or operated in a murderous or criminal the manner entirely failed to take account of the expert report, which opined that government companies, including F H were corrupt.

Decision

14. For these reasons, I find material errors of law in the decision of First tier Tribunal Judge Tobin. I set aside that decision and remit the appeal for a hearing *de novo* before the First tier Tribunal.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman

17 July 2018