



Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06516/2018

THE IMMIGRATION ACTS

Heard at Manchester
Promulgated
On 16th November 2018

Decision & Reasons
On 23rd November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

MR. M S
(ANONYMITY DIRECTION MADE)

Appella

nt

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms H Santamera of IAS(Liverpool)

For the respondent: Mr C Bates , Home Office Presenting Officer

DECISION & REASONS

Introduction

1. The appellant has been given permission to appeal the decision of First-tier Tribunal Judge Parker, who, in a decision promulgated on 27 July 2018 dismissed the appellant's appeal.

2. The appellant is an Iranian national who claims he would be at risk from the Iranian authorities on the basis of his political opinions. He is an Arab it claims to have been promoting their rights in Iran and had been involved in social media and distributing materials. Since coming to the United Kingdom he has taken part in related events. His account is that his friend, who was also involved, was arrested by the Iranian authorities. Fearful of what might happen to him he left the country. He said he travelled to Turkey and then flew by air from there to the United Kingdom, claiming asylum on the day he arrived.
3. The respondent accepted he was an Iranian Arab but did not accept his claimed activities or difficulties. The refusal letter refers to him producing a forged passport to Home Office officials. Reliance was therefore placed upon section 8 of the Asylum and Immigration(Treatment of Claimants)Act 2004.
4. On 4 July 2014 a Mr Dillon, Home Office presenting officer, faxed a letter to the appellant's representative enclosing copies of the appellant's Visa applications which give his passport details. The presenting officer states that the appellant screening and substantive interview as well as Home Office records were checked. At no stage did he indicated he had travelled on forged passport but said he travelled on his own passport. The presenting officer concluded by stating he can find no evidence to support the assertion in the refusal letter that he had produced a forged passport. Consequently, that paragraph was being withdrawn.
5. When the appeal was listed for hearing before First-tier Tribunal Judge Parker there was no presenting officer in attendance. The grounds state that at the outset of the hearing the appellant's representative provided the judge with a copy of the email referred to from the presenting officer. I have checked the judge's record of proceedings and find the judge recorded this.
6. At paragraph 31 the judge stated `the appellant has produced a forged passport which damages the credibility... Reference is then made to section 8 and that the production of an invalid passport damages his credibility.
7. Mr Bates accepted that the judge's comments about the use of a false passport were factually wrong amounted to a material error of law given that this was not the case being made by the respondent.

Consideration

8. It is clear that in preparing the decision the judge believed the appellant had entered the United Kingdom using a false passport. By doing so his credibility was damaged. Credibility was central to

the appeal. However the judge overlooked the email from the presenting officer. This issue had been raised in advance by his representatives and it was then accepted by the respondent that the comment in the refusal letter to this effect was wrong. Clearly from the decision this was a factor affecting the judge's assessment of credibility and so was on a false premise.

9. The judge did not have the advantage of presenting officer in attendance. Whilst it was stated he was told of the email at the start of the hearing it may be that in preparing the decision he may have turned to the refusal letter and overlooked this correction. Whatever the reason, this is a material error which fundamentally undermines the credibility findings. Consequently, I set aside the decision and remit the matter for a de novo hearing before the First-tier Tribunal.

Decision

The decision of First-tier Tribunal Judge Parker materially errs in law and is set aside. The appeal is remitted to the First-tier Tribunal for a de novo hearing excluding First-tier Tribunal Judge Parker.

Francis J Farrelly

Deputy Upper Tribunal Judge