



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

Appeal Number: PA/08596/2016

THE IMMIGRATION ACTS

**Heard at Liverpool
On 19th March 2018**

**Decision & Reasons
Promulgated
On 12th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR KHABAT ABUBAKIR ALI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard, Solicitor

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

DECISION AND REASONS

1. The Appellant is a citizen of Iraq born on 1st January 1983. The Appellant claims to have arrived in the UK on 3rd February 2016 via concealment in a lorry and claimed asylum on the same day following his arrest for illegal entry. The Appellant's application for asylum was based on purportedly having a well-founded fear of persecution in Iraq on the basis of his uncle threatening his life after he killed his father and ISIS being present in his area. That application was refused by Notice of Refusal dated 28th July 2016.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Birrell sitting at Manchester on 16th February 2017. In a decision promulgated on 20th February 2017 the Appellant's appeal was dismissed on all grounds.
3. On 11th April 2017 the Appellant lodged Grounds of Appeal to the Upper Tribunal. On 8th September 2017 Acting Resident Judge Appleyard refused permission to appeal stating that the grounds seeking permission amount to no more than a dispute with findings that were open to be made on the evidence and that the judge had adequately reasoned her decision which contained no arguable error of law.
4. Renewed Grounds of Appeal were lodged on 18th September 2017. On 16th October 2017 Upper Tribunal Judge Plimmer granted permission to appeal. Judge Plimmer in giving her reasons for decision stated:

"It is arguable that the finding at paragraph 37 that there is no evidence that the use of a different dialect on the part of the interpreter made any meaningful difference fails to take into account the Appellant's own evidence. When this is combined with the Appellant's hearing difficulties, it is arguable that the First-tier Tribunal unfairly drew adverse references from omissions within the interview."
5. On 7th November 2017 the Secretary of State responded to the Grounds of Appeal under Rule 24 submitting that the First-tier Tribunal Judge appreciated the Appellant's arguments and rejected them and that it is asserted that the adverse credibility findings made were reasonably open to the First-tier Tribunal Judge. As to whether the First-tier Tribunal Judge unfairly drew adverse references from omissions within the interview it was submitted in the Rule 24 response that fairness did not decree that every point be put by a judge and it was contended that the judge of the First-tier Tribunal had directed herself appropriately.
6. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed solicitor, Mr Howard. Mr Howard comes to this case afresh. His firm is not the firm that acted previously for the Appellant and I note that the Grounds of Appeal are personally signed by the Appellant rather than by solicitors. The Secretary of State appears by her Home Office Presenting Officer, Mr Bates.

Submission/Discussion

7. Mr Howard submits that there are errors within the fairness analysis carried out by the First-tier Tribunal Judge. He takes me firstly to the judge's findings which begin at paragraph 34. He notes therein that the findings have only been made having taken account of the evidence as a whole and that the Appellant's credibility is challenged on the basis of some omissions, discrepancies and responses that he completely denies giving. It is noted by the First-tier Tribunal Judge that she is asked to give

these matters no weight in her assessment of his credibility because he is hard of hearing and there were interpretation problems. He refers to the issues of the Appellant's hearing loss at paragraph 36 and at paragraph 37 with regard to the concerns expressed in the appeal with regard to interpretational problems. He further asked me to consider paragraphs 40 and 41 relating to issues with difficulty of interpretation and the effect that this has had upon the judge's analysis of the credibility of the Appellant's evidence. He submits that the Appellant is hard of hearing and that the findings of the judge at paragraph 37 reflects that the Appellant has been misunderstood and the question is has the Appellant given a plausible sufficient explanation and whether the judge has gone far enough in her findings not to justify an error of law.

8. Mr Bates in response points out that the judge was aware of the Appellant's hearing difficulties which are reflected at paragraph 7 and that the judge has thoroughly analysed the evidence prior to coming to her conclusions. He points out that at paragraph 38 the judge has gone on to look at the substance of the interview and considered if there are problems in interpretation as to what those issues were in the questions and answers. The judge has made findings at paragraph 40 which has given very little weight to the Appellant's claims that there were problems with the interpreter; this being a finding that the judge was entitled to make. He points out that the judge has found that the Appellant did understand the questions that were being posed as set out at paragraph 41 and made findings for which she has given reasons. He concludes by submitting that the findings made by the judge at paragraph 45 with regard to the Appellant's uncle to being findings that she was entitled to make. He asked me to dismiss the appeal.
9. In brief submission in response Mr Howard takes me again back to paragraph 38 pointing out that it is a question of interpretation and the issue which I am asked to consider is whether or not there has been one of procedural unfairness of the judge and the level of weight that has been given to the adverse credibility findings.

The Law

10. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
11. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as

being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

12. The issue that I am asked to adjudicate upon is whether there had been material errors of law constituted as a result of procedural unfairness to the Appellant with regard to the purported difficulties that he has had firstly in answering questions due to his deafness and secondly with regard to difficulties he alleges he has experienced in following the interpreter. As a starting point it is appropriate to make comment with regard to his deafness.
13. At paragraph 7 of her decision Judge Birrell sets out the position:

“The Appellant gave evidence through a Kurdish Sorani interpreter. He indicated that he had a hearing problem and preferred to sit so that Mr Hama the interpreter spoke into his right ear and thereafter there appeared to be no problems.”
14. The Appellant has chosen to personally appear at this error of law hearing accompanied by an interpreter. It is his appeal and that of course is his right. He purported to go through exactly the same process that I envisage he went through prior to the appeal before Judge Birrell and to ensure procedural fairness I allowed him to carry this out so that the interpreter sat where he was asked to sit and spoke directly into the Appellant’s ear so that he could hear. It is appropriate to record that the Appellant for the purpose of this appeal chose his left ear as being the ear into which the interpreter should speak as against his right ear as recorded (and not challenged) in the decision of Judge Birrell. I noted this fact. It was pointed out to me by Mr Bates. Mr Howard acknowledged the situation but made no comment/submission upon it.
15. This is a detailed decision well set out and well-reasoned by a very experienced judge. The judge has gone to great lengths to set out the basis upon which she has made her findings and at paragraph 36 has specifically stated that she has taken into account the Appellant’s claim that he is hard of hearing and the impact that that may have had upon his understanding of the interviews and what is recorded in the screening interview and the asylum interview. She has further noted the Appellant’s claim that there were interpretational problems at his screening interview and he now makes the assertion that the interpreter was a Bardini rather than a Sorani speaker. These facts are considered by the judge and she

quite properly notes that there is no evidence before her to suggest the two dialects are mutually unintelligible or to what degree they are different and I note that there is no submission again made on this specific point by the Appellant's legal representatives.

16. Having analysed carefully at paragraph 37 and 38 the allegations of difficulty of interpretation at the screening interview the judge at paragraphs 40 and 41 goes on to consider the credibility of the Appellant's testimony and makes findings that she is perfectly entitled to. A proper approach to credibility will require an assessment of the evidence and of the general claim. In asylum claims relevant factors would include the internal consistency of the claim, the inherent plausibility of the claim and the consistency of the claim with external factors of the sort typically found in country guidance. Whilst I acknowledge that it is theoretically correct that all the claimant need do is merely state his claim that claim will still need to be examined for consistency and inherent plausibility and this is something that the First-tier Tribunal Judge has gone at great lengths to consider.
17. The judge has gone on to consider and set out the failings in the Appellant's testimony at paragraphs 42 through to 45 and made a finding with regard to the Appellant's truthfulness about the circumstances in which he left Iraq at paragraph 47 that she was entitled to.
18. In refusing permission to appeal at first instance Acting Resident Judge Appleyard in considering the grounds seeking permission to appeal noted that they amount to no more than a dispute with findings that were open to be made on the evidence and that the judge had adequately reasoned her decision which contained no arguable error of law. The oral submissions made on the Appellant's behalf by both respective legal representatives has done nothing to change my view of that finding. This is a well-reasoned and well set out determination from a very experienced judge. Submissions made by the Appellant amount to no more than mere disagreement with those findings. The judge was perfectly entitled to make adverse credibility findings against the Appellant none of which disclose any material error of law nor show any sign of procedural unfairness. For all the above reasons the Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Decision

The decision of the First-tier Tribunal Judge discloses no material error of law. The Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed
Deputy Upper Tribunal Judge D N Harris

Date: 12 April 2018

**TO THE RESPONDENT
FEE AWARD**

No application made for a fee award and none is made.

Signed
Deputy Upper Tribunal Judge D N Harris

Date: 12 April 2018