



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

Appeal Number: PA/09082/2016

THE IMMIGRATION ACTS

Heard at Bradford

On 14th December 2017

**Decision & Reasons
Promulgated**

On 22nd January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR ZMA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Holmes, Counsel

For the Respondent: Mrs R Petterson, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iran born on 4th June 1997. He arrived in the UK on 26th February 2016 claiming asylum on 27th February 2016. It was an issue in the proceedings that it was contended that he had been

fingerprinted in Greece on 13th December 2015. The Appellant's application for asylum was refused by Notice of Refusal on 10th August 2016. The Appellant had claimed asylum based upon a fear that if returned to Iran he would face mistreatment due to his association with his cousin who supported the KDP. The Secretary of State in refusing the Appellant's application contended that he was not only fingerprinted in Greece but in Dunkirk on 28th January 2016 and that the Secretary of State contended he was an Iraqi national.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal James sitting at Bradford on 24th March 2017. In a decision and reasons promulgated on 25th April 2017 the Appellant's appeal was dismissed on all grounds.
3. On 9th April 2017 the Appellant lodged Grounds of Appeal to the Upper Tribunal. Those grounds contended that the First-tier Tribunal Judge materially erred in law by making findings unsupported by any evidence in the case and by failing to resolve the substance of the Appellant's case. On 18th September 2017 First-tier Tribunal Judge Mailer granted permission to appeal. Judge Mailer noted that the grounds asserted that the Appellant had claimed in his screening interview that he was fingerprinted in Greece on approximately 28th January 2016 and that there was no evidence presented by the Respondent to substantiate the assertion that he was fingerprinted in Greece on 13th December 2015. That was an issue which was raised at the prehearing review in the reply notice dated 4th January 2017. However it was contended there was still no evidence adduced by the Respondent in that respect and this appeared to be determinative in the judge's reasoning.
4. The prehearing review form dated 6th July 2017 was before the First-tier Tribunal. In the reply notice the Appellant's solicitors requested that evidence relating to the Appellant's fingerprinting in Greece as asserted by the Respondent should be provided. Judge Mailer considered that it was arguable that there was no evidence that supported the material finding made by the judge that the Appellant was in Greece on 13th December 2015. The Respondent's assertion in that respect had been contested throughout including at the appeal hearing where the issue is specifically addressed at paragraph 33.
5. On 28th September 2017 the Secretary of State responded to the Grounds of Appeal under Rule 24. The Rule 24 response contends that the Grounds of Appeal appear to misunderstand the findings of the Judge of the First-tier Tribunal and that the judge found that the Appellant was "equivocal and inconsistent" about being fingerprinted in both Greece and France. Neither, it was contended, did the Appellant deny that it was claimed that he was Iraqi on those occasions rather he sought to blame other parties for the confusion over his nationality. The Rule 24 reply contends that it was open to the judge to find that this tacit acceptance of the facts that he had previously denied undermined his claim to have not been fingerprinted at the time asserted by the Secretary of State.

6. It is on that basis that the appeal comes before me to determine whether there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel Mr Holmes. Mr Holmes is familiar with this matter. He appeared before the First-tier Tribunal and he is the author of the Grounds of Appeal. The Secretary of State appears by her Home Office Presenting Officer Mrs Petterson.

Submissions/Discussions

7. Mr Holmes submits that the Grounds of Appeal turns solely on the basis that there was no proof provided despite there having been a request for production of evidence by the Secretary of State that the Appellant had been fingerprinted in Greece. He submits that the judge was wrong in merely accepting the assertion made by the Secretary of State without evidence and by believing without evidence the position of the Home Office. He submits that it was quite simply not open to the judge to come to that conclusion without evidence being provided. He asked me to remit to the Secretary of State with a preservation of the Appellant's nationality. Mrs Petterson points out that the judge has considered these issues at paragraph 36 of his decision where the Appellant it is noted accepts he was fingerprinted in Greece as claimed in his asylum interview. Therefore the Tribunal was entitled to make its conclusions. The judge he submits has made clear findings at paragraph 42 and that the judge it is noted had difficulty with the Appellant's evidence.
8. In brief response Mr Holmes emphasises the point that on the Appellant's own version of events he admits that he was in Greece in January/February 2016 and could have been fingerprinted there but reiterates that he was not in Greece in December 2015 and consequently could not have been fingerprinted at that time. He emphasised that this is material to the findings of the First-tier Tribunal Judge and asked me to remit the matter for rehearing.

The Law

9. 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.
10. 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 Material Error of Law

11. The issue herein turns entirely on the Appellant's credibility and as emphasised at paragraph 39 of Judge James' decision a key issue about credibility relates to the Appellant's being fingerprinted in Greece and France whilst en route to the UK. Paragraph 40 is of importance. It is the assertion of the Secretary of State that the Appellant was fingerprinted in Greece on 13th December 2015. The Appellant's version of events is that he was not in Greece in December 2015. He admits that he was there in the middle of January 2016 and consequently could have been fingerprinted then or, as is submitted by Mr Holmes, in early February 2016.
12. The issue is of considerable importance. Firstly because it goes to the credibility of the Appellant's testimony and secondly because the Secretary of State has despite constant requests failed to provide evidence in support of the contention that the Appellant was fingerprinted in December 2015. Whilst of course the judge can look at all matters in the round bearing in mind the importance of this issue particular with regard to the consideration of the credibility of the Appellant's testimony I find that the judge materially erred in law in merely accepting the bare assertion of the Secretary of State when no evidence was produced particularly bearing in mind the specific requests made by the Appellant's legal team for the Secretary of State to provide evidence which I assume would not have been difficult for them to do. In such circumstances the correct procedure is to set aside the decision of the First-tier Tribunal Judge and to remit the matter back to the First-tier Tribunal for rehearing.

Decision and Directions

The decision of the First-tier Tribunal Judge contains a material error of law and is set aside. Directions are given for the rehearing of this matter.

- (1) On finding that the decision of the First-tier Tribunal Judge contains a material error of law the decision is set aside with none of the findings of fact to stand. The matter is remitted to the First-tier Tribunal sitting at Bradford to be heard on the first available date 28 days hence with an ELH of three hours.
- (2) The hearing is to be before any Judge of the First-tier Tribunal other than Immigration Judge James.

- (3) That there be leave to either party to file objective and/or subjective evidence upon which they intend to rely at the further hearing of this matter at least seven days prior to the restored hearing. In particular I direct that the Secretary of State do serve and file evidence in support of the Secretary of State's contention the Appellant was fingerprinted in Greece on 13th December 2015.
- (4) In the event that the Appellant requires an interpreter at the restored hearing his instructed solicitors must notify the Tribunal within seven days of receipt of these directions.

The First-tier Tribunal Judge granted the Appellant anonymity. No application is made to vary that order and none is made.

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

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

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

Signed

Date

Deputy Upper Tribunal Judge D N Harris