



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10989/2017

THE IMMIGRATION ACTS

Heard at Manchester CJC
On March 5, 2019

Decision & Reasons Promulgated
On March 8, 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

AZAD MUSTAFAZADEH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Wood, Legal Representative
For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, an Iranian national, claimed to have entered the United Kingdom on August 28, 2015 and claimed asylum the following day. The respondent refused his application on October 13, 2017 under paragraphs 336 and 339F HC 395.
2. The appellant appealed that decision on October 27, 2017 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
3. His appeal was heard by Judge of the First-tier Tribunal Foudy on June 19, 2018 and in a decision promulgated on July 4, 2018 he dismissed the appellant's appeal on all grounds.

4. Grounds of appeal were lodged on July 13, 2018 in which it was argued that the Judge had materially erred in her approach to plausibility and by failing to follow the approach given by the Court of Appeal in HK v SSHD [2006] EWCA Civ 1037 and by failing to consider all the evidence when assessing the appellant's claim.
5. Permission to appeal was initially refused by Judge of the First-tier Tribunal Adio on August 7, 2019 but Upper Tribunal Judge Martin granted permission on all grounds finding it arguable the Judge's decision was brief and she may have given inadequate reasons for her adverse credibility findings and not applied anxious scrutiny to the appellant's claim.
6. No anonymity order is made.

SUBMISSIONS

7. Mr Wood adopted the grounds of appeal and submitted that the Judge had erred by failing to the approach given by the given by the Court of Appeal in HK v SSHD. The Judge had also speculated on findings without any evidential support. He submitted the appellant's account had similarities to matters referred to in the respondent's decision letter and the failure to attach any real weight to the appellant's consistent account contained in his interview and statements meant there was an error in law. Mr Wood criticised the Judge's summary in paragraph 19 of her decision submitting it was incorrect and this amounted to an error in law. There was also no consideration of the additional risk of being a Kurd as suggested in HB (Kurds) Iran CG [2018] UKUT 00430 (IAC).
8. Mr Tan invited the Tribunal to dismiss the application. There was evidence on how Kurds were treated both in the appellant's bundle and decision letter, but the appellant's case had to be looked at against the background that the Judge did not find his claim plausible and whilst her reasons were brief she nevertheless gave adequate reasoning in paragraph 18 of her decision. The fact the appellant gave a consistent account did not mean the account was credible. Mr Wood had criticised the Judge's summary in paragraph 19 of her decision but the Judge was aware of the full facts as demonstrated in paragraph 10 of the decision and whilst paragraph 19 was not wholly reflective of the incident Mr Tan submitted the appellant did flee after a car crash and he fled after hearing gunfire. At para 20 the Judge made a further adverse finding with reasons and those findings were open to her. There was no evidence of a continued interest and without additional risk factors simply being a Kurd who may have left illegally was insufficient to engage the refugee convention.
9. Mr Wood responded and submitted the appellant's evidence was his parents were detained after the incident and the authorities had retained an interest in him. He left illegally and would be drawn to the authorities' attention, if returned, as he had been absent from Iran for some time and he would be questioned why he had gone to the United Kingdom. Paragraph 19 did not reflect his claim and the original submission was maintained despite Mr Tan's observations.
10. I reserved my decision.

FINDINGS

11. Mr Wood has invited the Tribunal to set aside the decision of Judge of the First-tier Tribunal Foudy and has advanced mistaken findings, inadequacy of reasoning and a failure to attach more weight to the fact the appellant had given a consistent account as reasons for an error in law.
12. The Court of Appeal in HK gave some advice on how to deal with evidence in an asylum appeal. At paragraph 30 the Court stated-

“Further, in many asylum cases, some, even most, of the appellant’s story may seem inherently unlikely but that does not mean that it is untrue. The ingredients of the story, and the story as a whole, have to be considered against the available country evidence and reliable expert evidence, and other familiar factors, such as consistency with what the appellant has said before, and with other factual evidence (where there is any).”
13. The Court continued at paragraph 30 and stated-

“Inherent improbability in the context of asylum cases was discussed at some length by Lord Brodie in *Awala -v- Secretary of State* [2005] CSOH 73. At paragraph 22, he pointed out that it was “not proper to reject an applicant’s account merely on the basis that it is not credible or not plausible. To say that an applicant’s account is not credible is to state a conclusion” (emphasis added). At paragraph 24, he said that rejection of a story on grounds of implausibility must be done “on reasonably drawn inferences and not simply on conjecture or speculation”. He went on to emphasise, as did Pill LJ in *Ghaisari*, the entitlement of the fact-finder to rely “on his common sense and his ability, as a practical and informed person, to identify what is or is not plausible”. However, he accepted that “there will be cases where actions which may appear implausible if judged by...Scottish standards, might be plausible when considered within the context of the applicant’s social and cultural background”.”
14. In allowing HK’s appeal the Court of Appeal pointed out that the facts of the case were important and said, “The striking features of the applicant’s account in the present case is that there is no evidence to contradict it; such in-country material and expert evidence as there is tends to support it (or, at the least, is not inconsistent with it); the applicant has, himself, been consistent throughout; and there is no finding that the applicant has shown himself otherwise to be an unreliable witness.”
15. It is against this background that I consider the error of law argument. Any decision should be looked at as a whole rather than taking individual paragraphs in isolation.
16. The Judge recorded the appellant’s claim in paragraph 10 of her decision. In paragraph 9 she recorded the fact she had considered all of the documents and the country guidance cases.
17. The respondent’s decision letter set out in some detail inconsistencies in the appellant’s account and some of those points were relevant to the question of

assessing the appellant's overall credibility. In particular, bearing in mind today's grounds of appeal, I highlight paragraphs 46, 50, 53, 54 and 55.

18. Mr Wood criticised the Judge for not attaching greater weight to the fact the appellant gave a consistent account but as the Court made clear in HK this assumes "the applicant has shown himself otherwise to be an unreliable witness".
19. The respondent highlighted a number of articles that reported the deaths of Revolutionary Guards and pointed out that there was no evidence of such a report of this incident. The country evidence did not support the appellant's case and this was something the Judge could take into account when assessing his credibility.
20. In paragraphs 18-20 the Judge considered the appellant's claim and rejected it. Neither her reasons nor her examination of the evidence was extensive. The Judge attached weight to what the appellant stated in his interview about contact between the authorities and his family. The appellant was vague about the level of contact (Q108) between the authorities and his family and the Judge found that if he was of interest, he would have been able to give more information than he did. The Judge also had to consider his account of how PJAK contacted him bearing in mind the answers he provided in his interview.
21. On the issue of how he met PJAK she simply did not accept the credibility of the account. The country evidence did not provide any support for the account he provided so whilst there was evidence of clashes between Revolutionary Guards and PJAK members that would not necessarily help the appellant in this case.
22. The Judge considered the appellant's account of how he met PJAK and rejected his claim and gave reasons. These were not speculative reasons. The Judge in paragraph 10 of her decision considered whether the appellant's account was reasonable likely and in the absence of other evidence, other than his own evidence, the Judge found his account lacked credibility. Simply being consistent does not make the account true and as stated above the Court of Appeal gave guidance on what the Tribunal should look at.
23. The Judge's recording of the events in paragraph 19 were accepted by Mr Tan as not correct but the Judge had already identified the appellant's version of events in paragraph 10 of the decision and ultimately, I find the misrepresentation of the facts does not detract from what the appellant claimed happened-something the Judge rejected. She was entitled to reach the findings she did in paragraphs 18-20 of her decision.
24. The appellant's case was about credibility and whilst the decision could have been more detailed, I am satisfied that with regard to the main grounds of appeal there is no material error as the findings were open to the Judge.
25. A separate argument was developed before the Tribunal in light of HB but as the Judge did not accept the appellant's account there are no additional risk factors that would be engaged and there is no error in law.

Notice of Decision

There is no error in law. I uphold the original decision.

Signed

Date 05/03/2019

A handwritten signature in black ink, appearing to read "SP Alis", with a horizontal line underneath.

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I do not make a fee award because I have dismissed the appeal.

Signed

Date 05/03/2019

A handwritten signature in black ink, appearing to read "SP Alis", with a horizontal line underneath.

Deputy Upper Tribunal Judge Alis