



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

PA/12442/2018

THE IMMIGRATION ACTS

Heard at Glasgow

Decision & Reasons
Promulgated

On 7 November 2019

On 13 November 2019

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

K K

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Martin, of Jain, Neil & Ruddy, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. FtT Judge McGrade dismissed the appellant's appeal by a determination promulgated on 4 February 2019. The appellant sought permission to appeal, specifying 7 grounds. The FtT and the UT refused permission.
2. The appellant petitioned the Court for judicial review of the UT's refusal of permission. In a joint minute, parties agreed that the UT erred by not granting permission on ground 2. The Vice President of the UT granted permission (not restricted to ground 2).
3. The appellant's evidence was that he failed to answer a question at interview because he misunderstood a crucial word in the question. At paragraph 21 of his determination, the judge rejected that explanation because the appellant offered a detailed answer by way of a later amendment, which suggested that he had understood the question.

4. Mr Govan conceded that the judge's reason was unsustainable.
5. The word used in the question was capable of being understood in different ways. It might have been understood (or translated) one way when first put, and the issue might have emerged only when going over the record. To give a different answer later did not imply that the appellant understood the question the first time in the sense the questioner intended.
6. Mr Govan contended that grounds 1 and 3 - 7 were only disagreements with conclusions properly reached, and that as a whole the grounds did not disclose such error as required the decision to be set aside.
7. At paragraph 25, the judge finds it significant that the appellant did not refer in the respondent's translation of the interview record or in his own translation to throwing the Koran to the floor during the alleged incident which led him to flee. Ground 1 is that the judge erred because the appellant did refer to throwing down the Koran.
8. On reference to the underlying materials, and to the rest of the appellant's evidence, he has referred in each instance either to throwing down the Koran, or to his actions being interpreted or misrepresented to that effect. Although Mr Govan argued that the judge took a view of the evidence which was within his lawful scope, in my view adverse significance was erroneously attached to this matter.
9. The rest of the grounds are all of lesser force. Some are only disagreements dressed up as "applying too high a standard of proof", when the determination does not suggest that the judge misunderstood that basic concept. However, grounds 1 and 2 show error on points near the centre of the claim. The other reasons in the determination are not so powerful that it may safely stand after the excision required by those grounds.
10. The determination of the First-tier Tribunal is set aside. It stands only as a record of what was said at the hearing.
11. There is a presumption that the UT will proceed to remake decisions, of which parties are reminded in directions issued with the grant of permission. However, parties agreed that the nature of the case is such that it is appropriate under section 12 of the 2007 Act, and under Practice Statement 7.2, to remit to the FtT for an entirely fresh hearing. The member(s) of the FtT chosen to consider the case are not to include Judge McGrade.
12. The FtT made an anonymity direction. The matter was not addressed in the UT. Anonymity is maintained at this stage.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

8 November 2019
UT Judge Macleman