



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

Appeal Number: PA/11454/2019 (P)

THE IMMIGRATION ACTS

**Decision under Rule 34
Without a hearing
12th June 2020**

**Decision & Reason Promulgated
On 23rd June 2020**

Before

UPPER TRIBUNAL JUDGE COKER

Between

**MS
(anonymity order made)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS(P)

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant in this determination identified as MS. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. FtT Judge Forster dismissed MS's appeal against the refusal of his international protection and human rights claim for reasons set out in a decision promulgated on 22nd January 2020. Permission to appeal was granted by FtT judge Bird on 11th March 2020. Directions for the further conduct of the appeal were sent and, in the circumstances surrounding COVID 19, provision was made for the question of whether there was an

error of law and if so whether the decision of the FtT Judge should be set aside to be determined on the papers.

2. Both parties complied with the directions; the appellant sought an oral hearing but did not give any reasons for requesting such a hearing. The respondent has expressed her consent to the decision on error of law being taken on the papers.
3. In the absence of any reasons by the appellant for an oral hearing of the error of law issue and having in any event considered whether an oral hearing was necessary, I am satisfied that the submissions made on behalf of the appellant and the respondent together with the papers before me are sufficient to enable me to be able to take a decision on whether there is an error of law in the decision of the FtT and if so whether the decision should be set aside, on the papers and without hearing oral submissions.

Grounds of appeal.

4. The appellant relied upon 3 grounds of appeal:

Ground 1: the judge erred in law in making an adverse finding on the credibility of the appellant's account because of discrepancies between his screening interview and his substantive interview. The first claimed discrepancy was not a discrepancy when read properly and in the context of the questions asked; the second discrepancy was in relation to the return of his brother which were mistakes in the screening interview of where the brother returned to and a misquote by the judge of the appellant's evidence.

Ground 2: the judge erred in law in failing to give adequate reasons for his finding that the appellant's *sur place* activities were not because of genuinely held political views but in order to support an asylum claim.

Ground 3: the judge erred in law in having accepted the appellant attended demonstrations and had a Facebook account, the judge failed to correctly apply the caselaw to those facts.

5. Judge Bird, in granting permission stated it was arguable that in finding the discrepancies undermined the appellant's credibility, the FtT judge had failed to give adequate reasons and secondly that it was arguable the judge had failed to adequately assess the risk to the appellant in the light of the findings on *sur place* activity.

Ground 1

6. The FtT judge found:

13. At the screening interview, the appellant stated that his brother was a member of a political party (SCR4.1) but at the asylum interview he said that he did not know his brother's status within the KDPI (AIR Q.55). When this inconsistency was put to him, the appellant stated that he was a member, but he did not know the details (AIR Q.56). I find his answer to be vague and I would expect the appellant to know more about his brother's involvement with the KDPI because it is the reason, he says that he left Iran and the base upon which his protection claim is built.

14. At the screening interview, the appellant stated that two days before he left Iran, his brother returned to the village to carry out political activities for the KDPI (SCR4.1). At the asylum interview he said that he did not know if his brother had returned to the village, just that he had returned to Iran (AIR Q.75). I find this highlights the appellant's inability to give consistent evidence which undermines the reliability of his evidence as a whole.
15. ...
16. ...His claim is based on what he says he was told by Haji Wahid who went to him on 20 July 2019 while he was working on his family's farm. The appellant claims he was told that the Iranian authorities had raided his home, arrested his parents because of his brother's activities and were looking for him. The appellant's evidence about whether his brother had returned to the village is not clear. He did not have any contact with his brother himself. The appellant has not provided any evidence about his brother's alleged activities that could establish a connection with any action taken by the authorities. The appellant claims he was immediately taken somewhere by Haji Wahid in his car....
17. The appellant was vague about what exactly he was told by Haji Wahid. On his evidence he accepted the events as told to him by Mr Wahid without question. The appellant was asked if he had asked Mr Wahid any question, but he said that he did not do so. The appellant's evidence was that he did not ask about his parent's whereabouts or welfare or seek more information about his brother's activities. I do not find that to be credible because in the circumstances described the appellant would have wanted as much information as possible. I find it is implausible that arrangements could have been made within hours to get the appellant out of the country. The appellant was asked but could not explain who paid the agent that took him away. It would have been expensive. Mr Wahid is not a relative and was described as a good friend of the appellant's father but without explanation it is not credible he would have paid for the journey.
.....
7. In his answers during the screening interview, he said he hadn't paid the agent "any money yet", who was a friend and he helped save his life (3.3). He was also asked:
 - 1.9 Town and country of birth. A: Altun Saru, Iran (Islamic Republic of)
 - 4.1. please briefly explain all of the reasons why you cannot return to your home country. A: My brother was a member of a political party I do not know any details regarding this. Two days before I left my country my brother came to the town where I lived to do some political activities and for that reason the authorities believed I had helped arrange this with my brother and they came to arrest me and raided my house however I was not home that day and somebody who knew me told me about this and told me to leave the country. So I left IRN in fear of my life 2 days later.
8. During his substantive interview the appellant was asked where he lived and said Upper Altun (Altuni Saru), which was where his parents and brother lived. He was asked if he lived anywhere else in Iran and replied no. (questions 9, 11,12). He confirmed he was content with the answers he gave in the Screening interview (questions 22 and 23). He was then asked a series of questions about his home:

Q30: Is Upper Altun a city a town, can you explain for me.
A30:it is a small village

Q31. Where is it?
A31. Do you mean which city is close to the village

Q32. So is your village in a city?
A32. Our village is close to Saqiz

The appellant was then asked questions about his brother's political activity:

Q50. What political party did your brother support?

A50. A democratic party, Kurdistan Democratic Party or(sic) Iran (KDPI)

Q51. Do you know when he began to support or follow this political party?

A51. Around 4 or 5 months ago approximately.

Q52. Did you live with your brother during this time?

A52. No.

Q53. Where did he live?

A53. I don't know where he lived, he is involved with that party and they have their own bases. I don't have information about this political party they have their own bases and headquarters.

Q54. Did you brother not inform you were he was going so you could keep in touch with him?

A54. No

Q55. Do you know what his status within this party was?

A55. I don't know

Q56. In your SCR you state that your brother was a member of this political party, can you explain this?

A56. Yes he was a member but I don't know the details.

Q57. How do you know he was a member and not a supporter?

A57. When my brother left, he didn't leave on his own he left with a group of other people from our village. Later the families of those people went to visit their sons and they also met my brother and they tell when they returned they told my mother. They told my mother that he was with that party and he was a member.

There then followed various questions about his knowledge of his mother's knowledge, whether his brother's absence had been reported, knowledge of treatment handed out to people who followed the KDPI. He was then asked

Q71. What happened before you fled Iran?

A71. My brother returned to Iran to carry out activities for the party, he was reported to the authorities, the authorities were unable to arrest him, so they came to our house, on that day when they came I was not at home I was away working, they mistreated my parents and they took them away, I don't know what happened to them since I don't know if they are still alive or if they are dead, if I was there then they would have taken me to. They were arrested by the authorities had massively affected me.

Q75. Did you know your brother had returned to your village?

A75. I don't know, but he was in that area, I don't know if he returned to the village or the surrounding area but he was in Iran.

Q76. How do you know this information?

A76. The person who came to tell me what had happened told me this.

The appellant was then asked a number of questions about how he found about about his brother and his relationship with the person who told him. The appellant confirmed he did not ask him any questions and he trusted him.

9. The appellant's solicitors wrote to the respondent after the screening interview and clarified that the appellant had said during the screening interview that his brother was involved with the KDPI and that his parents had been taken away, but those matters had not been recorded.
10. After the substantive interview the appellant's solicitors wrote to the respondent with clarification as to the length of time his brother had been away from home as 4 to 5 years and not months as recorded in Q51; and that clarification of the screening interview records had been sent and his response that he was content, as recorded in the substantive interview, should be read in that light.
11. It is difficult to understand how the FtT judge reached the conclusion that the appellant had given vague and discrepant answers to questions about his brother's political involvement either within the substantive interview or between the screening interview and the substantive interview. The judge makes a sweeping statement as to lack of credibility upon the foundation of discrepancy yet has failed to consider the explanation given by the appellant or provide a reason why the appellant should be expected to know of his brother's political involvement. The background material makes plain the extent to which the authorities clamp down on political opposition; the appellant's evidence was that he had not seen his brother since he left Iran and there was no evidence that the brother (or anyone else) had tried to recruit the appellant.
12. It may be that the ultimate credibility finding is the same but at the very least the judge should have approached the evidence as it was before him and reached his conclusions on that evidence with reasons why he discounted the explanation given by the appellant. This ground of appeal is not an attempt to reargue the appeal, as submitted by the respondent.
13. The FtT judge has erred in law in his findings on the credibility of the appellant based, as they were, mainly on matters that were not actually discrepancies and without considering the explanation provided by the appellant.

Grounds 2 and 3

14. These two grounds essentially deal with risk on return given, in particular, the appellant's Facebook activity as well as the findings on *sur place* activity. The judge finds the appellant, who cannot read or write, did not make the entries on his Facebook account. That has not been challenged in the grounds seeking permission to appeal. The respondent submits the appellant could simply close down his Facebook account, or remove all the postings because they were not a genuine reflection of his political beliefs.
15. Although the judge has engaged with the appellant's claim to attend demonstrations and has made findings on that and *sur place* activity, they are predicated on adverse credibility findings such that the appellant cannot be believed. Although the appellant's account as to his brother and the

reasons he fled are infected with an error of law and that has no direct bearing on the *sur place* activity, it does to the extent that his overall credibility has been adversely impacted upon. The judge has not engaged with the impact of the Facebook account on risk on return and nor has he engaged with relevant caselaw on Facebook accounts. The judge has erred in law.

Conclusion

16. The judge has erred in law in his findings on the credibility of the appellant's account regarding his brother. The appellant's credibility has an impact upon the findings regarding his current political beliefs and involvement, it may impact upon his Facebook entries and thus risk on return.
17. I set aside the decision of the FtT judge in its entirety. This is an appeal where significant and principal findings of fact are required and thus, in accordance with the practice direction, I remit the hearing of this appeal to the FtT for further hearing (not before FtT Judge Forster).

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision and remit the hearing of the appeal to the FtT.

Anonymity

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Jane Coker
Upper Tribunal Judge Coker
12th June 2020