Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/02257/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
on 23rd July 2013	**on 30th July 2013**

Before

THE PRESIDENT, THE HON MR JUSTICE BLAKE
UPPER TRIBUNAL JUDGE HANSON

Between

KAZEM DEGHANI
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Blum instructed by J D Spicer Zeb Solicitors.
For the Respondent: Mr Bramble Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Cohen promulgated on 10th May 2013 in which he dismissed the appellant's appeal against the direction for his removal to Iran following the refusal of his claim for asylum or any other form of international protection.

2. The appellant was born on 22nd January 1974 and is a citizen of Iran. The success or otherwise of his claim that he will face a real risk of persecution or ill-treatment on return to his home state was dependent solely upon the assessment of the credibility of his account.

3. Judge Cohen did not find the appellant to be a credible witness for the reasons he sets out from paragraph 21 of the determination.

4. The grounds on which permission to appeal was sought allege: procedural unfairness in refusing to grant an adjournment; failure to give adequate reasons for the adverse credibility decision and errors of fact in the reasons that were given, such as to amount to irrelevant considerations being taken into consideration. Cumulatively it is stated that these reasons amounted to material errors of law.

5. The hearing before us was short; the parties were agreed that the judge had misdirected himself; and we indicated we found merit in the grounds and we would set aside the determination with no preserved findings for re hearing afresh by a First-tier Tribunal judge other than Judge Cohen. We now give our reasons.

Discussion

6. The following factors when taken cumulatively, and ignoring the various typographical and other minor errors, are the basis for our decision:

   i. Judge Cohen refused a late application for an adjournment which was to allow a specified Iranian lawyer to be contacted to provide evidence relating to efforts undertaken by the appellant in order to attempt to trace his friends in detention. The reasons for refusing the adjournment are set out in paragraph 11 of the determination. Whilst it is true that the fact that the application was made late might well have justified its refusal, the judge did not consider whether refusing the application would have adverse impact on the effect of the proceedings.

   ii. A little later in the decision the Judge then proceeds to hold against the appellant the fact that he had failed to submit any evidence in support of his claim, which was precisely the nature of the evidence the appellant wished to obtain and which necessitated the adjournment application. Having refused the adjournment the adverse comment was inappropriate.

   iii. Further the judge thought that the claim to have contacted a lawyer in Iran during the events giving rise to the claim was a recent invention that had not formed part of the asylum interview and his witness statement. He was wrong about that as contact with a lawyer was mentioned in

response to questions 14 and 51 of his interview and in the penultimate paragraph of his witness statement dated 17th December 2012 [A's bundle P 17].

iv. In paragraph 26 Judge Cohen records:

> "Despite this, the appellant claims that he was charged together with the brother of one of his friends who was arrested soon approached the authorities, attempt to trace the for individuals and instruct a lawyer."

The appellant did not claim that he had been charged.

v. In paragraph 40 of the determination Judge Cohen states:

> 'In view of the significant discrepancies and implausible nature of the appellant's accounts, I find that I am unable to accept, even to the lower standard of proof that he has been truthful in his account of being accused of political activity, beaten, detained and wanted as claimed. I find that the appellant was not wanted by the security forces and that his father was not detained as claimed. I find that the appellant is totally lacking in credibility'.

Nowhere in the evidence did the appellant claim that he had been beaten and detained or that his father was detained. The Judge's conclusion appears to be based upon a failure to understand the evidence, or a fundamental mistake of fact sufficient to amount to a material error of law.

7. Throughout his decision, the judge comments on an aspect of the claim and then repeatedly uses the phrase "I find this to be highly damaging to his credibility and the credibility of this appeal as a whole" at the end of various paragraphs of the determination in which adverse findings are made. This gives the impression early on in the process that the judge had made his mind up to refuse the claim and spent the rest of the judgment finding reasons to support that conclusion, a number of which have on analysis been shown to be flawed. In any event it will normally be inappropriate to structure decision making in this way. This was not a case of admitted use of lies or a false document to advance a claim, or an admission that the claim originally presented was fundamentally false in some important way. The claim on its face is a perfectly plausible account of a person without a high level of political commitment being caught up in protests that lead to problems for him and his friends. Any assessment of whether there was a reasonable degree of likelihood that the account was reliable fell to be reached at the end of the process in the light of any legitimate concerns arising from the narrative and how it was tested.

8. We have no doubt the decision on credibility was fundamentally flawed and that for the reasons given above the decision must be set aside in totality and the process of judicial assessment of this claim must start again. Asylum decisions must be reached with meticulous care, and cannot be left to stand if there are significant flaws in the assessment of credibility. For authority we can do no better than refer to the recent Court of Appeal decision of ML (Nigeria) v Secretary of State for the Home Department [2013] EWCA Civ 844 in which Moses LJ, at paragraphs 1 and 2, states:

> 'Of all the hackneyed phrases in the law, few are more frequently deployed in the field of immigration and asylum claims than the requirement to use what is described as "anxious scrutiny". Indeed, so familiar and of so little illumination has the phrase become that Carnwath LJ in R(YH) v SSHD [2010] EWCA Civ 116, between paragraphs 22 and 24, was driven to explain that which he had previously explained, namely what it really means. He said that it underlines "the very special human context in which such cases are brought, and the need for decisions to show by their reasoning that every factor which might tell in favour of an applicant has been properly taken into account". It follows that there can be no confidence that that approach has been taken where a tribunal of fact plainly appears to have taken into account those matters which out not to have been taken into account. To similar effect, our attention was drawn to a recent case of the European Court of Human Rights, the case of Singh & Ors v Belgium (Application no. 33210/11) (the second section of the court) on 2 October 2012 in which the court again reaffirmed the importance of decisions in this field and in the field of human rights. In that case it was Article 3 and, as it put it:
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> > "...the irreversible nature of the harm likely to be caused in case of the realisation of the risk of ill treatment, [in the light of which] it is the responsibility of the national authorities to show that they are as rigorous as possible, and carry out a careful investigation of the grounds of appeal drawn from Article 3 without which the appeals lose their efficiency... Such an investigation must remove all doubt, legitimate as it may be, as to the invalidity of a request for protection regardless of the competences of the authority responsible for the control."
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> The instant appeal is yet another unfortunate example where the First-tier Tribunal displayed an absence of care, both as to the recitation of the facts and the arguments that were advanced in relation to a claim for asylum….'

9. Where a hearing of such a claim is fundamentally flawed the Senior President of Tribunal's direction of September 2012 makes it clear that the re-making must be in the First-tier Tribunal and this remains the case even if this results in delay in future listing. We express the hope that judges will not make the serious errors committed in this case and that the appeal can be properly and fairly considered first time.

10. The appeal is to be remitted to the First-tier Tribunal where it shall be heard by a judge other than Judge Cohen sitting at Taylor House on the 16th November 2013 with a time estimate of 3 hours. The necessary listing arrangements have been made.

Decision

11. **The First-tier Tribunal Judge materially erred in law. We set aside the decision of the original Judge. We remit the appeal to the First-tier Tribunal to be heard afresh by a judge other than Judge Cohen.**

Anonymity.

12. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

No application was made for such an order before us. No grounds for making such an order have been established at this stage in the proceedings.

Signed…….
Upper Tribunal Judge Hanson

Dated the 26th July 2013