



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

Appeal Number: AA/10654/2012

THE IMMIGRATION ACTS

**Heard at North Shields
On 29 May 2013**

**Determination Sent
On 1 July 2013**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

JAVAD ALI-MOHAMMADI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Pickering, Counsel, instructed by Kirklees Law Centre
For the Respondent: Mr J Kingham, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant is a citizen of Iran, born on 21 January 1974. He seeks to appeal against the decision of the respondent refusing his application for asylum or other protection in the United Kingdom.
2. His appeal came before First-tier Tribunal Judge Fisher on 3 January 2013 and was dismissed.

3. Grounds of appeal were submitted against that decision and leave to appeal was granted. Thus, the matter comes before me in pursuance of that permission.
4. Ms Pickering addressed me as to the grounds of her appeal. Mr Kingham, who represents the respondent, made his submissions and invited me to find that there was no material error of law in the decision.
5. The nature of the appellant's claim is well summarised between paragraphs 3 and 8 of the determination.
6. Ms Pickering raises three areas of challenge.
7. The first lies in the approach taken by the Judge to credibility.
8. It has been noted at paragraphs 19 and 20 that the Judge noted two aspects of the appellant's account which called into question his reliability as a witness. One was the fact that in his screening interview the applicant had indicated that he had not been arrested. In his description as to the locality where he had been taken after his arrest he gives one account, the Godal Cheshmeh district, whereas in another account he says that the place was unnamed.
9. Ms Pickering submits that they are relatively minor matters which should have been considered within the overall context of the consistency of the appellant's account.
10. Her second challenge is that the Judge was unduly dismissive of the expert evidence, unfairly criticising the expert in paragraph 22 of the determination and his opinion based on the scanned documents notwithstanding the caveat to that opinion which is set out at page 9 of the expert report.
11. Those two challenges raise the difficult situation in determining the issue of error of law on appeal. The Court of Appeal in **D v Higher Courts** have consistently stressed that it is not the function of a decision maker to substitute his or her own view of the facts for those of the decision maker who had the advantage of seeing the appellant and making findings of fact.
12. It seems to me that the comments which are made by the Judge in paragraphs 19 and 20 are properly open to be made. It was not simply that the appellant denied being arrested in his screening interview but it was the finding of the Judge that in his substantive interview the appellant had given a different reason for not having mentioned the fact of his arrest, namely that he misunderstood the question.

13. It is to be recognised that another Judge may not have placed the same significance upon those inconsistencies as did Judge Fisher. However, the issue of weight is essentially a judicial function and should not be interfered with unless such amounts to a finding which is **Wednesbury** unreasonable or perverse.
14. In fairness to Judge Fisher it has been noted that he has borne in mind in paragraph 21 matters that are to the advantage of the appellant but nevertheless comes to the conclusion that, notwithstanding such matters, the inconsistencies are such as to override that consideration. Within its narrow confines it does not seem to me that that is an improper approach to take.
15. Similarly, with the expert, it is clear that the Judge has paid careful regard to what the expert has to say in paragraphs 18 and 22.
16. The difficulty of course with the evidence relating to the documents is that they are considered in one paragraph by the expert, in the last paragraph on page 9. Ms Pickering invites me to note the caveat which is expressed in the last line of that paragraph, namely "I have no reason to doubt the authenticity of these documents in so far as examinable from scanned copies". There may be some merit in the concern expressed by Ms Pickering that the Judge in seeking to criticise the expert for his conclusion does not also recognise that caveat.
17. Once again, given the limited context of that remark, I do not find it to be untoward or outside that which is properly permissible.
18. It is, however, the final ground of appeal which most concerns me, namely that there has been no clear findings of fact on most material issues.
19. It is fundamental to a proper determination that the full context of the claim is recognised and findings of fact are made upon it.
20. The fundamental context in this case is of the appellant who claims to have lost his appointment as a part-time university lecturer and his work within the tax office in the Iranian Ministry of Finance. There is no clear finding one way or the other as to whether that preliminary position is accepted or not. No such finding is made if indeed it is capable of being made. It is difficult to put all that follows in its proper context. Indeed if the appellant was so employed the obvious question as a starting point for the consideration of his claim must be what happened to him and why has he come to the United Kingdom leaving his family in Iran.
21. Such a finding should then lead, in my estimation, to the proper examination of the documents. In this case I find that there has been a degree of shorthand in that approach. Although the Judge was entitled to express the view that he should approach the expert report with some care, there has been no analysis of the documentation that has been

presented. It is clearly the limiting factor that they are scanned copies and indeed those in my bundle are far from clear. They are however documents which cover a number of aspects of the appellant's life. They are documents for example relating to the warnings given to the appellant for administrative violations at his work. There are the court documents and there are the bail documents. All may be false or some may be viable and others not. That is a matter for the Judge to consider in the course of the analysis.

22. What weight can be placed to those documents must depend to some extent upon what the documents purport to contain and to what extent that is consistent or inconsistent with the context of the appellant's claim. The relevant question was clearly relating to weight and reliability and the extent to why the originals have not been presented when clearly they are in the possession of the appellant's family. It is said that his brother put up his house as surety for the appellant. There are no documents relating to what the authorities have or have not done as a consequence of that. It is not a requirement that there be corroboration clearly when such corroboration is reasonably able to be provided then its absence may be a significant factor.
23. I am concerned that although the Judge has criticised the expert there has been no independent consideration of those documents and any clear findings made upon them.
24. The third issue relates to the return of the appellant. As the Judge quite rightly indicated it is the view of the expert that there was a risk on return as set out in some detail in his report. The comment is given little weight in the light that it conflicts with the country guidance. There needs however to be some consideration of what the evidence is on that matter, both for and against, and a balanced conclusion arrived at.
25. For those reasons I do not find that the case of the appellant was given the consideration in the detail that it ought to have been. That is not to say of course that the findings should be other than have been set out but any findings should be clearly justifiable with reasons within the overall context and detailed consideration.
26. For those reasons the decision shall be set aside and shall be re-made.
27. I bear in mind paragraph 7 of the Senior President's Practice Direction. There would need to be a re-hearing of the evidence and possibly consideration of further evidence. Although this is a matter that could perhaps be considered further by the Upper Tribunal, I have been invited by both parties to say that this does come within the Practice Direction and should in the circumstances be remitted to the First-tier Tribunal for a re-hearing.
28. In all the circumstances I will do so.

29. Whether evidence is or is not to be called is of course a matter for the parties. It is not for me to direct on that issue other than perhaps to express the view that it might be more helpful to a proper examination of the documents if the expert could perhaps expand a little bit more on why he says that they are genuine. Reasons will also need to be given as to why the original documents could not be dispatched and the further details as to the family situation given. [it is to be recognised that the appellant is contending that his family are under suspicion and have incurred the wrath of the authorities on his account and that is a factor of course that must be borne in mind in the eventual analysis.]

Directions

1. The decision of Judge Fisher shall be set aside.
2. There shall be a de novo hearing before the First-tier Tribunal.
3. An interpreter in the Farsi language is required.
4. Any further submissions or evidence should be submitted no later than five days prior to the hearing in order for all parties to have sufficient time to seek all relevant documentation.
5. The hearing should not be listed before six weeks from the promulgation of these directions.
6. Any further directions that shall be required will be issued by the First-tier Tribunal.

Signed

Date

Upper Tribunal Judge King TD