



IAC-CH- CK-V1

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

Appeal Number: AA/06813/2014

**THE IMMIGRATION ACTS**

**Heard at Columbus House,  
Newport  
On 12<sup>th</sup> August 2015**

**Decision and Reasons  
Promulgated  
On 7<sup>th</sup> September 2015**

**Before**

**UPPER TRIBUNAL JUDGE POOLE**

**Between**

**ML  
(ANONYMITY DIRECTION CONTINUED)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms G Capel, Counsel

For the Respondent: Mr Irwin Richards, Home Office Presenting Officer

**REMITTAL WITH REASONS**

1. The anonymity direction made in the First-Tier Tribunal is continued.
2. The appellant is a male citizen of Iran, born 3 April 1977. He arrived in the United Kingdom in August 2013. He claimed asylum and a year later the respondent made a decision to refuse his application, and to remove him as an illegal entrant. The appellant appealed that decision and his appeal came before Judge of the First-Tier Tribunal Britton sitting at Newport on 24 April 2015. An oral hearing was held and both parties were

represented. In a determination dated 10 May 2015, Judge Britton dismissed the appellant's appeal on all grounds having found, *inter alia*, that the appellant lacked credibility.

3. The appellant sought leave to appeal, grounds being contained in a document prepared by the barrister who represented him before Judge Britton.
4. The very full grounds in support allege three errors. Firstly the inappropriate treatment of the medical evidence that was available at the hearing. Secondly misunderstanding or misstatement of the appellant's evidence and thirdly making speculative findings and giving inadequate reasons.
5. The application came before another judge of the First-Tier Tribunal who granted leave to appeal indicating that all grounds were arguable though casting doubt as to the allegation of error relating to speculation on the part of Judge Britton.
6. The respondent lodged a response under Rule 24 of the Procedure Rules indicating that in the opinion of the respondent the judge had directed himself appropriately. Reference was then made to the judge's treatment of the medical report and indicating that the judge had not contradicted the opinion of the doctor.
7. Hence the matter came before me in the Upper Tribunal.
8. Ms Capel relied upon the grounds seeking leave and in particular paragraphs 52 and 61 of Judge Britton's determination. He had not engaged with the evidence and had failed to recognise the objective information contained in the doctor's report. The doctor had considered whether or not the appellant had been feigning the injuries. The doctor did not seek to make credibility findings. Also there was a misstatement of the evidence with regard to the appellant's evidence as to his involvement in demonstrations.
9. Mr Richards in his submission was of the opinion that there was no material error of law. The judge had taken all evidence into account. He had analysed the evidence and found the appellant lacking in credibility. The judge must take into account the evidence and he did that. The conclusions were properly open to him. In any event if there had been an error of law was it truly material?
10. In her response Ms Capel again relied upon the grounds. The question of credibility must be taken in the round. The appellant's evidence was that he had been detained and tortured.
11. At the end of the hearing I announced that I found a material error of law contained in the determination of Judge Britton to the extent that his findings and conclusions must be set aside and that it would be appropriate in the circumstances to remit the case back to the First-Tier Tribunal for a hearing *de novo*. Both representatives agreed to that course of action.

12. For the reasons set out in the grounds seeking leave I consider that Judge Britton fell into errors in his determination and that such errors were material to the outcome of the appeal.
13. The main thrust of the challenge to his determination is with regard to his treatment of the medical evidence that was placed before him. Paragraph 52 of the determination clearly shows that he took into consideration all the evidence “including that of Dr Alison Battersby”. The judge’s only other reference to that report is contained in paragraph 61. That paragraph contains the sentence “whatever he told Dr Battersby, the doctor has to accept, unless it is obviously something that could not have happened”.
14. If Judge Britton says (paragraph 52) that he has taken into consideration the evidence of Dr Battersby I have no doubt that he did. However the determination itself makes little other reference to that evidence and the comment at paragraph 61 shows that the judge rejected what was contained therein. A reader of the determination cannot be satisfied that Judge Britton engaged with the evidence of Dr Battersby to any material extent. He has not explained what that evidence was, how it might support the appellant’s own evidence and neither does it explain exactly why the judge rejected it. I consider such explanation is necessary at least to show the reader of the determination why the judge had reached the conclusions that he did. With respect to simply indicate that the doctor would pay lip service to anything the appellant said is simply not enough. That in itself constitutes an error of law which is material to the outcome.
15. As to the second allegation of error there is merit in the argument that Judge Britton did not engage accurately with the appellant’s evidence both at interview and at the hearing. Paragraphs 54 and 55 of the determination makes reference to dates and seeks to distinguish between peaceful and violent demonstrations. The judge found the appellant’s evidence not to be credible because whilst he was saying that he only attended peaceful demonstrations the objective information showed that demonstrations on the dates mentioned were other than peaceful. I am satisfied that the judge may have reached the wrong conclusions on these dates and the nature of the demonstrations, and this may again be an error.
16. I have noted the allegation regarding the making of speculative findings. Given that there was evidence before the judge that CCTV coverage of Metro stations did take place in Tehran and therefore the judge’s conclusions that the alleged incidents involving the appellant could we have been filmed it is not appropriate to preserve this or any of the other findings made by Judge Britton.
17. I therefore find for the reasons contained above that the judge fell into material error and it is appropriate to remit this appeal for hearing *de novo* before a First-Tier Tribunal Judge other than Judge Britton.

Signed

Date

Upper Tribunal Judge Poole