Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/06998/2014

THE IMMIGRATION ACTS

Heard at Newport	**Determination Promulgated**
On 14 April 2015	**On 11 May 2015**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

AAA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Neale instructed by Greater Manchester Immigration
For the Respondent: Mr I Richards, Home Office Presenting Officer

REMITTAL AND REASONS

1. This appeal is subject to an anonymity order by the First-tier Tribunal pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Neither party invited me to rescind the order and I continue it pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

Background

2. The appellant is a citizen of Iran who was born on 5 October 1988. He arrived in the United Kingdom on 23 April 2014 and the following day he made a claim for asylum. He claimed to be an Iranian national of Kurdish ethnicity who was at risk on return to Iran because of his involvement with the opposition political party, the Kurdistan Free Life Party (PJAK). On 26 August 2014, the Secretary of State refused the appellant's claim for asylum and humanitarian protection and under Art 8 of the ECHR. The Secretary of State did not accept that the appellant was Iranian or that he had been involved with the PJAK as he claimed. On 3 September 2014, the Secretary of State made a decision to remove the appellant as an illegal entrant by way of directions to Iran or Iraq.

3. The appellant appealed to the First-tier Tribunal. In a determination promulgated on 16 December 2014, Judge A Cresswell dismissed the appellant's appeal on all grounds.

4. The appellant sought permission to appeal challenging the judge's adverse credibility finding. On 13 January 2015 the First-tier Tribunal (Judge Lambert) granted the appellant permission to appeal.

5. Thus, the appeal came before me.

The Judge's Decision

6. Judge Cresswell accepted that the appellant was from Iran. He accepted the evidence of an expert that the appellant was from Iran over that of a Sprakab Report.

7. Nevertheless at paras 21(ix) – (xix), Judge Cresswell did not accept the appellant's account, including that his brother had been arrested because of his activities with the PJAK and that the appellant had himself been involved in putting up PJAK posters and was at risk on return as a result. Having dealt with the linguistic evidence concerning the appellant's nationality, at para 21(x), Judge Cresswell stated:

> "There are, however, significant issues with the appellant's evidence which lead me, when I consider all factors in the round, to conclude that he has failed to establish his case to the lower standard required of him, as I will explain. The fact that he may be from Iran rather than Iraq, as the Sprakab Report had suggested, does not lead in any way to a logical conclusion that his claim is a truthful one".

8. Judge Cresswell continued:

> "…he was a poor witness, who appeared to make things up as he went along. I appreciate he may have been nervous, but this does not explain his behaviour in relation to specific points".

9. Judge Cresswell then went on to deal with the appellant's evidence concerning where he lived in Iran at paras 21(x) – (xiv) as follows:

"(x) .... He had the greatest difficulty telling me where he actually lived in Iran, which an honest person would not struggle with. In his screening interview, he gave his permanent address as Saqqez (Saghez); in his asylum interview, he said that his last address was in Kariza (or Kariyaza) and that he had moved there from Saqqez at the age of 5 and spent most of his time there, but some time also in Saqqez when a porter's job was available or to rest.

(xi) In his witness statement, the Appellant says "*I was born in Saqqez and lived in Kariyaza when I was about 5 years old. My family moved because my father was a farmer and he returned to work on the farm.*"

(xii) In oral evidence, he told me that Saqqez was a city and told me initially that he lived in Saqquez and that his uncle lived in the same town, some 7 to 8 minutes walk away.

(xiii) Later, the Appellant told me first that he would spent most of the time in Kariza and then changed this so that he would spend one week in Saqqez and the next week in Kariza. In relation to the latter statement, he said that he would go alternate weeks to Kariza to tend his father's animals and that he had done this all of his life.

(xiv) Apart from the confused evidence as to where he actually spent his time, there was also the curiosity that he said that the homes in Kariza and Saqqez were only 5 miles apart, which begs the question as to why he would need 2 homes and why he would need to live at each for alternate weeks. Whilst it does not matter to any real extent whether he had 2 homes or 1, it was the fact that he did not appear to be giving a truthful account about his home, which was a part of the evidential whole in a case which depended very much upon his credibility".

The Submissions

10. Mr Neale, who represented the appellant submitted that the judge's reasoning was inadequate and he had failed to take into account the explanation given by the appellant in his evidence as to why his family had two homes.

11. As regards the appellant's evidence about where he lived, Mr Neale submitted that the appellant had specifically disclosed in his asylum interview that he had two homes. At question 7 he had said: "we had both placed the village in the town". Mr Neale relied on the appellant's answer at question 8 that he had two homes. In his oral evidence he had said that his family had two homes, one in Saqiz and one in Kariyaza and that he "lived between them both". Similarly, the appellant had stated at question 9 of his interview that he had moved to Kariza when he was 5 years old. Mr Neale submitted that this evidence was consistent with what the appellant had said in his witness statement at para 15: "my family moved because my father was a farmer and he returned to work on his farm". Mr Neale submitted that the appellant's account was consistent that the family had two homes and they lived part-time at one and part-time at the other. The judge had no basis for reaching his view that the appellant had the "greatest difficulty telling me where he actually lived in Iran".

12. Mr Neale submitted that in para 21(xiv) the judge had counted against the appellant's credibility that it was "curious" that he had two homes only five miles apart. However, Mr Neale submitted that the judge had failed to consider the appellant's evidence given orally why his family had two homes. At para 12 of his skeleton, Mr Neale set out this point as follows:

> "He stated that his family had a house in Saqiz. His brother never lived with them, they had some other relatives. The appellant was asked why he would live in one house one week and the other the next week. The appellant stated that when his father was fit and young, he was working on the farm and would take the family there to help him. Later his father was weaker, not fit, and had a problem. His father had a problem with his leg and wasn't doing any job, he accompanied them to the village but wasn't doing anything. The judge asked if the family had animals. The appellant confirmed that they had sheep. In a subsequent response the appellant also explained that they moved back and forth between Saqiz and Kariyaza because 'if you've got some relatives you should have a place for relatives to visit you.' In the village they did not have enough space".

13. Mr Neale submitted that the judge had failed to take this explanation into account. He accepted that the judge was not bound to accept the appellant's explanation but he had, at least, to engage with it and his failure to do so amounted to an error of law. Mr Neale pointed out in his reply that Mr Richards had not disputed what the appellant said in his evidence at the hearing.

14. Mr Neale submitted that although the judge had given a number of other reasons at paras 21(xv) – (xix), it could not be said that those reasons were so strong that I could be confident that the judge would have reached the same conclusion if he had not taken into account the matters set out at para 21(x) – (xiv). The error was material.

15. On behalf of the respondent, Mr Richards submitted that the judge had not made any material error of law. He had assessed the evidence and his credibility finding was properly open to him on the evidence. The issue in relation to the appellant having two homes was not a key finding but was only one of a number of points made including, as the judge said in para 21(x), that the appellant was a "poor witness". Mr Richards submitted that what was crucial to the appellant's claim was his own political involvement and the judge had found at para 21(xv) onwards that he did not accept that part of the appellant's account. The judge had also referred, as he was entitled to, to s.8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 in that the appellant had not claimed asylum in a number of safe countries.

Discussion

16. In relation to para 21(x) – (xiv), I accept Mr Neale's submission that the judge fell into error. In particular, in para 21(xiv), the judge's view that the appellant's evidence about having two homes only five miles apart was a "curiosity" failed to take into account the appellant's explanation, given in oral evidence, why his family had two homes. Whilst the judge was not bound to accept the appellant's explanation, that explanation is not so

obviously incredulous that it was bound to be rejected by the judge. In failing to take it into account, the judge clearly, in my view, fell into error.

17. Further, the judge's treatment of the appellant's evidence about where he lived does not, in my judgment, stand up to scrutiny when the appellant's evidence is considered as a whole. As Mr Neale pointed out, the appellant gave consistent evidence about his two homes and that he had moved to Kariza (or Kariyaza) when he was 5. That was his evidence both in his asylum interview and in his evidence before the Tribunal in his witness statement and oral evidence. It was not, in my judgment, sufficient in itself to doubt the appellant's evidence that in his screening interview (about which care must necessarily be taken in relying upon detail given the nature of such an interview) that his permanent address was Saqiz which throughout his evidence he claimed to have left to move to Kariza when he was 5. Mr Richards relied upon the judge's view that the appellant was a "poor witness" who "appeared to make things up as he went along". The difficulty with that is that the only apparent example of that relied on by the judge is the change in evidence about his last address. There may have been other matters that the judge had in mind but he does not rely upon them and therefore it is wholly unclear from the determination upon what basis he came to the view that the appellant was a "poor witness".

18. In my judgment, for these reasons, the judge erred in law in reaching his adverse credibility finding.

19. Mr Richards focused upon the materiality of any such error in the light of the judge's reasoning at para 21(xv) – (xix). That reasoning is as follows:

> "(xv) A further factor about the geography detailed is that the Appellant said that the authorities knew that his uncle was his uncle and he told me that his uncle lived only 7 to 8 minutes walk from his own home. His suggestion that the Iranian authorities would arrest his brother, would have a recording of his own involvement in PJAK poster placement and that he would be undisturbed by the authorities 3 days later in his own home and 2 days after that in his uncle's home, damages his credibility; he is the one asserting that he would be killed by the authorities if he was returned because of the seriousness of his situation.
>
> (xvi) There is a conflict here too with his claim that his brother got information to him that there was a recording of him putting up posters; if his brother was arrested as he claims, it is hardly likely that the authorities would take no steps to arrest him too if they were in possession of such a recording.
>
> (xvii) Whilst I accept the objective evidence that PJAK would have low level sympathisers, who would not understand its aims (just like any other political party), that does not explain why the Appellant was unable to explain PJAK's aims in the question following his own statement: "*Yes when my brother would talk about the aims of the political parties I would understand*". Nor does it explain why the Appellant would take of the USA, the UK and ISIS and the borders of Syria and Iraq when this disparity was put to him by Mr Arkless.

(xviii) I accept that, whilst compulsory, education may not be enforced in "*many remote regions of Iran*" especially among ethnic minorities as Professor Matras records, but the Appellant said in oral evidence that education is not compulsory and told me that he lived in the city of Saqqez for some of his time.

(xix) I have been mindful throughout of the benefit of the doubt requirements, but have concluded upon an overall assessment that this Appellant has not given a consistent account and has given evidence which damages his credibility in circumstances where his case relies in very large part upon the reliability of his account".

20. Then at para 22 the judge dealt with s.8 of the 2004 Act as follows:

> "22. I also took into account the provisions of section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 in assessing the Appellant's credibility. I noted that the Appellant must have travelled through a number of safe countries and refers to changing lorries, but accept that he may have been under the influence of an agent. I was mindful that section 8 was not itself a starting point for a decision on credibility and the evidence as a whole had to be considered".

21. Dealing with para 22 first, it is not entirely clear to me whether the judge took into account that the appellant had not claimed asylum in a number of safe countries or he did not do so because the appellant "may have been under the influence of an agent". That, in itself, presents a difficulty in taking that matter into account as one which might sustain, taken together with others, the judge's adverse credibility finding despite the error that I have already identified.

22. Both in his skeleton argument and oral submissions, Mr Neale directed some criticism at the judge's reasoning in paras 21(xv) – (xix). However, he also accepted that there were no "freestanding" errors. Instead, he submitted that none of the reasons were so strong that I could be confident the judge would have reached the same conclusion. Mr Richards submitted, in effect, that the reasons were sufficient.

23. At para 21(xiv), the judge made clear that he took into account the points he made about the appellant's evidence of where he lived and whether he had two homes in assessing the appellant's credibility. As the judge said:

> "it was the fact that he did not appear to be giving a truthful account about his home, which was part of the evidential whole in a case which depended very much upon his credibility".

24. Despite the reasons given in para 21(xv) – (xix), I am not confident that had the judge not fallen into the errors which I have identified, he would necessarily have reached the same adverse conclusion on the appellant's credibility. In SSHD v AJ (Angola) and Another [2014] EWCA Civ 1636, Sales LJ at [49] identified the category of case where an error was not material as one where: "it is clear that on the materials before the Tribunal any rational Tribunal must have come to the same conclusion". In my judgment, it cannot be said that, applying that test, the judge's error was "immaterial". I am not persuaded that any rational Tribunal must have come to the same conclusion, namely an adverse credibility finding or,

indeed, that Judge Cresswell would necessarily have come to that conclusion in the absence of the errors I have identified.

Decision

25. For these reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of a material error of law. That decision is set aside.

26. Given the nature of the error and the need to consider again all the evidence and make a credibility finding, applying para 7.2 of the Senior President's Practice Directions, this is an appropriate case to remit to the First-tier Tribunal to remake the decision *de novo*.

27. Thus, the appeal is remitted to the First-tier Tribunal to be heard by a judge other than Judge A Cresswell to remake the decision *de novo*.

Signed

A Grubb
Judge of the Upper Tribunal