Upper Tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07347/2012

THE IMMIGRATION ACTS

Heard at Field House **Determination Promulgated**
On 13 July 2015 **On 14 July 2015**

Before

Deputy Upper Tribunal Judge Pickup

Between

Sayed Reza Kiaei
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr T Hodson, instructed by Elder Rahimi Solicitors
For the respondent: Mr E Tufan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Sayed Reza Kiaei, date of birth 30.5.77, is a citizen of Iran.

2. This is his appeal against the decision of First-tier Tribunal Judge Levin promulgated 16.12.14, dismissing his appeal against the decisions of the respondent to refuse his asylum, humanitarian protection and human rights claims, and to refuse him leave to enter the UK pursuant to the Immigration Act 1971. The Judge heard the appeal on 9.12.14.

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3. First-tier Tribunal Judge Kamara granted permission to appeal on 15.1.15.

4. Thus the matter came before me on 13.7.15 as an appeal in the Upper Tribunal.

Error of Law

5. For the reasons set out herein I find no material error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Levin should be set aside.

6. There is an unfortunate lengthy history to this appeal, which can be summarised as follows. The appellant came to the UK on 30.6.12 and claimed asylum on arrival at Heathrow Airport. The Secretary of State refused his claim on 31.7.12.

7. The appellant's appeal against the decision of the Secretary of State was heard on 5.9.12 by First-tier Tribunal Judge Davies, who dismissed the appeal. Permission to appeal to the Upper Tribunal was granted. Deputy Upper Tribunal Judge Harris found errors of law in the making of the decision of First-tier Tribunal Judge Davies and remitted the appeal to be remade in the First-tier Tribunal.

8. The appeal next came before First-tier Tribunal Judge Lever on 20.8.13. In his decision dated 2.9.13, Judge Lever dismissed the appeal. Once again, permission was granted to appeal to the Upper Tribunal. In his decision, Upper Tribunal Judge Chalkley found errors of law in the making of the decision of the First-tier Tribunal and remitted the appeal to the First-tier Tribunal.

9. Then, as stated above, the appeal then came before First-tier Tribunal Judge Levin, who dismissed the appeal, and subsequently permission was granted to appeal to the Upper Tribunal.

10. The grounds of appeal complain that:

    (a) Judge Levin went behind a finding of Upper Tribunal Judge Chalkley;

    (b) Judge Levin fell into procedural impropriety in his questioning of the appellant;

    (c) Judge Levin failed to take account of submissions and case law regarding reliance on the contents of the screening interview;

    (d) Judge Levin failed to take into account corroborating background evidence.

11. The primary focus of Mr Hodson's submissions relates to the nature and description of a yellow document allegedly handed to the appellant's mother following a search of the family home. For the purpose of this appeal I will refer to it as an inventory.

12. The previous grounds of appeal to the Upper Tribunal alleged that Judge Lever had failed to properly identify that document, referring to it variously as a search or seizure warrant, or summons, or search warrant. It was claimed that by failing to understand the document is an inventory the judge materially erred in law. At the error of law hearing before Judge Chalkley, Mr Harrison for the Secretary of State

accepted that First-tier Tribunal Judge Lever had erred in law in failing to understand that the document is an inventory. Judge Chalkley stated, "The significance of this is that, of course, it may very well have been produced before the raid, rather than after it, and the background evidence which the judge considers relating to search warrants and summonses, is to that extent irrelevant."

13. With respect to Judge Chalkley, it is not clear that he has grasped the point being made by Mr Hodson in the appeal grounds. Further, there is an evident mistake in the error of law decision, in that the contention of the appellant is that the inventory was produced after the search, when the officers returned to the family home and gave this yellow copy of the completed document to the appellant's mother. It is not contended that it was produced before the raid, as Judge Chalkley's error of law decision asserts.

14. The appellant's claim as it now stands is that on the evening of 13.3.12 he was attended the Chadar Sharibe Soori celebrations, an event which takes place about a week before the start of the New Year (Nowruz). People were lighting fires and setting off fireworks. The security services arrived and began to break up the celebration beating the participants. The appellant joined a group who were shouting slogans and throwing things at the officers. On the spur of the moment, he pulled down a poster and set light to it. His friend who helped him do this was arrested, but he managed to escape and went to stay overnight at the house of a friend. However, in the early morning of the following day, 14.3.12, his mother called him to warn him that the authorities had been to his aunt's home looking for him. The appellant then made arrangements to leave Iran. Meanwhile, it is claimed that later the same day the officers came back to get the appellant's mother to sign the inventory and left a copy with her, the yellow document now on the case file.

15. There is an issue, to which I will return as to what the appellant said in his screening interview about these events, as to whether it was at the Nowruz, which is what was recorded, or the Chadar Sharibe Soori, and as to whether he hit back at the security officers.

16. There is also an issue as to when the search, in which items listed in the inventory were removed, took place and when the inventory copy was given to the appellant's mother.

17. The grounds complain that Judge Levin wrong referred to the inventory as a combined search warrant and inventory and in doing so went behind the finding in Judge Chalkley's error of law decision that the document in question is an inventory. There is no merit in this submission, regardless of my other error of law findings. I do not accept that in finding an error of law in the making of Judge Lever's decision, Judge Chalkley made a factual finding intended to bind the First-tier Tribunal when remaking the decision. Indeed, Judge Chalkley stated, "The evidence needs to be carefully examined and clear findings of fact will be required. It will be necessary for the judge dealing with this appeal to look carefully at the documents relied upon by the appellant and to make clear findings on them." I find that Judge Levin had a free hand to do exactly that and make his own findings on the documents.

18. In questioning the appellant about this document, as recorded at §30 of the decision, Judge Levin noted that the appellant identified the yellow document as the search warrant and inventory. There was also a smaller, white, document which is said to be a summons. Judge Levin recorded, "He also accepted that the yellow document was a search warrant upon which the authorities had recorded the property they removed during the search. I find that the appellant's evidence that the document was a search warrant was significant given that at page 3 of his grounds against Judge Lever's decision, which were settled by Mr Hodson, the appellant maintained that Judge Lever's finding that the document was a search warrant constituted an error of law and in paragraph 3 of his decision Upper Tribunal Judge Chalkley found that Judge Lever had made an error in so finding."

19. The current grounds of application for permission to appeal complain that it was only in answer to a leading question from the judge that the appellant agreed with the judge's own original suggestion that the document was a combined search warrant and inventory. "This is a point which involves procedural impropriety on the part of the FTJ." It is claimed that the appellant's answer was in response to pressure from the judge to agree with his characterisation of the document as a combined search warrant and inventory and that the judge was seeking to get the appellant to agree to the judge's pre-formed theory or understanding which was wholly illegitimate and not open to either the judge to adopt or the appellant to unwillingly agree to, in view of the findings of Judge Chalkley.

20. I have already found that the First-tier Tribunal was not bound by anything stated by Judge Chalkley and observed that he seems to have misunderstood the relevance of the evidence on this issue. I do not find that the evidence adduced by Mr Hodson demonstrates, as claimed, procedural impropriety. I note the record of the questioning submitted by Mr Hodson at R14. I can see that Mr Hodson took objection to the questioning, but it is clear that the appellant's first response on this was to agree with the judge's understanding that it was a search warrant and a list of items seized. It was perfectly open to the appellant to disagree to that first question (Q20). However, after Mr Hodson's complaint about the questioning, the appellant was asked to explain why he agreed with the judge that it was a search warrant. He replied (Q22) "because it is written down in that paper." Asked again, whether he was familiar with what it says and asked where does it say warrant, the appellant replied, " It refers to part of law referring to search warrant." It follows that it is quite clear that both in questions from the judge and Mr Hodson, the appellant maintained that the document was a search warrant with a list of items seized. For the reasons set out herein, I also find that there is no merit in this ground of appeal and that it really matters not how the document is described. That is because the judge's only reliance on its contents was in relation to the issue of the timing of the search.

21. A translation of the inventory appears at P17 in the appellant's bundle. Relying on the translation, one can see that it is not titled, but refers to being 'minutes.' However, it is significant that the translation states quite clearly that the security officer attended at the address at 10:40 on 14.3.12, i.e. in the morning of the following day, and not during the night as claimed, either around midnight, or some time prior to his mother's call to him between 5-6am. The translation states that the house was

searched in the presence of Mrs Farkhondeh Shir Khan, the appellant's mother, and articles listed in the section below were seized for further investigation.

22. Mr Hodson told me that there was some concern with the quality of this translation, and suggested that timing I have referred to related to when the officers returned to give the appellant's mother a copy of it. However, as this is the only translation submitted on behalf of the appellant I have to proceed on the basis that it is accurate when it records that the search began when the officers attended at the house at 10:40am. Mr Hodson cannot get round this clear indication.

23. As stated, the relevance is that Judge Levin recalled at §35 that the incident of tearing down the poster took place in his estimation about 10pm on the 13.3.12 and that it was therefore highly unlikely that the authorities would have obtained a court order to search the appellant's mother's home by around midnight. The judge found of greater significance is that the inventory records that the search began at 10.40am on 14.3.12, not around midnight and a considerable time after the appellant's mother allegedly telephoned him between 5-6am to tell him that security officers searched the home during the middle of the night. The translation of his mother's letter (P12) also states that the search took place at around midnight, though the translator noted an alternative translation of "or in the middle of the night."

24. At §36 Judge Levin notes that this inconsistency was put to the appellant at the appeal hearing, and his explanation was that 10.40am was when the officers returned to ask his mother to sign the inventory. The judge noted that the appellant's witness statement recorded that he had been told by his uncle that the document was given to his mother on the night. Judge Levin relied on this inconsistency in his credibility findings, concluding at §39 that the appellant's account was not credible and that the appellant's claim that the authorities returned the later the same day with the completed document for her to sign, a fact not mentioned in his mother's letter, was a "fabrication in a vain attempt to explain the clear inconsistency on the face of the search warrant as to the time of the search…I find that this inconsistency fundamentally undermines the credibility of the search warrant."

25. I find Judge Levin made a carefully assessment of all the relevant evidence on this issue and made clear findings of fact which were open to him (notwithstanding the submissions in the grounds to the contrary), for which cogent reasons have been given in the decision. Mr Hodson was unable to identify to me why the alleged error in description of the inventory was relevant at all. It is not the case as Judge Chalkley appears to have thought that it was relevant to the background evidence as to the issue of search warrants, etc., a not uncommon feature of many asylum appeals. I find that in reality the dispute as to what the document was called is a red herring and an irrelevance to the material discrepancy relied on by Judge Levin. In the circumstances there is no error of law in this regard and no procedural impropriety by the judge. He was entitled to rely on this obvious and still present discrepancy to consider that the credibility of the appellant's account was seriously undermined.

26. The remaining issues revolve around the judge's reliance on what the appellant stated in his Screening Interview or SEF form. I accept that the purpose of this

interview is to establish the general nature of the appellant's case and is not intended to be a detailed statement of his claim. However, Mr Hodson concedes that case law indicates that asylum seekers are nevertheless expected to tell the truth. In this regard I was referred to the case of *YL (Rely on SEF) China* [2004] UKAIT 00145. Further YL states that it is open to a judge to compare answers given in that interview with those given elsewhere. The starting point is that the SEF or Screening Interview is an accurate statement and if it is not, it is incumbent on the asylum seeker to give a full and proper explanation for any deficiency at an early stage.

27. Judge Levin noted discrepancies between the appellant's later account and his Screening Interview account as to when the events described took place. The appellant had stated that he was celebrating Iran New Year but 10 days later he claimed it was at Chadar Sharibe Soori, which the judge accepted takes place about a week before the new year. Although it had not been accepted by the Secretary of State in the refusal decision, the judge accepted the background information that the Chadar Sharibe Soori celebrations of 13.3.12 in Tehran were broken by the use of force by the authorities. This sort of discrepancy is not explicable by the limited nature of the screening interview. The date when crucial events are alleged to have taken place is a fundamental part of the claim.

28. When challenged on this discrepancy, the appellant claimed that his reply in the screening interview had been wrongly recorded and denied stating that the incident took place at the New Year celebration. At §24 the judge gave detailed and careful reasons for rejecting this explanation, noting that there is no similarity between 'Nowruz' and 'Chadar Sharibe Soori.' The judge stated that he found this to be a material inconsistency which damaged the appellant's credibility. The judge also, at §25 rejected Mr Hodson's submission that there as there were two inconsistencies, the second relating to whether the appellant hit back at the security officers breaking up the celebrations, this necessarily rendered the record unreliable.

29. In the circumstances, I do not find the judge's reliance on these particular discrepancies to be unfair or contrary to case law guidance.

30. The balance of the concerns raised in the grounds of application for permission to appeal to the Upper Tribunal, such as not giving the appellant credit for being right as to the fact that the Chadar Sharibe Soori celebrations of 13.3.12 were broken up by the authorities, are far less relevant and in fact are not material to the outcome of the appeal; in other words, given the judge's other findings the appeal would still have been dismissed. In the circumstances, if any errors are disclosed, which I doubt, they are not material.

Conclusions:

31. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

Signed

Deputy Upper Tribunal Judge Pickup

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable and thus there can be no fee award.

Signed

Deputy Upper Tribunal Judge Pickup