IAC-AH-SAR-V2

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05567/2015

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 30th March 2016	**On 11th May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR AZIMI MAYSAM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Nicholson (Counsel)
For the Respondent: Mr G Harrison (Home Office Presenting Officer)

DECISION AND REASONS

1. The Appellant is a citizen of Iran born on 10th May 1983. The Appellant left Iran on 16th November 2013 travelling overland to Turkey, then onward by lorry to the United Kingdom, arriving in the UK on 17th December 2013.

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The Appellant claimed asylum on his arrest on arrival by the police based on a fear that if returned to Iran he would face mistreatment due to his political opinion. That application was refused by Notice of Refusal dated 13th March 2015.

2. The Appellant appealed and the appeal came before the panel of Judges of the First-tier Tribunal Lever and Hudson sitting at Manchester on 16th June 2015. In a decision and reasons promulgated on 29th June 2015 the Appellant's appeal was dismissed on asylum and human rights grounds and the Appellant was found not to be entitled to humanitarian protection. On 11th July 2015 Grounds of Appeal were lodged with the Upper Tribunal. On 23rd July 2015 First-tier Tribunal Judge Ford refused permission to appeal.

3. On 1st September 2015 renewed Grounds of Appeal were lodged with the Upper Tribunal. These are in exactly the same format as the original Grounds of Appeal. On 23rd September 2015 Upper Tribunal Judge Kopieczek granted permission to appeal. He found that it was evident from the determination that the panel directed itself appropriately and that it was not evident that the correct standard of proof was not applied in its assessment of the evidence.

4. Regarding the suggestion that the Appellant was prejudiced by the Respondent's representative being curtailed and questioning of the Appellant because the Appellant's representative was unable to re-examine on unknown points had he found no merit at least on that narrow basis and that it would only be if cross-examination revealed any points adverse to the Appellant that re-examination might have been undertaken. However, the wider and more significant point he considered was in terms of what was said about the First-tier Judge having apparently truncated cross-examination in circumstances where cross-examination on matters in issue may have given the Appellant the opportunity to deal with potentially adverse points. He noted that the grounds contended that the hearing was rapid and that the First-tier Tribunal Judge stopped the Respondent's representative three times in his cross-examination, finally ending it by saying "we have thoroughly exhausted this short story" and then "we have enough" and then asking seven questions of his own on distances between the Appellant's work and home and the Iraq/Iran border without explaining why he was asking these. Judge Kopieczek considered that such an approach in questions may indicate that one of the panel, at least, had made up his mind as to the credibility of the account by that early stage.

5. It is noted that the question of adverse credibility issues had not been raised with the Appellant at least in terms of knowledge that the car would be passing through a checkpoint is answered within the Grounds of Appeal. If this is correct, it shows that the matter was put to the Appellant. However, Judge Kopieczek considered it was arguable that if some at least of the other credibility matters were to be taken against the Appellant, they should have been put to him at the hearing either in cross-

examination or by the panel. He considered that if the Tribunal's credibility findings are legally sustainable, it is doubtful that the issue of the Appellant's return undocumented or having left illegally would have any merit given the Appellant's lack of credibility but he did not rule on this ground. He considered that some of the grounds amounted to a mere disagreement with the Tribunal's assessment of the evidence but he was not prepared to limit the grounds that may be advanced.

6. The Secretary of State has not I am advised in this matter filed a Rule 24 response.

7. It is on that basis that the appeal comes before me solely to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel, Mr Nicholson. Mr Nicholson is very familiar with this matter. He appeared before the First-tier Tribunal and is the author of the Grounds of Appeal. The Secretary of State appears by her Home Office Presenting Officer, Mr Harrison. I am also assisted in this matter in that I am provided with handwritten and typed notes of the Record of Proceedings in this matter, both from Mr Nicholson on the Appellant's behalf and by Mr Bilsland, the Home Office Presenting Officer in attendance before the First-tier Tribunal.

Submissions/Discussion

8. Mr Harrison acknowledges from discussions that he had had with the Home Office Presenting Officer and from the note on the Home Office Presenting Officer's handwritten notes that it is clear that the Home Office were prevented from exploring the case any more and that questions that they intended to ask of the Appellant were not put to him. Mr Nicholson comments that the issue is actually worse than that in that the panel thereafter speculated as a result on a number of matters put to the Appellant and refers to the handwritten notes pointing out the Appellant was stopped on three occasions from answering questions and that the panel then proceeded to make findings which were pure speculation. He submits that this is a material error of law and indeed that it would still be an error if the judge had gone on and made findings on matters that were not put to the Appellant.

9. Mr Harrison points out that the Appellant has provided a witness statement subsequent to the Notice of Refusal and consequently his representatives would be aware of the refusal and that the Appellant's credibility had been challenged. He points out it was not for the Secretary of State to make the Appellant's case for him.

10. In response Mr Nicholson acknowledges that interruption of cross-examination in itself is not necessarily fatal and that the Notice of Refusal had been addressed but it is issues that go beyond that that show a material error of law.

The Law

11. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

12. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge’s factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge’s assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

13. It is incumbent upon a First-tier Judge or panel to have control of the court and Mr Nicholson has acknowledged that interruption of cross-examination would not necessarily be fatal. However, there is also a requirement of fairness and I am greatly assisted in this matter by the two notes that are provided of the evidence. It is quite clear from Mr Bilsland’s notes that cross-examination was curtailed and he specifically states that he was prevented from asking further questions of the Appellant because the Immigration Judge was satisfied that everything had been explored. That in itself would not create an error of law but I am persuaded that the panel then made a series of findings within the determination on questions which had not been put to the Appellant or which were speculative or dismissive about people seeking asylum generally. I accept, as the Respondent’s representative had been stopped from completing his cross-examination, there was no possibility of re-examination of the Appellant on these points (even if they had been known) by Mr Nicholson and that this creates a procedural unfairness which makes the decision unsafe. In such circumstances, there is a material error of law and I set aside the decision and set out directions hereinafter below in the decision paragraph for the rehearing of this matter.

Notice of Decision

(1) The decision of the First-tier Tribunal contains a material error of law and is set aside with none of the findings of fact to stand.

(2) That the appeal be remitted to the First-tier Tribunal at Manchester to be heard before any Immigration Judge other than Immigration Judges Lever and Hudson with an estimated length of hearing of three hours.

(3) That the appeal be listed after the decision in *Hamma and Rostami* (country guidance appeal) is handed down.

(4) That there be leave for either party to file and serve additional witness statements and evidence upon which they seek to rely at least fourteen days prior to the restored hearing.

(5) That a Farsi interpreter be in attendance.

(6) That in the event that this matter has not been relisted for full hearing by 1st July 2016, the matter be listed for Case Management directions on the first available date after 15th July 2016 with an ELH of twenty minutes. The purpose of such directions are to monitor the progress of the claim, in particular with regard to any information as to when the country guidance authority is to be handed down and to ensure that the appeal does not get lost in the administrative system.

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed Date

Deputy Upper Tribunal Judge D N Harris