



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

Appeal Number: AA/10132/2015

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke

**Decision &
Promulgated**

Reasons

On 30th June 2016

On 12th July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**VPM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Vokes of Counsel instructed by TRP Solicitors

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against the decision of Judge Jerromes of the First-tier Tribunal (the FTT) promulgated on 21st March 2016.

2. The Appellant is a male Iranian citizen whose asylum claim was refused on 30th June 2015. The appeal was heard on 8th March 2016. The FTT found that the Appellant had not given a credible account, and would not be at risk if returned to Iran. The appeal was dismissed on all grounds.
3. The Appellant applied for permission to appeal to the Upper Tribunal relying upon four grounds which are summarised below;
 - A. The FTT made a material misdirection of law at paragraph 46.2 in imposing a duty of corroboration, and misinterpreting paragraph 339L. Reliance was placed upon KS (benefit of the doubt) [2014] UKUT 552 (IAC) and it was contended that the FTT was not constrained by paragraph 339L, and should apply the lower standard of proof to the evidence.
 - B. The FTT made a material error of law at paragraphs 46.2 and 51.6 in considering the Appellant's failure to claim asylum en route to the United Kingdom. This was not a point taken by the Respondent in the refusal decision. The FTT failed to consider if the Appellant had a reasonable opportunity to claim asylum in the unnamed countries through which he passed, and the FTT erred in believing that Turkey is a designated safe country in accordance with part 2 of schedule 3 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (the 2004 Act).
 - C. The FTT failed to consider material evidence and failed to provide proper reasons. At paragraph 49 the FTT rejected the Appellant's contention that he was appointed chair to the Cultural Heritage Sub-Committee of the Institute but had failed to consider a letter contained at A23 of the Respondent's bundle, addressed to the Appellant as the director of the Cultural Heritage Section of the Institute. The FTT failed to consider the explanation for the absence of a witness and failed to explain why there was a sufficient basis to discount the witness statements made by that witness.
 - D. The FTT erred by failing to consider material matters. The FTT failed to consider that on return the Iranian authorities are reasonably likely to look at the Appellant's Facebook page which links the Appellant to the Institute and to the monarchy which is an exacerbating risk factor. The FTT failed to consider AB and Others [2015] UKUT 257 (IAC).
4. Permission to appeal was granted by Judge Simpson who found it arguable that the FTT had placed too much emphasis on the need for corroborating evidence, and had failed to give sufficient weight to the evidence of the witness SM, and failed to consider AB and Others. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 contending in summary that the FTT had not erred in law, and had made sustainable findings and

provided adequate reasons. It was not accepted that the FTT had erred in consideration of section 8(4) of the 2004 Act, but even if it was an error, that did not undermine the remainder of the findings against the Appellant.

5. Directions were issued making provision for there to be a hearing before the Upper Tribunal to decide whether the FTT decision contained an error of law such that it should be set aside.

Oral Submissions

6. Mr Vokes adopted and expanded upon the grounds contained within the application for permission to appeal. The Appellant's solicitors had submitted a bundle of documents including a notice of intention to adduce further evidence that had not been before the FTT, pursuant to rule 15(2A) of the 2008 Procedure Rules. This evidence related to further extracts from the Appellant's Facebook page. Mr Vokes made it clear that this application was to be considered only if an error of law was found. It was not suggested that at the error of law hearing, evidence that had not been before the FTT should be placed before the Upper Tribunal, as it was not appropriate to suggest the FTT had erred in law by not considering evidence that had not been before it.
7. In relation to Ground A I was asked to find that the FTT had erred by requiring corroboration, and that corroboration was not required by paragraph 339L. The FTT was in fact imposing a higher standard of proof.
8. In relation to Ground B, findings made by the FTT undermined the Appellant's credibility. The FTT at paragraph 51.6 made a specific reference to the Appellant's failure to claim asylum before reaching the United Kingdom and stated that this "further undermines the credibility of his claim that he fled Iran in fear of persecution following a raid on his house." I was asked to note this point had not been made by the Respondent, and the FTT had not informed the parties at the hearing that section 8 of the 2004 Act was an issue.
9. Regarding Ground C Mr Vokes accepted that the FTT had in fact considered the letter at A23 of the Respondent's bundle, but submitted this letter had not been properly assessed, and there was no adequate explanation as to why the letter was not accepted. Mr Vokes submitted that dismissing this letter was irrational. There had been no challenge to the authenticity of the letter in the Respondent's refusal decision.
10. With reference to Ground D the FTT had not taken into account AB and Others, which although not a country guidance decision, is a reported decision of the Upper Tribunal. The FTT had acknowledged that the Appellant, when he returned to Iran in 2006, had attracted the attention of the authorities, and that he may attract similar attention on return on this occasion. The FTT had not considered that the authorities may discover entries in the Appellant's Facebook account that would put him at risk.

11. Mr McVeety relied upon the rule 24 response in contending that the FTT had not erred in law. With reference to Ground A, the FTT was not requiring corroboration, but was simply setting out what was contained in paragraph 339L.
12. With reference to Ground B, the FTT had described the Appellant passing through Turkey, but did not find that he could have claimed asylum there. As the Appellant had travelled overland to the United Kingdom he must have passed through safe countries and not claimed asylum. I was asked to find no error, but in the alternative, I was asked to find that this was a minor credibility point taken against the Appellant.
13. In relation to Ground C, Mr McVeety noted that it was now accepted that the FTT had in fact considered the letter at A23 of the Respondent's bundle. The weight to be attached to evidence was a matter for the FTT.
14. With reference to Ground D the Appellant had not produced to the FTT, evidence of anything in his Facebook account, that would bring him to the adverse attention of the authorities.
15. By way of response Mr Vokes submitted that the judge had imposed a duty of corroboration, and made specific reference to corroboration in paragraph 52. It was submitted that the judge had made a finding that Turkey is a safe country and had therefore erred in that respect, and erred in making negative credibility findings against the Appellant because of his failure to claim asylum en route. In relation to the evidence of SM, the FTT had not given adequate reasons for not attaching weight to this evidence.
16. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

17. I will consider the grounds as set out in the application.

Ground A

18. I do not accept that the FTT has imposed a requirement of corroboration. In my view the FTT has not imposed an incorrect standard of proof. At paragraph 13.3 the FTT confirms that the standard of proof is lower than that of the normal civil standard of the balance of probabilities, and describes the standard of proof as a reasonable degree of likelihood. That is not an error.
19. The FTT at paragraph 47 acknowledges "that great care must be taken before making adverse findings of credibility and should only be made where justified in the circumstances of the case." The FTT makes further reference in this paragraph to the lower standard of proof.

20. At paragraph 48, the FTT again refers to the lower standard of proof, and there is further reference to the lower standard of proof in paragraphs 50, 51 and 52.
21. In my view the judge adequately considers credibility, and at paragraph 46.1 does not accept the Respondent's suggestion that the fact that the Appellant's first asylum claim was rejected undermines his credibility. At paragraph 49 the FTT does not accept the Respondent's suggestion that the fact that the Appellant was unable to state in interview what UNESCO stands for, adversely affects his credibility.
22. At paragraph 46.2 the FTT refers to there being a duty on an Appellant to substantiate the asylum claim, where statements are not supported by documentary or other evidence, those aspects will not need confirmation when all of the conditions in 339L are met. This is setting out what is stated in paragraph 339L.
23. The FTT does make reference to there being no corroborative evidence in paragraph 52, and using the word 'corroborative' may be unwise, and leads to challenges that the wrong standard of proof has been applied. However in paragraph 52, the FTT also makes specific reference to the lower standard of proof that is applicable.
24. The decision must be read as a whole. Having read the decision as a whole, I do not find that the FTT imposed a duty of corroboration, nor do I find that the FTT imposed an incorrect standard of proof. The FTT assessed the evidence in the round, and made findings based on the lower standard of proof that applied.

Ground B

25. I find the FTT erred at paragraph 46.2(i) and 51.6 in making an adverse credibility finding because the Appellant did not claim asylum before reaching the United Kingdom.
26. It is common ground that this is a point which was not taken by the Respondent in the refusal, and while it is open to the FTT to consider this issue, if raised at the hearing, both parties should be given an opportunity to make submissions. There is no evidence to indicate that this issue was in fact raised at the hearing. I find that the FTT did regard Turkey as a safe country because of the reference to "other safe countries". That is an error, as Turkey is not one of the safe countries designated under the 2004 Act. I find that the FTT failed to consider if the Appellant had a reasonable opportunity to claim asylum in the unnamed safe countries through which he must have passed.
27. Although I find an error, it is not material for the following reasons. The FTT made specific reference at paragraph 46.2(ii) to paragraph 339MA of the Immigration Rules which states that applications for asylum shall neither be rejected nor excluded from examination on the sole ground that

they have not been made as soon as possible. The error in making an adverse credibility finding is not material because of the numerous other adverse credibility findings made by the FTT, which are sustainable and for which adequate reasons have been given. In my view it is apparent that the failure to claim asylum before reaching the United Kingdom was not a major credibility issue.

Ground C

28. As conceded at the hearing, the FTT did not fail to consider the document at A23 of the Respondent's bundle. This document is a letter dated 18th May 2009 addressed to the Appellant from SM. This letter is referred to at paragraph 41(iv) of the FTT decision, and specifically considered at paragraph 49.4. The FTT notes that this letter makes reference to the Appellant being in an official position at the Institute and notes that the letter was written by SM, and records that little weight is placed on SM's evidence for the reasons set out at paragraph 49.4(i) and (ii). The FTT recorded that the witness, SM, was unable to attend the hearing to give evidence in person and be cross-examined. The FTT recorded at paragraph 40.1 the explanation given by SM that he was studying in Germany and due to sit crucial exams. That however is not the main reason why the FTT did not regard SM as a credible witness. The reason for that finding is the claim in SM's first statement that the Appellant had been "often arrested or threatened by the intelligence service or special forces of cultural heritages through his activities and he has many different kinds of problems experienced in this period of time." As the FTT pointed out, the Appellant did not claim to have been often arrested or threatened, his claim was that he had been detained only on one occasion, and apart from when he was released, did not claim to have been personally threatened.
29. The FTT gave adequate reasons for not accepting as credible, the evidence of SM.

Ground D

30. The FTT did not fail to consider the Appellant's Facebook. As acknowledged in the grounds, the FTT made reference to this at paragraph 51.4 noting that the Appellant produced in evidence his Facebook homepage, but that he had failed to produce any evidence as to what was on his Facebook account. Therefore the Appellant had not produced evidence that his Facebook account contained anything that would put him at risk if that was inspected when he returned to Iran. The burden of proof is on the Appellant, and he did not discharge the burden. It is apparent that this is why the Appellant's solicitors now wish to make an application to introduce evidence that was not before the FTT. It is not appropriate to consider fresh evidence at an error of law hearing, but if it is thought appropriate, such evidence should form the basis for making a fresh claim for protection to the Respondent.

31. In conclusion, I find that Grounds A, C and D display a disagreement with findings made by the FTT but do not disclose a material error of law. I find that Ground B does disclose an error of law, but for the reasons I have given, it is not material.

Notice of Decision

The decision of the FTT did not involve the making of an error on a point of law such that the decision must be set aside. The appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

The FTT made an anonymity direction. I continue that direction pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

5th July 2016

**TO THE RESPONDENT
FEE AWARD**

As the decision of the FTT stands, so does the decision not to make a fee award.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

5th July 2016