Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/07652/2013**

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 20 June 2017	**On 21 June 2017**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

MA
ANNONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr Karnik, Counsel
For the respondent: Mr Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant.

Introduction

1. I have anonymised the appellant's name because this decision refers to his international protection claim.

2. This is an appeal by the appellant, a citizen of Iran, against a decision of the respondent ('the SSHD') dated 25 July 2013, in which leave to remain was refused, following his asylum claim.

3. The appellant fears that upon return to Iran he will be subjected to ill-treatment because the authorities have been informed that he was having a sexual relationship outside of marriage with a woman, who was found to be interested in Christianity. The appellant's appeal to the First-tier Tribunal was dismissed in a decision dated 1 October 2013. The First-tier Tribunal did not accept the appellant's credibility and gave comprehensive and detailed reasons for this.

Procedural history

4. The passage of the appeal from the 2013 First-tier decision to this stage is a lengthy and convoluted one. It is sufficient to only summarise it here.

5. The appellant appealed against the First-tier Tribunal decision to the Upper Tribunal. Permission to appeal was refused by the First-tier Tribunal and then the Upper Tribunal. The appellant's application to challenge the refusal of permission to appeal, to the Administrative Court was also unsuccessful. The appellant appealed against the refusal of permission by the Administrative Court, to the Court of Appeal. Gloster LJ granted permission to appeal on 13 March 2014.

6. In a consent order dated 27 July 2015 the Court of Appeal remitted the appeal to the Upper Tribunal for a new decision on the application for permission to appeal to be made. In a statement of reasons the parties agreed that the First-tier Tribunal and in turn the Upper Tribunal when refusing permission to appeal, made an arguable error of law:

   (i) in failing to engage with new material showing a risk to failed asylum seekers returning to Iran, which supported a departure from the relevant country guidance decision;

   (ii) in failing to attach any weight to representations dated 14 January 2013 made on the appellant's behalf, following his asylum screening interview in order to correct errors therein ('the 2013

representations') - there has been both procedural and substantive unfairness.

7. In a decision dated 12 December 2016 the Upper Tribunal granted permission in view of the consent order and statement of reasons.

8. The matter now comes before me to determine whether the First-tier decision contains an error of law, and if so whether it should be set aside.

Hearing

9. At the beginning of the hearing Mr Harrison distanced himself from the rule 24 notice and agreed that the decision needs to be remade in its entirety – he accepted that it was procedurally unfair for the First-tier Tribunal to draw adverse inferences from the contents of the 2013 representations. He was entirely correct to do so for the reasons I set out below. That is sufficient to dispose of issue (i) at [6] above. Both representatives agreed that when the decision is remade, consideration shall need to be given to SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 308 (IAC) and therefore issue (i) does not need to be addressed further at this stage.

10. Both representatives agreed that the error of law is such that the decision needs to be remade completely. I had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I decided that this is an appropriate case to remit to the First-tier Tribunal.

Discussion

11. In the 2013 representations the appellant's solicitors requested two brief amendments to and clarification of the screening interview held on 21 November 2012. The First-tier Tribunal regarded the claims in the 2013 representations to "*stand in stark contrast to his screening interview*" [15]. Mr Harrison accepted that it was not unusual for representatives to submit further submissions clarifying matters at the very brief screening interview, made shortly upon arrival after long journeys with the assistance of an interpreter, and for such representations to be accepted by the SSHD. In any event, it is very difficult to see what was so stark in the contrast to the screening interview.

12. After directing itself to YL (Rely on SEF) China [2004] UKIAT 00145 the First-tier Tribunal found at [16] that the 2013 representations "*give rise to a number of credibility issues*" which I summarise below:

    (i) The claim that the appellant did not understand the Farsi interpreter at the screening interview in the 2013 representations is unsupported by his confirmation at the interview that he understood the interpreter.

    (ii) The claim in the 2013 representations that the appellant did not have a fair opportunity to put forward all the relevant details in support of his claim is inconsistent with the record of the screening interview, in which relevant questions were asked and the appellant was given an opportunity to answer these but failed to mention important matters such as his girlfriend's abortion and the accusation of rape against him.

    (iii) The failure to mention Christianity at the screening interview is inconsistent with his claims at the asylum interview.

    (iv) A proposed amendment to the screening interview regarding the appellant's pregnant girlfriend does not make sense and in any event does not address the failure to refer to the abortion.

13. Mr Karnik submitted that, leaving aside the errors in approach that can be demonstrated in relation to the specific findings at (i) to (iv) above, it was procedurally unfair for the First-tier Tribunal to effectively reject the 2013 representations and to draw adverse inferences from their submission, when that was not a point taken against the appellant at any stage (asylum interview, decision letter or at the hearing) and which the appellant was provided with no opportunity to address.

14. When the asylum interview is read as a whole, it is clear that the interviewing officer approached the claim on the basis set out in the screening interview as amended by the 2013 representations. For example, the appellant's explanation that his girlfriend had an abortion, was probed by the interviewing officer (Q 92-93) but not because of a failure to mention this at the screening interview.

15. A similar approach was adopted in the decision letter. Direct reference is made to the 2013 representations at [6] of the decision. The decision letter appears to have been drafted on the basis that the proposed amendments to the answers at the screening interview have been accepted. The adverse credibility findings reached by the SSHD are mostly predicated upon her view that the account is implausible.

16. I therefore accept that at no point did the SSHD seek to draw any adverse inferences from the inconsistencies between the 2013 representations and the screening interview or the content of the 2013 representations.

17. I have not been able to locate a record of proceedings on the court file. Mr Karnik indicated that the point was not put by the SSHD or the Judge at the hearing. Mr Harrison accepted there was no reason to dispute this.

18. I am satisfied that the failure to put matters, apparently accepted by the SSHD, to the appellant, constituted procedural unfairness. This infected the credibility findings made, such that the decision needs to be remade de novo.

Decision

19. The First-tier Tribunal decision contains an error of law. Its decision cannot stand and is set aside.

20. The appeal shall be remade by the First-tier Tribunal de novo.

Signed:
Ms M. Plimmer
Judge of the Upper Tribunal

Date:
20 June 2017