



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/01337/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Birmingham Employment
Centre
On 12 December 2017**

**Decision & Reasons
Promulgated
On 19 December 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

**AAM
(ANONYMITY ORDER CONTINUED)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard, Fountains Solicitors

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. In her decision and reasons statement of 20 April 2017, First-tier Tribunal Judge Graham directed that the appellant's identity is protected by an anonymity direction. Given the nature and content of this appeal to the Upper Tribunal, it is appropriate to continue that directions, which I do by the order at the end of this decision.

Background

2. The appellant was born on 30 June 1994. He says he is a national of Iran. In her decision of 20 April 2017, Judge Graham found he was not, and that it was more likely than not that he was in fact a national of Iraq. Judge

Graham also found there were other reasons to disbelieve the appellant's account. The appellant challenges these conclusions, and related matters.

The submissions

3. Mr Howard amplified the grounds of application. He first argued that Judge Graham appears to have used the civil standard (a balance of probabilities) when assessing the evidence rather than the lower standard of proof that applies in a protection claim. He points to Judge Graham's use of words such as probable, likely, improbable at paragraphs 26, 28, 34 and 37 to found his argument.
4. Mr Mills reminded me that in the Court of Appeal ruled as follows in *RM (Sierra Leone) v SSHD* [2015] EWCA Civ 541 regarding different standards of proof that can apply in a protection appeal.

35. What emerges from those cases – and would in truth be clear enough even in the absence of authority – is that what standard of proof applies to the question of an applicant's nationality depends on the legal issue to which it is relevant. If it is relevant to whether he will suffer persecution (whether by reference to the Refugee Convention or article 3), the lesser standard will apply. But if it is relevant to some other issue – such as whether it is in fact possible in practice for him to be returned, and any rights that may accrue if it is not – the standard is the balance of probabilities.
5. Mr Mills submitted that Judge Graham had been right to use the civil standard, therefore, when deciding the evidence provided showed the appellant to be an Iraqi national and not an Iranian one. This means that the correct standard of proof had been applied in paragraphs 26 and 28 where the judge was examining the issue of the appellant's nationality.
6. Mr Mills suggested that the concerns regarding the use of the language of the civil standard of proof in the remainder of the decision and reasons statement was immaterial. The judge was experienced and could be expected to know the law. At paragraph 34, the judge used the phrase, "completely improbable" when she probably meant completely implausible. But that was not material, being merely a semantic argument. Judge Graham had provided cogent reasons for this finding, being that if the appellant had been caught on CCTV when entering the hospital, then the same CCTV would have exonerated him from any accusations that might be made.
7. At paragraph 37, Judge Graham concluded that she had, "not found the Appellant's account plausible, likely or credible." According to Mr Mills, this phrasing serves to show what was in her mind and that she was applying the lower standard of proof, which she described at paragraph 10 as being "substantial grounds for believing". This phrasing did not sit well with the notion that Judge Graham was applying the civil standard of proof.
8. The second ground pursued by Mr Howard questions whether Judge Graham imposed a burden on the appellant to provide corroborating evidence. At paragraph 25, Judge Graham indicated the appellant could have obtained his birth certificate. At paragraph 32 and 33, Judge Graham

appears to ask the appellant to provide the CCTV recording and photographs.

9. Mr Mills countered by pointing out that Judge Graham did not seek corroboration but gave weight to the fact that the appellant had described evidence he could obtain but did not obtain it. She rejected his explanations regarding his inability to obtain his birth certificate because the appellant had admitted to being in contact with relatives after he arrived in the UK. Judge Graham did not seek the CCTV recordings or photographs. At paragraphs 32 and 33, she was identifying a significant hole in the appellant's account.
10. Mr Howard's third ground related to whether Judge Graham had considered what risks the appellant faced on return to Iran as a failed asylum seeker. Mr Mills pointed out that this was an established issue in country guideline cases, to which Judge Graham made sufficient reference at paragraph 39.
11. The final ground raised a question about whether sufficient attention had been made to the appellant's private life rights. Mr Howard acknowledged this was an extension of his first ground and stood or fell with it.

My findings

12. After listening to the arguments, I reached the following decision, which I gave at the end of the hearing.
13. I do not give any weight to the fact Mr Howard, Mr Mills and I all know that Judge Graham is an experienced judge. Her decision and reasons statement but stand as a record for an independent observer and such factors cannot reasonably be taken into consideration.
14. I am satisfied that Judge Graham properly assessed that the appellant is an Iraqi national and not an Iranian national. She applied the standard of proof required, as explained by the Court of Appeal in RM (Sierra Leone). This finding is sufficient to undermine the entirety of the appellant's account because it can only mean that the events the appellant describes happening to him in Iran could not have occurred.
15. I am satisfied the argument relating to the use of the phrase, "completely improbable", is semantic and not a legal error. There can be no logical difference between completely improbable and completely implausible. Both express the absence of any reasonable likelihood, which means the evidence falls below the lower standard of proof. I also take note of Judge Graham's tripartite description of the appellant's truthfulness at paragraph 37. The use of the words, plausible, likely or credible, reassures me that Judge Graham has applied the lower standard of proof when assessing the protection claim.
16. Turning to the second ground, I agree with Mr Mills's analysis of the text. Judge Graham is careful not to say she required corroboration. She is entitled to take account of the absence of corroboration where the omission itself goes to the question of credibility, as here. The third ground falls away given what Judge Graham says at paragraph 29. There is no need for a judge to give a detailed account of what is settled law.

There was no challenge in the First-tier Tribunal to the established country guideline cases. The final ground falls away because of my other findings.

17. It follows that I am satisfied there is no legal error and Judge Graham's decision stands.

Decision

There is no legal error in Judge Graham's decision and I uphold her decision.

The appellant's appeal to the Upper Tribunal is dismissed.

Order regarding anonymity

I make the following order. I prohibit the parties or any other person from disclosing or publishing any matter likely to lead members of the public to identify the appellant. The appellant can be referred to as "AAM".

Signed

Date

12 December 2017

Judge McCarthy
Deputy Judge of the Upper Tribunal