



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/01499/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Glasgow

On 28 April 2017

**Decision & Reasons
Promulgated**

On 3 May 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

F E

(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Devlin (counsel) instructed by Latta & Co, solicitors

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

DECISION AND REASONS

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant, preserving the anonymity direction made by the First-tier Tribunal. No public interest is served by making the appellant's details known.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Gaskell promulgated on 5 December 2016, which dismissed the Appellant's appeal.

Background

3. The Appellant was born on 20 August 1993 and is a national of Iran. On 1 February 2016 the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Gaskell ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 1 March 2017 Deputy Upper Tribunal Judge Davey gave permission to appeal stating inter alia

1. The grounds seeking permission to appeal the decision [D] of First-tier Tribunal Judge Gaskell (the Judge) dated 5 December 2016 disclose an arguable error of law.

2. The Judge raises a fair point about the appellant's claim [D27] not being credible. However, the Judge expresses a personal view about how he expects the appellant would act without adequate reasons for rejecting the appellant's conduct in the UK [D27,28,29,30,31].

3. The appellant raises other criticisms of the Judge's assessment of the evidence, which appears to be founded upon what the Judge regarded as an overwhelming and central inconsistency in the appellant's account, namely the failure to take steps to trace V, his former lover, and go socialising on the gay scene in Glasgow.

4. All grounds may be argued.

The Hearing

5. (a) Mr Devlin, counsel for the appellant, moved the grounds of appeal. He told me that despite the length of the decision, the decision contains inadequate findings of fact and inadequate reasons. He told me that the decision is damaged by structural failing. He took me to [27] & told me that a fair reading of that paragraph of the decision indicates that the Judge had made a decision on credibility as a whole before considering the evidence in the case. He told me that from [28] to [32] the Judge sets out what appears to be reasoning, but that the reasoning contained there is inadequate and in any event the order in which the Judge deals with the crucial aspects of the case indicate that the Judge reached in unreasoned conclusion before rejecting the appellant's evidence.

(b) Mr Devlin told me that the Judge fell into an error of the nature encapsulated by Lord Justice Wilson in Mbanga v SSHD [2005] INLR 377 at paragraph 24:

What the fact finder does at his peril is to reach a conclusion by reference only to the applicant's evidence and then, if it be negative, to ask whether the conclusion should be shifted by the expert evidence.

(c) Mr Devlin told me that the opening sentence of [32] indicates that the Judge dealt with the appellant's evidence in isolation, before considering the evidence of other witnesses. Three people gave evidence before the First-tier, the appellant and his two witnesses. The Judge accepted the evidence of one witness and rejected the evidence of another, but manifestly does not consider that evidence until after the Judge had rejected the appellant's account in its entirety. Mr Devlin told me that that is a clear material error of law

(d) Mr Devlin took me to [31] of the decision and told me that there the Judge made a finding that no reasonable Judge would have made. There, the Judge focuses on the appellant's decision to socialise on the gay scene in Glasgow within 10 months of fleeing from Iran. He told me that between [27] and [32] the Judge expresses his own personal opinion about his expectations of the appellant, without adequately explaining his reasons for rejecting the appellant's evidence. He told me that the decision is based on the Judge's speculation rather than on findings of fact drawn from the evidence presented to the First-tier.

(e) Mr Devlin told me that at [32] the Judge simply declares that he rejects the appellant's evidence and does not adequately set out reasons, so that the informed reader has no idea why the Judge rejects the appellant's evidence. He described the findings at [32] and [33] to be nothing more than cursory and indicative of structural failing undermining the entire decision.

(f) He urged me to set the decision aside and to remit the case to the First-tier to be determined afresh.

6. (a) Mr Govan, for the respondent, told me that the decision does not contain any errors, material or otherwise. He relied on the respondent's rule 24 note dated 14 March 2017, and told me that the Judge made adverse credibility findings at [27] after considering all of the evidence in this case, and that at [29] and [30] the Judge explained his reasons for reaching that conclusion. He told me that the reasons for refusal letter in this case is detailed and attacks the appellant's credibility over 33 paragraphs. He told me that the Judge clearly took account of the contents of the reasons for refusal letter, and summarised them between [28] and [31] of the decision, setting out adequate reasons for rejecting the appellant's account.

(b) Mr Govan told me that the decision as a well-rounded assessment of the evidence; that the Judge correctly directed himself in law before reaching his decision, and that the Judge sets out why he accepted one of the appellant's witnesses to be credible and why he found the other to be neither a credible nor a reliable witness.

(c) Mr Govan told me that the decision does not contain a material error of law and that the grounds of appeal amount to nothing more than a disagreement with the conclusion reached by the Judge. He asked me to dismiss the appeal and allow the decision to stand.

Analysis

7. The Judge's decision contains 37 paragraphs. Between [1] and [3] the Judge sets out the background to the appeal. Between [4] and [10] the judge summarises the basis of the appellant's application. Between [9] and [11] (there is an error in the numbering of the paragraphs) the Judge summarises the respondent's reasons for refusal. Between [12] and [26] the Judge sets out the relevant law.

8. It is only at [27] that the Judge starts to consider the evidence in the case. At [27] the Judge effectively sets out a conclusion. He ends that paragraph by saying

I find there is an overwhelming and central inconsistency in the appellant's account; such that I find that it is not credible; and I reject it.

Before reaching that conclusion, the Judge does not set out any findings of fact, nor does he discuss the evidence.

9. At [28] the Judge summarises the appellant's account of the events that caused him to flee from Iran. In the final sentence of [28] the Judge sets out his expectation of the emotional effect forced separation from a lover would have on the appellant. The Judge does not explain how he comes to his conclusion, nor why his expectation is formed. The final sentence of [28] may be little more than speculation.

10. The speculation contained in the final sentence of [28] is the foundation for the reasoning set out in [29] and [30]. In essence, the Judge says that he would expect the appellant to be so upset by separation from his lover in Iran that he would devote his efforts to searching for his lover and be incapable of socialising in Glasgow. The Judge does not adequately explain how he reaches the conclusion.

11. Despite the amount of evidence that was placed before the Judge, and despite setting out the background to the application and the law over 26 paragraphs, the Judge's findings of fact are contained in three short paragraphs between [29] and [31]. At [32] the Judge emphatically rejects the appellant's account, but does not adequately say why.

12. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight

whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

13. I therefore find that the decision is tainted by material errors of law. A fuller fact finding exercise might have resulted in a different outcome to this appeal. I must, therefore, set the decision promulgated on 5 December 2016 aside.

14. I have already found material errors of law in the fact-finding process carried out by the First-tier in the decision promulgated on 5 December 2016. I therefore find exercise required to reach a just decision in this appeal.

Remittal to First-Tier Tribunal

15. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

16. In this case I have determined that the case should be remitted because a new fact finding exercise is required. None of the findings of fact are to stand and a complete re hearing is necessary.

17. I remit the matter to the First-tier Tribunal sitting at Glasgow to be heard before any First-tier Judge other than Judge Gaskell.

Decision

18. The decision of the First-tier Tribunal is tainted by material errors of law.

19. I set aside the Judge's decision promulgated on 5 December 2016. The appeal is remitted to the First-tier Tribunal to be determined of new.

Signed Paul Doyle

Date 1 May 2017

Deputy Upper Tribunal Judge Doyle

