Upper Tribunal

(Immigration and Asylum Chamber) **Appeal Number: PA/02781/2016**

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly	**Decision and Reasons Promulgated**
On 1.2. 2018	**On 7.2.2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

MAHDI ABDOLAHIYAN -SOHI

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Wood of IAS Manchester

For the Respondent: Mr McVitie Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. The Appellant was born on 10 February 1980 and is a national of Iran.

3. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
4. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Lloyd-Smith promulgated on 1 February 2017 which dismissed the Appellant's appeal against the decision of the Respondent dated 3 March 2016 to refuse the Appellants protection claim.
5. The refusal letter gave a number of reasons which were in essence that it was not accepted that the Appellant was at risk because it was not accepted that he was gay.
6. Grounds of appeal were lodged arguing: that the Judge was in error: the Judge failed to apply anxious scrutiny to the appeal; her assessment of the plausibility of the Appellants claim was flawed and her assessment of the documentary evidence was flawed.
7. On 15 May 2017 Designated First-tier Tribunal Judge Manuell refused permission to appeal. The application was renewed and on 22 August 2017 Upper Tribunal Plimmer gave permission to appeal on grounds 1-3. There was an additional ground that there had been procedural unfairness in that the Respondent did not produce a new refusal letter or put in writing her response to the additional claim put forward at the CMR that the Appellant was at risk on return because he was a Christian and how she dealt with the Court Attendance Note and the witness Mr Khorrami and the Appellant's mental health.

8. At the hearing I heard submissions from Mr Wood on behalf of the Appellant that:

   <u>Ground 1</u>

   (a) The Judge referred to having an arrest warrant (paragraph 11 and 19(ii) under the heading 'Documents'). The document she had before her, now at page 17 of the consolidated bundle (CB), is a document headed in the translation 'Court Attendance Note.'(CAN)

   (b) In relation to that CAN at paragraph 18 under the heading 'Screening Interview ' she refers to the warrant stating that he was wanted in relation to 'illicit material and hosting gay parties' when this is not what the CAN states.

(c)The Respondent relied on the COIS to challenge the CAN but the COIS related to an arrest warrant which this was not. There was nothing about the CAN that was inconsistent with the material about court documents and what was relevant was its reliability not authenticity.

(d) The Judge failed to acknowledge that the HOPO had no issue with the evidence of Reverend Jackson.

(e) The Judge failed to deal with the medical evidence at page 23 (consolidated bundle) and taken that into account in her assessment.

Ground 2/3

(f) The Judge in her assessment of the plausibility of the Appellants account makes no refence to HK v SSHD [2006] EWCA Civ 1037. She did not accept that the Appellant had a gay relationship or lived a gay lifestyle in Iran but she had background material before her (CB 35) which was the Respondents own material showing that there were venues, gay people met and if they lived a low profile they could live together. His account was therefore not inconsistent with the background material. She failed to take into account his claim that he was 'careful' at University. In relation to the party which the police raided there was no evidential basis for rejecting this account as at CB 35 it was stated that arrests at private home parties were common.

Ground 4

(g) The Respondent failed to set out the basis on which his claim to be a Christian was rejected.

(h) There was no requirement for the Appellant to obtain an expert report in relation to the CAN.

(i) In relation to the CAN issue was taken with the difference between the date of the incident and the date the document was served this issue was not put to the Appellant in cross examination and it was unfair if he did not know what points were being taken against him.

(j) In relation to the witness Milad it was irrelevant to take into account his demeanour. In relation to him leaving court before the Appellants case had finished there was no basis for drawing an adverse inference from this.

(k) The Judge failed to follow the Joint Presidential Note on Vulnerable Adults

(l) In relation to her adverse findings about amendments to the Screening Interview the Appellant made these before the substantive interview and he maintained that there were problems with interpretation.

9. The decision was the sum of its parts and was unsafe.

10. On behalf of the Respondent Mr McVitie submitted that :

(a) In relation to the allegation of procedural unfairness the Appellant made a late claim at the CMR that he had converted to Christianity. The Respondent having agreed to deal with a new issue was entitled to challenge this even if it was not in the refusal letter.

(b) It was of course open to the Appellant to make amendments to the SI but the Judge was also entitled to make adverse findings arising out of those changes if they are significant.

(c) In relation to the claim that the Appellant was a vulnerable witness it was open to the Judge to reject the evidence relied on to suggest that the Appellant was vulnerable. The amended letter now produced by the Doctor was not of course before the Judge.

(d) In relation to calling the CAN an arrest warrant it was still a document requiring his attendance at court. The Judge directed herself appropriately in relation to the evidence. The mistake in the name was not material. The Judge had to look at the document in the round.

(e) In relation to the *Dorodian* witness the Judge did not have to explicitly accept that she was honest although she appears to have done so.

(f) The Judge was entitled to take into account the plausibility of the Appellants account of the party that led to the police being called.

Finding on Material Error

11. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.

12. In a very detailed analysis of the evidence before her it is alleged that the Judges assessment does not reflect an anxious scrutiny because of mistakes she made.

13. It is a trite observation that a judge need not address in detail every single argument advanced before her, nor consider in isolation every single piece of evidence. She must weigh all of the evidence before her, and give clear reasons for her conclusions such that the parties, and in particular the losing party, can understand the reasons for her decision. In this case the Judge set out at paragraph 16 that she did not find the Appellant to be a credible witness finding that his evidence was inconsistent between his various accounts, unreliable and evasive and then summarises thereafter reasons for her findings. She then detailed her reasons for coming to that conclusion under various headings.

14. While the Judge in her summary of the documents before her refers to a 'warrant of arrest ' at paragraph 11 in her detailed assessment of the Appellants 'Documents' at paragraph (ii) she was clear that what she had been provided with was a Court Attendance Note. Any references to it as a warrant may have been due to the fact that this was what the Appellant called the document that had been issued at Q148 of the AI ('they have an arrest warrant.') and she refers at Documents (ii) to him having been asked to try and obtain this arrest warrant he had referred to. While there is another reference to it as a warrant at 'Screening Interview (iv) and that it related to' illicit material and hosting gay parties' I am satisfied that this was a simple error and does not suggest she did not carefully examine the correct document as she accurately states under the heading 'Documents' that the reasons for the notice was '*possessing indecent films and images and having illicit relations.'*

15. In her assessment of the CAN the Judge at paragraph 12 had directed herself correctly as to the law in Tanveer Ahmed but gave a number of reasons which were open to her as to why she did not, as she states find it reliable: no where

does she state she was looking at authenticity. It was open to the Judge to comment on the lack of expert evidence given that the Appellants representative, Mr Adejumbo of IAS, had advised the court on 14 November that they had instructed an expert in relation to what he called a 'court summons' and that they required the substantive hearing to be vacated as the report would not be ready. That such a report was never served after a 2 month adjournment to obtain it was a clear basis for the Judges comment. It was open to the Judge to note that the claim that the CAN had been served on his mother in relation to indecent films and illicit relations was inconsistent with his cousins account that the document related to the fact he had a 'gay party' referred to in the AI at Q148, the SI in which he was said to be wanted in respect of a sexual assault on another male and what he later said in oral evidence. It was open to the Judge to question why when it is claimed that the police had attended in possession of a warrant on 25 October 2015 the date of the CAN is 15 June 2016. She also noted that there was no evidence of how the documents came into possession of the Appellant. These were all matters the Judge was entitled to take into account in her assessment of the reliability of the documents where the burden was on the Appellant to establish their reliability.

16. In relation to the Judges assessment of the plausibility of the Appellants account of his lifestyle and the party which was a central feature of his case the Judge was entitled to look at the plausibility of the account. She was not required to refer to specific caselaw provided her approach was correct. The assessment of credibility may involve an assessment of the plausibility, or apparent reasonableness or truthfulness of what was being said. This could involve a judgement on the likelihood of something having happened, based on evidence or inferences. Background evidence could assist with that process, revealing the likelihood of what was said having occurred. Background evidence could reveal that adverse inferences which were apparently reasonable when based on an understanding of life in this country were less reasonable when the circumstances of life in the country of origin were exposed. Plausibility was an aspect in the process of arriving at a decision, which might vary from case to case, and not a separate stage in it.

17. It is a trite observation that a judge need not address in detail every single argument advanced before her, nor consider in isolation every single piece of evidence. She must weigh all of the evidence before her, and give clear reasons for her conclusions such that the parties, and in particular the losing party, can understand the reasons for her decision. She was entitled to consider whether his claim to have realised he was gay and then have without any issues 4-5 gay relationships and a lengthy one with Saied was consistent with the 'hostility and dire consequences ' that could follow from such relationships. It was open to her to be concerned in essence about his account of openly identifiably gay men, identifiable by their walk and makeup which she found was inconsistent with the objective material about their isolation and repression. The material relied on by Mr Wood at page 35 talks of gay people keeping a low profile and this did not appear to be what the Appellants account described. In relation to the party the fact of such parties occurring is of course set out in the background material but the Judge was not required to accept that this one occurred as the Appellant claimed and she set out a number of reason at paragraph 18 'Party' (ii)- (vi) including why the police would use flashing lights if they intended to raid the party, why would the police raid the party and break down the door (but then knock on the door of their party) if it was simply a complaint about music.

18. In relation to the argument that the Judge failed to treat the Appellant as a vulnerable witness the Judge gave clear reasons at paragraph 18 'Documents' (i) why she attached no weight to the doctors letter which in the body of the letter referred to another person entirely. The letter amending that mistake was not before the Judge and on the basis of what was before her she reached that there was no reliable evidence before her that there was a basis for treating the Appellant as vulnerable.

19. In relation to the criticism of the Judges approach to the Screening Interview it was open to the Judge to the Judge at paragraph 18 'Screening Interview' (i)–(iv) (actually (v) as there were two paragraph (iii)s) to draw attention to matters that concerned about the Screening Interview and how it differed from his later account taking into account his later amendments: she was not bound to accept

that such amendments addressed these concerns. Thus it was open her to note that the reason he gave for fleeing was significantly different , that he sexually assaulted another male and that this was how he summarised the reason for fleeing at 4.1 and he confirmed that he had been accused of an offence of assault at 5.6. She notes that he made no mention of the conduct of the interview at the time or of any distractions which he later referred to but was able to correct a date in one of the answers but not the two separate references to him assaulting someone. Given that he corrected a date it was open to her to conclude that the interview was read back to him and question why he failed to amend what he now said was such a fundamental mistake at two separate places in the SI. She also noted that his comment '*I never thought I would do this'* was more consistent with regret for an assault rather than his fear arising out of his sexuality. She also notes that the level of detail about his education, being fingerprinted his journey did not sit well with his claim to have been distracted.

20. In relation to the criticism of the Judges assessment of the Appellants witness Mr Khorammi which she dealt with at paragraph 19 'Gay Relationship' it is wrong to suggest she referred to his demeanour what she said is that he had to be told to face the Judge as he looked to the Appellant for guidance and answers from which she was entitled to draw an adverse inference. It was of course then open to her to note at (a)- (f) a number of inconsistencies between the evidence of the Appellant and Mr Khorammi that cumulatively that undermined his credibility. It was not unreasonable to find it surprising that given the nature of their relationship and having been told he could stay as soon as the witness gave evidence he left court with no explanation and little acknowledgement of the Appellant.

21. In relation to the claim that it was procedurally unfair for an application for an adjournment to be refused and for the Judge to proceed when the Respondent had not issued a new refusal letter or otherwise put in writing their challenges to his claimed conversion I am satisfied that there was no unfairness. In Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC) it was held that Where an adjournment refusal is challenged on fairness grounds, it is important to

recognise that the question for the Upper Tribunal is not whether the FtT acted reasonably. Rather, the test to be applied is that of fairness: was there any deprivation of the affected party's right to a fair hearing.

22. In relation to the argument that it was unfair to refuse an adjournment the chronology and the circumstances whereby the case came before the Judge and in which the Appellant raised a new matter, a factual matrix that was not set out in his grounds of appeal or raised at the first CMR on 14 November 2016 was set out in the Judges decision at paragraph 15. The Appellant appeared in person at the CMR on 4 January 2017 and produced a bundle that included evidence as to his conversion to Christianity. The case was adjourned to a substantive hearing date on 24 January 2017 although there is no record of the issue of the consent of the Respondent being addressed. Mr Wood came on record the day before the hearing on 23 January 2017 and requested an adjournment on the basis that he needed to take full instructions to include his account of 'all aspects of his case, including those which were not explored at the asylum interview.' That application was refused by Designated Judge McClure who noted that the case had already been adjourned for 2 months at the request of the Appellant previous representatives, if the Appellant wished to instruct new solicitors it was a matter for him. The Judge notes in paragraph 15 'there was no renewal of an adjournment application at the beginning of the hearing or at any stage.' The Judge notes that Mr Woods skeleton argument which contained at paragraph 13 an argument that it was procedurally unfair to refuse an adjournment had been the Judge noted:

> *"Placed on my bench prior to me entering court. Mr. Wood saw that I had not had the opportunity to read this, did not invite me to do so prior to the hearing commencing and did not renew his adjournment request. He only asked that the reasons for the refusal of the adjournment be read to him, which it did, did no more."*

23. I therefore find that the Judge was entitled to assume that Mr Wood was ready to proceed having been provided with a full bundle and Mr Wood not renewing his application nor alerting the Judge to the argument contained in his skeleton argument. There was no procedural unfairness in proceeding when no application for an adjournment was made.

24. In relation to the new issue raised at the second CMR the Appellants conversion to Christianity the statutory powers of the court although not explicitly referred to by the Judge are set out at s 85 and 86 of the Nationality Immigration and Asylum Act 2002 and in so far as they are relevant to this appeal provide

(4) On an appeal under section 82(1) against a decision the Tribunal may consider any matter which it thinks relevant to the substance of the decision, including a matter arising after the date of the decision.

(5) But the Tribunal must not consider a new matter unless the Secretary of State has given the Tribunal consent to do so.

(6) A matter is a "new matter" if— (a)it constitutes a ground of appeal of a kind listed in section 84, and (b)the Secretary of State has not previously considered the matter in the context of—

(i) the decision mentioned in section 82(1), or

(ii) a statement made by the appellant under section 120.

86. Determination of appeal

(1) This section applies on an appeal under section 82(1)

(2) The Tribunal must determine—

(a) any matter raised as a ground of appeal, and

(b) any matter which section 85 requires it to consider."

25. There is therefore a requirement for the Tribunal to deal with a new matter of the Respondent consents. It would appear in this case that the Respondent implicitly consented to deal with this new matter as the Judges record of proceedings noted at the beginning of the hearing that the parties agreed that if the Judge found that the Appellant was 'gay/Christian' the appeal would succeed.

26. The Appellant relied in their skeleton argument on Rule 24 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 which provides:

"24. - (1) Except in appeals to which rule 23 applies, when a respondent is provided with a copy of a notice of appeal, the respondent must provide the Tribunal with —

(a) the notice of the decision to which the notice of appeal relates and any other document the respondent provided to the appellant giving reasons for that decision;

(b) any statement of evidence or application form completed by the appellant;

(c) any record of an interview with the appellant in relation to the decision being appealed;

(d) any other unpublished document which is referred to in a document mentioned in subparagraph (a) or relied upon by the respondent; and

(e) the notice of any other appealable decision made in relation to the appellant. (2) The respondent must, if the respondent intends to change or add to the grounds or reasons relied upon in the notice or the other documents referred to in paragraph (1)(a), provide the Tribunal and the other parties with a statement of whether the respondent opposes the appellant's case and the grounds for such opposition.

(3) The documents listed in paragraph (1) and any statement required under paragraph (2) must be provided in writing within 28 days of the date on which the Tribunal sent to the respondent a copy of the notice of appeal and any accompanying documents or information provided under rule 19(6).

27. However failure to comply with Procedure Rules is not automatically fatal under Rule 6:

6. - (1) An irregularity resulting from a failure to comply with any requirement in these Rules, a practice direction or a direction does not of itself render void the proceedings or any step taken in the proceedings.

(2) If a party has failed to comply with a requirement in these Rules, a practice direction or a direction, the Tribunal may take such action as it considers just, which may include—

(a) waiving the requirement;'

28. I note again that this matter was not raised in advance of the hearing commencing and was not raised in Mr Woods letter of 23 January 2017 to suggest that his client was disadvantaged by not having the fact that the Respondent did not accept that the Appellant had genuinely converted to Christianity, which was the basis of their challenge in the course of the hearing, committed to writing. This argument was contained within the skeleton argument and not raised before the hearing started. The Judge makes clear that at paragraph 16 that the Appellant was given the opportunity to present this aspect of his case and of course called witnesses and it was explored during cross examination. The Judge was clearly satisfied that that having consented to deal with a new matter raised at a late stage the Appellant was not deprived of the opportunity to advance his claim and have it tested in court. There was no procedural unfairness.

29. I was therefore satisfied that the Judge's determination when read fairly and as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning and did not deprive the Appellant of the opportunity of a fair hearing..

CONCLUSION

30. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

31. **The appeal is dismissed.**

Signed Date 2.2.2018

Deputy Upper Tribunal Judge Birrell