



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04203/2016

THE IMMIGRATION ACTS

Heard at Manchester
On April 16, 2018

Decision & Reasons Promulgated
On April 24, 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MR MSM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Mottershaw, Counsel, instructed by GMIU

For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I extend the anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and direct that unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her 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.

2. The appellant is an Iranian national. On October 24, 2014 he applied for asylum but his application was refused on April 5, 2016.
3. The appellant lodged grounds of appeal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on April 26, 2016. His appeal came before Judge of the First-tier Tribunal Raikes (hereinafter called "the Judge") on May 9, 2017 and in a decision promulgated on May 30, 2017 the Judge refused his appeal on all grounds.
4. The appellant appealed the decision on June 13, 2017. Permission to appeal was initially refused by Judge of the First-tier Tribunal Chamberlain on September 19, 2017. Those grounds were renewed and on November 9, 2017 Deputy Upper Tribunal Judge Taylor found it arguable the Judge may have erred by failing to provide adequate reasons on a number of matters.
5. The respondent filed a Rule 24 response dated December 8, 2017 in which she opposed the setting aside of the decision.
6. The matter came before me on the above date and the parties were represented as set out above.

SUBMISSIONS

7. Miss Mottershaw adopted the grounds of appeal and submitted that cumulatively there was an error in law.
8. The Judge found that the appellant had referred to "the computer" as his computer but had later referred to it as his mother's computer. The Judge failed to have regard to the appellant's witness statements in which he made it clear that the computer was a shared computer and that reference to his and hers did not reflect actual ownership.
9. The Judge concluded that it lacked credibility his aunt and uncle had not been approached despite their photographs being on the computer. She submitted that the authorities would not have identified them merely from the photographs and therefore they would not have located them. The difference between his "aunt and uncle" and his mother was that the appellant and her had taken the computer to a repair shop and it was from an examination of the computer the intelligence services obtained the photographs. The Judge was therefore wrong to find it wholly implausible that his aunt and uncle were not identified and spoken to.
10. The Judge criticised video footage which showed the exact same scene but failed to take into account that a number of individuals were present who also photographed and videoed the incident.
11. The Judge stated that the two photographs did not identify the witness because they were taken of his back or when he had his side to the camera. The Judge overlooked

a further picture which showed the witness's facial features clearly and this amounted to an error.

12. The Judge did not have full regard to the appellant's age when he was interviewed or consider whether that he had understood questions put to him in his interview. Miss Mottershaw submitted the Judge should have considered whether any inconsistencies could be explained by his young age and should have ensured that the appellant had understood all the questions in his interview.
13. The Judge had before her an expert report from Dr Kakhki but failed to adequately consider that report and whether the appellant would be at risk.
14. Mr Bates opposed the application. The Judge had considered the photographs that were found on the computer and he submitted that this ground of appeal did not go to the core of the claim. The issue was not whose computer it was but that the appellant had provided two different accounts about the computer and the timing of when he and his mother encountered problems. Taken together the Judge was entitled to make the findings she did in paragraphs 26 and 27 of her decision.
15. The Judge considered the evidence regarding the appellant's aunt and uncle and the findings she made in paragraph 29 of her decision were not implausible and were open to her. The appellant had claimed that his mother was on the radar of the authorities, so the Judge was entitled to consider how she was able to wander off and meet her husband who was supposed to be a member of PJAK. The Iranian authorities are known for their interrogation methods and are not adverse to locating family members. The Judge's findings were open to her.
16. The Judge considered the evidence presented and concluded that as PJAK did not allow the videoing of events that it was unlikely so many people would have been videoing the same incident as was now being argued. In any event, there was no evidence apart from that given by the appellant that the male identified by him as his father was actually his father. The witness who attended the hearing was unable to confirm they were related. The Judge ultimately concluded that the appellant had not attended the camp.
17. Whilst he was a minor when he attended his screening interview he was nevertheless over the age of 17 and he had signed the screening interview and been provided with a copy. He was represented when he attended his substantive interview and there is no evidence in the interview that either the appellant or his legal representative were unhappy with the conduct of that interview. He submitted that the appellant's age and the submission that he was unhappy with his interview content did not have any merit. At the time of his substantive interview he was no longer a minor and was almost 18 $\frac{3}{4}$ years of age.
18. Mr Bates invited me to reject the application but Miss Mottershaw submitted that five of the ten inconsistencies, identified by the Judge, had been challenged and this supported her claim that there was an error in law. She relied on the cases of AT

(Guinea) [2006] EWCA Civ 1889 and AM (Afghanistan) and the Secretary of State for the Home Department [2017] EWCA Civ 1123.

CONSIDERATION AND FINDINGS

19. In considering the appellant's appeal the Judge had regard to the Joint Presidential Guidance Note number 2 of 2010 "Child, Vulnerable Adult and Sensitive Appellant Guidance". This document provides the correct approach when dealing with a child or vulnerable adult. The Judge specifically noted at paragraph 2 of her decision that she had regard to this document. The Judge also made clear that she had had regard to the various bundles that had been submitted by the appellant's representatives between October 14, 2016 and May 2, 2017. The Judge was aware of the expert report of Dr Kakhki and the witness statements of both the appellant and his witness, DM.
20. The Judge noted ten inconsistencies in the appellant's evidence and the grounds of appeal challenged five of those inconsistencies. Miss Mottershaw agreed that the remaining inconsistencies had not been challenged but argued that the matters raised by her were material and undermined the Judge's findings.
21. In reaching her final decision the Judge made it clear that she had compared the oral evidence with the previous accounts provided by the appellant in his statements and interview.
22. Key to the appellant's claim was the seizure of a computer which was said to have contained photographs of the appellant and others dressed in PJAK uniform. The Judge noted in the appellant's screening interview that the appellant claimed the photographs were stored on his own computer although later in the same interview he claimed that it was his mother's computer. The appellant subsequently stated that the computer was shared and there was no difference in his own mind. The appellant did not suggest that his answer had been incorrectly recorded but simply that he meant the computer was shared. This was something the appellant sought to clarify in his statement and formed the first ground of appeal.
23. If the Judge had only rejected the appellant's appeal based on this purported inconsistency then I am in no doubt that would have amounted to a potential error in law but this was not the only basis on which the Judge rejected the claim. The Judge noted the inconsistency and it was one of ten inconsistencies that the Judge found.
24. A second highlighted inconsistency concerned what was recovered from the computer. The appellant, in his screening interview, stated it was the technician who had reported the photographs to the intelligence services and thereafter rang his mother the following day whereas the appellant later claimed the technician had rung his mother to inform her that the intelligence services had taken the computer as distinct to the technician reporting the photographs to the intelligence services. This inconsistency does not appear to have been challenged in the grounds of appeal but was one of the factors relied on by the Judge to find the appellant's claim to lack credibility.

25. There was also inconsistency surrounding the timing of the report to the authorities with the appellant claiming in his asylum interview that the problems occurred around two months after they returned from the mountains whereas in his statement, dated September 10, 2015, he stated it was four months after his claimed returned visit to his father.
26. The grounds of appeal took issue with the fact that the appellant was a minor at his screening interview and his substantive interview was not fully understood. There is nothing contained in his substantive interview that supports Miss Mottershaw's submission that the Judge erred in with regard to either interview. The Judge made it clear that he had regard to the Presidential Guidance when considering his evidence. The appellant was not a young teenager but was in fact almost an adult when he underwent his screening interview. He was also represented by a legal representative during his substantive interview. No issue was raised at the time of the interview.
27. Turning to the issue of the photographs that were found on the computer the appellant claimed that his mother, and, uncle and himself were all pictured in PJAK clothes. Miss Mottershaw submitted that the Judge was wrong to make an adverse finding concerning the failure of the authorities to interview his aunt and uncle but the Judge in paragraphs 29 to 33 dealt with this issue and explained why he made that adverse finding. Miss Mottershaw's submission on this issue amounts to a disagreement with the Judge's conclusion. Her conclusion is neither irrational nor inadequate.
28. Miss Mottershaw challenged the fact that the photographs relied on by the appellant showed exactly the same scene sent by a different witness. The grounds submit that more than one person could have taken the same picture but again the Judge considered the evidence and concluded at paragraph 35 that it lacked credibility that firstly someone else would have the identical video and secondly, given the security in place at such meetings, that videoing would freely have taken place. Miss Mottershaw's submission on this issue similarly amounts to a disagreement.
29. At paragraph 38 of his decision the Judge addressed photographs which purported to identify the witness in the same camp and at the same time as the appellant. The Judge clearly reviewed all the photographs as he refers to them in her decision.
30. The Judge made the finding that the appellant had stated the photographs were taken by his aunt and uncle as against the witness who claimed to have taken. The Judge applied the principles of Tanveer Ahmed and rejected them as being self-serving and designed to support his claim. At paragraph 39 the Judge concluded that given the lack of evidence as to the origin and absence of any evidence as to his friend's ability, or method, of source and together with the lack of evidence in respect of the appellant's father that she could attach no weight to the photographs.
31. Miss Mottershaw also challenged the Judge's approach to the expert report of Dr Kakhki. The Judge considered this report and the treatment of Kurds by the Iranian authorities. The Judge was satisfied that the country guidance decision SSH and HR

(illegal exit: failed asylum seeker) CG [2016] UKUT 308 (IAC) had considered the issues being raised and she also had regard to the additional objective evidence that had been submitted. She considered the expert's conclusion at paragraph 44 and stated that she saw no reason to depart from the country guidance case on the basis of this report in view the fact the expert had actually given evidence to the Tribunal.

32. Ultimately this case was about credibility and this was not a case which turned on one particular point but was a case where the Judge identified numerous matters which she found either to be inconsistencies or implausible. Those findings were open to the Judge.
33. I do not therefore find any error of law on the issues raised in this appeal.

DECISION

34. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I uphold the decision.

Signed

Date 23/04/2018



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I do not make a fee award because I have dismissed the appeal

Signed

Date 23/04/2018



Deputy Upper Tribunal Judge Alis