



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/04568/2018

THE IMMIGRATION ACTS

Heard at North Shields

On 9 November 2018

**Decision & Reasons
Promulgated**

On 15 November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

**G. H.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Weatherall, Counsel, instructed by Halliday Reeves

For the Respondent: Mr McVeety, Home Office Presenting Officer

DECISION AND REASONS

The Appellant is a national of Iran who entered the UK unlawfully, and made a protection claim on 10 October 2017 upon being apprehended having done so. That application was refused on 24 March 2018, and his appeal against that refusal came before the First-tier Tribunal at North Shields on 9 May 2018, when it was heard by First-tier Tribunal Judge Head-Rapson. The appeal was dismissed on asylum and human rights grounds, in a decision promulgated on 10 May 2018.

The Respondent's application for permission to appeal the decision was granted by First tier Tribunal Judge Froom on 4 June 2018 on the ground that it was arguable the Judge had failed to engage with the numerous credibility points raised and relied upon by the Respondent.

There has been no application to adduce further evidence pursuant to Rule 15(2A) and there has been no response to the grant of permission by way of Rule 24 Notice by the Respondent. Thus the matter comes before me.

The grounds identify nine different credibility points raised by the Respondent in the reasons given for the refusal of the protection claim, which it is said the Judge has failed to engage with. Before me it was agreed by the parties that there was simply no reference at all to seven of them. Although Mr McVeety accepted that there was what he described as an oblique reference to two of them, he put the Respondent's case on these two as being that the Judge's language failed to make any clear finding of fact upon them.

Thus, whether there were seven, or nine, credibility points that the Judge had failed to engage with, it was argued on behalf of the Respondent that it was clear the Judge had failed to properly engage with the Respondent's case, so that he had been denied a fair hearing. Alternatively, adequate reasons for the overall decision to allow the appeal had not been given, because the Respondent was unable to see why that overall decision had been reached in the face of these credibility points; MD (Turkey) [2017] EWCA Civ 1958.

Ms Weatherall's counter was that a proper analysis of the Appellant's answers at interview provided an answer to each of the credibility points that the Respondent had relied upon in the reasons given for the refusal of the protection claim. That submission was not tested, because there was no need to do so. It is a submission that misses the point at the heart of the Respondent's complaint; that there was not a fair hearing case because the Judge failed to engage adequately with his case. That complaint is clearly made out in my judgement, and it amounts to a material error of law; R (Iran) [2005] EWCA Civ 982. The decision is not saved by the opening sentences of the concluding paragraph [39] in which the Judge observed that "*The Appellant's evidence was consistent, unembellished and the Appellant gave a credible account. The information the Appellant has provided is coherent and credible.*" Such observations must be properly rooted in what has gone before, and follow sustainable reasons, otherwise that would be all that the Tribunal ever needed to say.

In circumstances such as this, where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the parties of the opportunity for their case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 13 November 2014. Moreover the extent of the judicial fact finding exercise required is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 13 November 2014.

To that end I remit the appeal for a fresh hearing by a judge other than Judge Head-Rapson at the North Shields Hearing Centre. A Kurdish Sorani interpreter is required. The Appellant wishes to lodge further evidence, namely the document that the Judge had refused to admit in evidence at the hearing, and he may do so provided it is filed and served within the next 7 days. Otherwise there is no need to file further evidence since there has been no material change to the Appellant's circumstances. As a result the appeal may be listed as a short notice filler, so long as that is after 19 November 2018.

Notice of decision

1. The decision did involve the making of an error of law sufficient to require the decision to be set aside on all grounds, and reheard. Accordingly the appeal is remitted to the First Tier Tribunal for rehearing de novo, with the directions set out above.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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.

Signed
Deputy Upper Tribunal Judge J M Holmes

Date 9 November 2018

A handwritten signature in black ink, appearing to be 'J M Holmes', written in a cursive style with a large loop at the end.