



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09862/2017

THE IMMIGRATION ACTS

Heard at Bradford
On 5 July 2018

Decision and Reasons Promulgated
On 9 July 2018

Before

Deputy Upper Tribunal Judge Pickup

Between

Hawker [I]
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr T Hussain, instructed by Bankfield Heath Solicitors

For the respondent: Ms R Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge O'Hanlon promulgated 6.12.17, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 20.9.17, to refuse his protection claim.
2. First-tier Tribunal Judge Adio granted permission to appeal on 9.1.18.

Error of Law

3. For the reasons summarised below I found no material error of law in the making of the decision of the First-tier Tribunal such as to require it to be set aside.
4. The basis of the appellant's protection claim was that he engaged in an unapproved relationship with a young woman. He also fears that the Pasdar will kill him. He claims to have left Iran on 12.12.15. However, the evidence suggested that he was fingerprinted in Bulgaria in September and October 2015. Judge O'Halon found the appellant's factual claim not credible.
5. The grounds assert that the judge failed to apply the correct standard of proof and failed to reconcile the expert report. It is asserted that the judge did not expressly direct himself in respect of the standard of proof and the incorrect standard of proof stated at [45] of a balance of probabilities is compounded by the judge's statement that this finding impacts on the appellant's credibility.
6. In granting permission to appeal, Judge Adio noted that the only express reference to the standard of proof was at [45] of the decision where the judge found on the balance of probabilities that the appellant had been fingerprinted in Bulgaria in September and October 2015, so that this cast doubt on the general credibility of his account. Despite the judge's reference at [48] to not being satisfied that the appellant's account was reasonably likely to be true, Judge Adio considered "*on the whole bearing in mind the judge refers to what is clearly an incorrect standard of proof in an asylum claim, i.e. the balance of probabilities and used one finding to cast doubt on the appellant's account generally it raises serious doubt as to the standard of proof applied on the rest of the credibility finding regardless of the judge's finding at paragraph 48.*"
7. The Rule 24 reply, dated 15.2.18, points out that that appellant accepted that he had been fingerprinted in Bulgaria in 2015. "*The judge found that this was the case, applying the balance of probabilities test which would be the appropriate test. This does not suggest that the judge applied the incorrect standard of proof to the remainder of the asylum claim. The judge made adequate findings of fact at paragraph 46 and onwards.*" It is also asserted by the Secretary of State that the judge properly considered the expert report, as set out at [42] of the decision and made adequate findings in respect of it.
8. I agree with the response of the Secretary of State. The judge did apply the correct standard of proof of a balance of probabilities, the burden being on the Secretary of State, in relation to the assertion by the respondent that the appellant had been fingerprinted in Bulgaria in September and October 2015. The judge considered the available evidence and the appellant's admission to having been fingerprinted in Bulgaria and was entitled to reach the conclusion that this was in September and October 2015. The relevance is that the appellant claimed not to have left Iran until 12.12.15. The finding was, therefore, clearly relevant to and undermined the appellant's general credibility.
9. The judge set out the correct standard of proof when explaining the law at [5], [6] and [7] of the decision, and was clearly applying the correct standard of reasonable likelihood at [48] of the decision, stating, "*Having considered all of the evidence before me*

in the round, I am not satisfied that the appellant's account is reasonably likely to be true and I therefore reject it in its entirety."

10. In the circumstances, there is no merit in this ground of appeal.
11. In relation to the issue of the tribunal's consideration of the expert report, the judge specifically stated that this had been considered in the round, in other words in the context of the evidence as a whole, and noted at [42] that the expert considered the appellant's account was plausible and that his life would be in danger. However, the judge also noted that there was little direct analysis of the appellant's claim and little direct reference to the appellant or his the claim in the body of the report.
12. Whilst the judge considered the report was helpful in setting out background information, and did rely on it at [44] in accepting the danger the appellant would face if the relationship had been discovered, the judge concluded that it was of little assistance in reaching conclusions on the plausibility or otherwise of the appellant's claim. Mr Hussain's submission is that the report was relevant to the overall assessment of credibility and should have been considered in the context of the evidence as a whole. Whilst that proposition is right in principle, in reality the point the judge was making was that the theoretical plausibility of the alleged account was of limited value in assessing the credibility of the claim. "Little assistance" does not mean that it was of no assistance or was rejected outright.
13. I note that the judge went on to assess the credibility of the specific claim applying paragraph 339L of the Immigration Rules and giving cogent reason as to why the claim was rejected on credibility grounds. The judge made some findings in the appellant's favour but noted how the claim was vague and lacking in detail, and was concerned about inconsistencies in the account. That he was fingerprinted at a date when he claimed to be still in Iran cast further doubt on his credibility. In reality, in the light of the judge's specific findings in relation to credibility, an expert's opinion as to the general plausibility or otherwise of a claim to risk based on pre-marital sex, honour violence or killings in Iran based on country background information was of little ultimate value, even if it confirmed that the basis of the claim was plausible.
14. I am satisfied that even if the judge should have indicated in a more clear way that the fact that the claim was plausible when set against country background information and expertise had been taken into account in the overall credibility assessment, on the facts of this case of the outcome would undoubtedly have been the same. The weight an abstract opinion as to plausibility of an asserted scenario can have when considered in the context of vagueness, inconsistency and untruths has to be very limited. If there was an error in the decision in this regard, I am satisfied that it was not material. Nit-picking at the way in which the decision is worded in this way fails to appreciate the overall assessment that was made of the facts with findings cogently reasoned.
15. In the circumstances, I find no material error in the decision of the First-tier Tribunal sufficient to require the decision to be set aside.

Decision

16. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal of the appellant remains dismissed on all grounds.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014.

Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable and the appeal has been dismissed so there can be no fee award.



Signed

Deputy Upper Tribunal Judge Pickup

Dated