



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12517/2016

THE IMMIGRATION ACTS

Heard at Glasgow
on 8 January 2018

Decision & Reason Promulgated
On 10 January 2018

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

HEDI MOHAMMEDI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

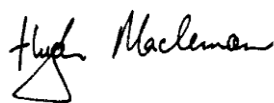
Respondent

For the Appellant: Mr E MacKay, of McGlashan MacKay, Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. By a decision promulgated on 20 July 2017 FtT Judge Mill dismissed the appellant's appeal on all available grounds.
2. The appellant's application dated 4 August 2017 states 7 grounds of appeal to the UT. Permission was granted on 25 October 2017 on grounds 1 and 3 - 7, but not on ground 2.

3. Ground 1 complains about the FtT's findings based on not claiming in other countries, because passing through them while mainly confined to the back of lorries did not constitute a reasonable opportunity to do so.
4. This ground is only disagreement. The judge was not bound to accept that the appellant was in difficulty over claiming asylum elsewhere if he chose. He was being transported at his own expense and choice.
5. Ground 3 complains about adverse findings based on the appellant not giving exact descriptions of leaflets he claimed to have distributed, including their number and size, or the exact period spent on distribution.
6. The respondent had no answer to this issue. To describe leaflets as about A4 size and to describe their layout in terms of colours, without specifying writing or photographs, is hardly a lack of definition materially damaging to credibility (¶19-22). To describe a period of time as "late at night" and as "around 3 hours" is hardly a lack of definition which undermines the account (¶23-24). The deficiencies found in this aspect of the account were at a level beyond what might be expected of ordinary recall. They verged, as put in the grounds, on expectation of a photographic memory for details of events and times.
7. The respondent also acknowledged that ground 4 was well taken. The appellant had not said at interview that he went to the mountain to pick up materials, but nor had he said anything inconsistent, and the respondent did not identify any question asked at interview in response to which this detail should naturally have emerged. There was no "significant inconsistency" (¶26).
8. Grounds 5 - 7 disagree and assert absence of reasoning, although perhaps on points of lesser force.
9. As a whole, the grounds and submissions show that the decision cannot safely stand as a resolution of the case.
10. The decision of the FtT is **set aside**. It stands only as a record of what was said at the hearing.
11. The nature of the case is such that it is appropriate in terms of section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to **remit the case to the FtT** for an entirely fresh hearing.
12. The member(s) of the FtT chosen to consider the case are not to include Judge Mill.
13. No anonymity direction has been requested or made.



9 January 2017
Upper Tribunal Judge Macleman