Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07432/2018

THE IMMIGRATION ACTS

Heard at North Shields	**Determination & Reasons Promulgated**
On 22 March 2019	**On 29 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

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

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Cleghorn, Counsel, Aman Solicitors
For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of Iran, entered the UK illegally, in November 2017 and made a protection claim. That was refused on 30 May 2018, and the Appellant's appeal against that decision was then heard and dismissed by

First Tier Tribunal Judge Gumsley in a decision promulgated on 23 July 2018.

2. The Appellant's application for permission to appeal was granted by Deputy Upper Tribunal Judge Chalkley on 19 November 2018.
3. No Rule 24 Notice has been lodged in response to the grant of permission to appeal. Neither party has applied pursuant to Rule 15(2A) for permission to rely upon further evidence. Thus the matter came before me.

The challenge

4. When the appeal was called on, both representatives confirmed that they considered that the terms in which the grant of permission had been cast did not reflect the challenge advanced in the grounds. Ms Cleghorn confirmed that she did not adopt the terms of the grant of permission, and indeed she disowned it. In the circumstances I invited her to make her submissions based upon the grounds themselves.
5. Ms Cleghorn (who was not their author) confirmed that although the grounds were drafted in such a way as to suggest three complaints, in her view, and in reality, they offered a single challenge; namely that the Judge erred in his approach to the record of the screening interview, and had thus placed too much weight upon the content of the record of the screening interview, when he should have placed no weight upon it.
6. The grounds complain about paragraphs 36-8, 41-2 and 50 of the decision, and go so far as to complain that the Judge's approach to the evidence was irrational and unjust. I take that to be a perversity challenge, which as noted in Miftari imports a high threshold.
7. The grounds assert that the Appellant never had the opportunity to verify the content of the interview record because his answers were never read back to him. The grounds are not supported by any further evidence from the Appellant on the matter, and there has been no application from him to adduce evidence before me in support of his challenge to the Judge's decision. However the Appellant did make this claim when he was subject to full interview. He did not then challenge the accuracy of the content of the record of the screening interview – he simply denied that he had ever been given a copy of it, but when offered the opportunity to read through it to identify any issues, declined [Q3-5].
8. As the interviewing officer put to him, he had in fact signed the record of the screening interview to confirm that he had answered the questions truthfully, that he had understood all of the questions he had been asked,

and, that he had been given a copy of the interview record.

9. When he gave evidence to the Judge, the Appellant made claims in relation to the screening interview that he had not made at his full interview. Thus he claimed to have been interviewed in a different language to that which was recorded as having been used, and, claimed that discrepancies between the record and his current evidence must result from mistakes made by the interpreter. The Judge rejected those claims, and in my judgement he gave sound and adequate reasons for doing so [35-38].

10. Although Ms Cleghorn complained that the Judge erred by taking the s8 issues first when considering the Appellant's evidence, there is in my judgement no merit in that complaint. In my judgement the Judge had no option but to do so, because of the way in which the Appellant's appeal was advanced before him.

11. When the decision is read as a whole (as it should be), then it is in my judgement plain that the Judge did not form a view upon the s8 issues, and then, as a result, dismiss the Appellant's evidence as incredible. What the Judge did do (which is not at all the same thing) was deal with the Appellant's evidence about the way in which the screening interview was conducted, in order to ascertain whether he could place no weight, or some weight, upon the record of that interview. He was obliged to do so because of the way in which the appeal was advanced. Having done so the Judge then turned to look at the Appellant's evidence concerning his experiences in Iran [43-50], before standing back to look at the evidence in the round [51-2]. I can see no error of law in that approach, indeed it is the approach I would expect to be adopted.

12. That disposes of the complaint that was advanced in the grounds.

13. Before me Ms Cleghorn sought additionally to argue that the finding of fact made by the Judge in paragraph 46 of his decision was "unsustainable". When I queried how such a proposition could be advanced, given this paragraph was only an assessment of the weight that could be given to the evidence, and not a finding of fact, the challenge was dropped, and focus was switched to paragraph 47 of the decision. However, even then, there was no merit in the complaint advanced. The points the Judge was taking in relation to the credibility of the Appellant's account were obvious and logical, and ought to have occurred to anyone listening to it; it was the Appellant's evidence that made no sense. In any event,

as with paragraph 46, this passage was only an assessment of the weight that could be given to the evidence, and not a finding of fact. The findings of fact are to be found in paragraphs 51 and 52. In my judgement they were well open to the Judge on the evidence and they were more than adequately reasoned; there is no proper basis for a complaint that the Judge's findings were perverse.

Conclusion

14. Accordingly, notwithstanding the terms in which permission to appeal was granted, the grounds fail to disclose any material error of law in the approach taken by the Judge to the appeal that requires his decision to be set aside and remade.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 23 July 2018 contained no material error of law in the decision to dismiss the Appellant's appeal which requires that decision to be set aside and remade, and it is accordingly confirmed.

Direction regarding anonymity – Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed

Deputy Upper Tribunal Judge JM Holmes
Dated 22 March 2019