



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/07859/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice Centre
On 16th April 2019** **Decision & Promulgated
On 8th May 2019** **Reasons**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR Y.A.M.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Smith, Counsel
For the Respondent: Mr Tan, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iran born on 27th August 1987. The Appellant entered the UK illegally on 20th January 2016. Thereafter, he has an extensive immigration history with appeals passing through both the First and Upper-tier Tribunal. For the purpose of the issues before me the Appellant's recent appeal came before Judge of the First-tier Tribunal Hudson sitting at Manchester on 7th January 2019. At that hearing the Appellant's appeal was dismissed on all grounds.
2. The Appellant lodged Grounds of Appeal to the Upper Tribunal on 5th February 2019. On 18th February 2019 First-tier Tribunal Judge Saffer

granted permission to appeal. Judge Saffer considered that it was arguable that the judge may have misunderstood the Appellant's evidence as alleged and that this may amount to a material error of law given its adverse impact on credibility which is at the heart of the appeal.

3. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel, Ms Smith. Ms Smith is very familiar with this matter. She appeared before the First-tier Tribunal and she is the author of the Grounds of Appeal. The Secretary of State appears by his Home Office Presenting Officer, Mr Tan. The Appellant has previously been granted anonymity within these proceedings. No application is made to vary that order and the anonymity direction will remain in force.

Submission/Discussion

4. Ms Smith relies on the grounds as pleaded. She points out to me that there are three grounds. Firstly, that there has been a failure by the judge to have any or any proper regard to the evidence, secondly that the judge has made an unreasonable finding that the First-tier Tribunal Judge's assessment at paragraph 17 that there is a reasonable degree of likelihood that the Appellant and K would have engaged in a plot to threaten a Mullah, whose political views were contrary to their own, is materially flawed, and thirdly, that there has been a failure to take into account a number of relevant considerations. She starts by addressing the first ground. She takes me to paragraph 15 of the decision. She submits that the judge has mischaracterised the Appellant's account therein and that is material because an inaccurate account cannot in any way be reconciled with the account recorded in the Appellant's screening interview. Further, she strongly criticises paragraph 16 of the judge's decision where the judge states "he simply told me he was a Kurd", pointing out that this statement demonstrates a failure to have any regard to material evidence that the Appellant gave in re-examination.
5. Secondly, she turns to the contended unreasonable finding made by the judge submitting that on the Appellant's evidence K was a member of a Kurdish political group, Komala, and that the Appellant himself clearly sympathised with the party's cause. She contends that the country evidence before the judge established that Komala is politically active against the Iranian Republic. She contends that in the many years it has been active it has not achieved its aim and those involved in activities connected to the party have been detained and seriously ill-treated by the authorities and yet members continue to engage in activities. She submits against such a background it cannot reasonably be said that the Appellant's account of threatening the Mullah is implausible.
6. Thirdly, she turns to the failure to take into account relevant considerations. She refers me to paragraph 6 of the Grounds of Appeal and paragraphs (a) to (e) therein which sets these out. She reminds me that the Appellant is illiterate, wholly uneducated and has never attended

school and had worked as a shepherd. It is her contention that the way the Appellant gives his account of events is reasonably likely to be affected by such considerations.

7. I have given due consideration to the submissions set out therein at paragraphs 6(a)-(e) without reciting them herein. I note that Ms Smith submits that the arguments that she puts go far beyond mere disagreement with the findings of the First-tier Tribunal Judge.
8. In brief response Mr Tan firstly takes me to paragraph 15 of the decision, pointing out that at no stage did the judge say the Mullah had been beaten up by the Appellant and that the arguments put forward by Ms Smith amount to mere semantics. So far as paragraph 16 is concerned he submits that nothing really turns upon this, that the Appellant has said that he is not a political person and that his only involvement was as a Kurd. He points out that the Appellant's testimony is that he was aware that he was asked to be involved in an attack which could put him at great risk and he enquires why the Appellant would risk everything to get involved. The judge had asked this question which is to be found at paragraph 16 of the decision and the response he received was very vague. Secondly, he turns to the ground relating to unreasonable findings and points out that paragraph 17 has to be viewed in the context of the judge's findings at paragraph 16 and that this issue turns very much on the credibility of the Appellant's testimony.
9. So far as the third ground is concerned and the issue which begins with the contention that the illiteracy of the Appellant is an important factor, he starts by reminding me that there is nowhere within the documentation to say that the Appellant is unable to understand and answer questions and that in paragraph 20 of the decision, he submits, the judge was correct to say that the account was evolving and therefore not consistent. In particular, he asked me to consider the answers given at the asylum interview to questions 63 to 78.

The Law

10. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
11. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising

after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

12. This is a case that turns very largely on the credibility of the Appellant's testimony. A proper approach to credibility will require an assessment of the evidence and of the general claim. In asylum claims relevant factors would be the internal consistency of the claim; the inherent plausibility of the claim; and the consistency of the claim with external factors of the sort typically found in country guidance. I accept that it is theoretically correct that a claimant need do no more than state his claim but that claim would still need to be examined for consistent and inherent plausibility. In nearly every case external information against which the claim could be checked will be available.
13. In this case much of the manner in which the judge criticises the decision turns on the way that the Appellant gave his account, i.e. structure and not the content. I agree with the submission made by Ms Smith that the judge's findings do not take this into account, particularly bearing in mind that the manner in the way the Appellant phrases his answers are not put in the way that a more educated man might have structured or phrased them. I accept the Appellant's lack of education and whilst noting Mr Tan's comment that this has not been raised as an issue, it is quite simply a fact which should form part of the judge's consideration process. The amount of weight that a judge would give to it is for him/her to determine on hearing the evidence.
14. Further, the judge has made adverse findings on the Appellant's account of his attendance at the mosque and repeatedly refers to the Appellant's account being one where "his friends set upon a cleric with weapons in the middle of the night". I have cross-referenced the questions in the Appellant's asylum interview with the findings of the judge and I accept that there is possibly a mischaracterisation by the judge of the Appellant's account and that this is material because such an account cannot in any way be reconciled with the account recorded in the Appellant's screening interview. Further, at paragraph 16 Ms Smith has emphasised that the judge merely by stating that "the Appellant told me he was a Kurd" demonstrates a failure to have any regard to the material evidence that the Appellant gave in re-examination and she has set out in the Grounds of Appeal the questions and answers that were posed.
15. Looking at this matter in the round I am satisfied that the submissions consequently do not amount to mere disagreement and that there are material errors of law in the manner in which the judge has assessed the

evidence and made findings with regard to the credibility of the Appellant's testimony. In such circumstances the correct approach is to set aside the decision of the First-tier Tribunal Judge and to remit the matter back to be reheard before another Judge of the First-tier Tribunal.

Decision and Directions

The decision of the First-tier Tribunal contains a material error of law and is set aside. Directions are given hereinafter for the rehearing of this matter.

- (1) On finding that there is a material error of law in the decision of the First-tier Tribunal Judge the decision is set aside and the appeal is remitted to the First-tier Tribunal sitting at Manchester on the first available date 28 days hence with an ELH of three hours.
- (2) The appeal is to be before any Judge of the First-tier Tribunal other than Immigration Judge Hudson.
- (3) None of the findings of fact are to stand.
- (4) That there be leave to either party to file and serve a bundle of such further subjective and/or objective evidence upon which they seek to rely at least seven days prior to the restored hearing.
- (5) That a Kurdish (Sorani) interpreter do attend the restored hearing.

The Appellant has previously been granted anonymity. No application is made to vary that order and the anonymity direction will remain in place.

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 him or any member of his 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

Date 29th April 2019

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT FEE AWARD

No application is made for a fee award and none is made.

Signed

Date 29th April 2019

Deputy Upper Tribunal Judge D N Harris