



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/09309/2018**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 7 December 2018

**Decision and Reasons
Promulgated**

On 9 January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

**SHAHAB KARIMI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Popal (counsel) instructed by Barnes Harrild & Dyer solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Cohen promulgated on 20/09/2018, which dismissed the Appellant's protection appeal on all grounds.

Background

3. The Appellant was born on 11/03/1999 and is a national of Iran. The appellant claimed to have a well-founded fear of persecution because of his political opinion. On 13/07/2018 the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Cohen ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 24/10/2018 Judge Boyes gave permission to appeal stating inter alia

"2. The grounds assert that the Judge did not consider the Facebook material correctly and secondly, was wrong to conclude as he did in relation to the ethnicity argument. Thirdly, was procedurally unfair in relation to a drawing (?) And erred in requiring the appellant to show corroboration.

3. Ground 3 is arguable. I do not know on what basis the court thought it appropriate to conduct its own investigation and set up its own experiments, on the hoof, then criticise the appellant thereafter.

4. Permission is granted on all the grounds however it is ground 3 which is the shining light."

Hearing

5. For the appellant, Ms Popal told me that the respondent served a rule 24 notice in which the respondent concedes the appeal and asked that the case be remitted to the First-tier Tribunal to be heard of new. Mr Walker did not have a copy of the rule 24 notice, but on the court file there is a rule 24 notice dated 19 November 2018 which says

"The respondent does not oppose the appellant's application for permission to appeal and invites the tribunal to remit the matter to the First-tier in order for sustainable findings to be made."

6. Mr Walker told me that he could not oppose the appeal. He described [32] of the decision as "an unusual approach to take". He told me that the appeal is no longer opposed and asked me to remit this case to the First-tier Tribunal to be determined of new.

Analysis

7. It is clear from [32] of the decision that the Judge adopted an inquisitorial approach and then, having done so, reached findings which are not properly explained. [32] of the decision contains conclusions drawn from the Judge's own inquisition. The conclusions that the Judge

reaches are inadequately reasoned. The procedure that the Judge adopted is unfair. The appellant had no notice of the test he was to face - created by the Judge on the spur of the moment. There is no evidence of the qualifications the Judge has to ponder the artistic character and quality of the drawing that he forced the appellant to produce.

8. The result is that the Judge's findings cannot stand because they are not supported by adequate reasoning and because the proceedings were tainted by unfairness. Those are material errors of law because the Judge places [32] of the decision at the heart of the assessment of the appellant's credibility. I therefore set the decision aside

Remittal to First-Tier Tribunal

9. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
- (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

10. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the Judge's findings are preserved. A complete re-hearing is necessary.

11. I remit the matter to the First-tier Tribunal sitting at Taylor House to be heard before any First-tier Judge other than Judge Cohen.

Decision

The decision of the First-tier Tribunal is tainted by material errors of law.

I set aside the Judge's decision promulgated on 20 September 2018. The appeal is remitted to the First-tier Tribunal to be determined of new.



Signed
Deputy Upper Tribunal Judge Doyle

Date 11 December 2018