



IAC-AH-VP-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/08848/2014

THE IMMIGRATION ACTS

**Heard at Centre City Tower, Decision & Reasons Promulgated
Birmingham
On 18th January 2016**

On 1st February 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**RH
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs O Dury of Jemek Solicitors

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Stott of the First-tier Tribunal (the FtT) promulgated on 13th January 2015.
2. The Appellant is a male Iranian citizen born in 1987 who arrived in the United Kingdom illegally on 24th May 2014 and claimed asylum. In brief, the Appellant's claim was based upon his fear of the Basij in Iran due to his

previous activities in fitting satellite dishes to homes which is an illegal occupation in Iran.

3. The Respondent refused the application on 24th June 2014, not finding the Appellant credible, and rejecting his claim in its entirety although it was accepted that he is a national of Iran. The Appellant appealed and his appeal was heard by the FtT on 5th January 2015. The FtT accepted that the Appellant is an Iranian national but did not accept his account as credible and did not find that he would be at risk if returned to Iran. His appeal was dismissed on all grounds.
4. The Appellant applied for permission to appeal to the Upper Tribunal. In summary, it was contended that the negative credibility findings made by the FtT are unsustainable as the FtT had failed to give reasons for the findings.
5. It was also contended that the FtT had failed to take into account a Country of Origin Information Report relied upon by the Appellant, which indicated that a person with the Appellant's profile would be at risk in Iran.
6. Permission to appeal was granted by Judge P J M Hollingworth of the FtT in the following terms;

“An arguable error of law has arisen. At paragraph 11 the judge has accepted that the Appellant may well have been stopped by police authorities in Iran and that he has paid bribes and also accepted that the Appellant may have been detained by the Basij. However, the judge went on to state that he was unable to accept the Appellant had been imprisoned for a twenty day period. Subsequently, the judge has made adverse credibility findings. It is unclear as to which portions of the Appellant's evidence have survived the adverse credibility findings. In these circumstances the relationship between the findings and the degree of risk becomes the subject of an arguable error of law.”

Following the grant of permission the Respondent lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008. In summary it was contended that the FtT had made clear findings and rejected the Appellant's claim to have been detained for a six day period, and a twenty day period. The FtT had also made clear findings and given adequate reasons for rejecting the Appellant's claimed relationship with the niece of a Basij commander.

7. Directions were issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision must be set aside.

The Appellant's Submissions

8. Mrs Dury contended that the FtT had not given adequate reasons for dismissing the appeal. The Appellant had provided a detailed witness statement to the FtT, commenting upon the issues raised in the reasons for refusal letter.

9. The FtT had accepted that the Appellant had been arrested by the authorities in Iran but it was not clear what aspects of his claim had been accepted and what had been rejected, and there was a lack of reasoning.
10. It was submitted that in relation to the twenty day period of imprisonment, the Appellant's evidence was clear in that he had stated in his asylum interview, that he had been imprisoned for twenty days approximately three years ago.
11. Mrs Dury submitted that the FtT decision should be set aside and the appeal remitted to the FtT to be heard afresh.

The Respondent's Submissions

12. Mr McVeety submitted that it is well-established law, that parts of an account can be accepted, and parts rejected. When read as a whole it was contended that the FtT had considered the evidence in the round, considered the background evidence, and made findings open to it on the evidence, and provided adequate reasoning.

The Appellant's Response

13. Mrs Dury contended that the FtT had placed reliance upon the Appellant's screening interview, which was unsafe, as the Appellant was told at that interview that he need not provide comprehensive details of his asylum claim, which would be dealt with at a later substantive interview. When that substantive interview took place, the Appellant had explained his claim in detail.
14. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

15. The challenge to the decision of the FtT was based upon inadequacy of reasons, and the judge granting permission raised the issue of unclear findings.
16. The FtT has a duty to make clear findings on the evidence and provide clear reasons. I set out below the head note to MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC);
 - “(1) It is axiomatic that a determination discloses clearly the reasons for a Tribunal's decision.
 - (2) If a Tribunal finds oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it is necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight is unlikely to satisfy the requirement to give reasons.”
17. I also set out below the head note to Budhathoki (reasons for decision) [2014] UKUT 00341 (IAC);

“It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.”

18. Credibility is a central issue in this appeal. The Respondent rejected the Appellant’s account on credibility grounds. The Respondent in the reasons for refusal letter placed very considerable weight on inconsistencies between the Appellant’s screening interview and substantive asylum interview. Adverse credibility findings were made because the Appellant mentioned aspects of his claim in his substantive interview, that he had not mentioned in his asylum interview.

19. The FtT has followed a similar approach stating in paragraph 10;

“There are disparities in the versions that he has given as outlined in the refusal letter and furthermore the Appellant has failed to mention in the screening interview events that he now relies upon which, if true, are of significance.”

20. The credibility findings made by the FtT that relate to the events that the Appellant claimed took place in Iran are contained in paragraphs 11-14 of the decision. In paragraph 11 the FtT accepts that the Appellant may well have been stopped by police authorities in Iran, that he paid bribes, and that he may also have been detained by the Basij. The FtT does not accept that the Appellant was imprisoned for a twenty day period on the basis that there is no clear evidence clarifying the situation. I do not find that adequate reasons have been given for rejecting the Appellant’s claim to have been imprisoned for a twenty day period. The Appellant said in his screening interview (4.1) that he had been imprisoned for twenty days and later said in answer to question 5.1 that he had been arrested in 2013. He did not however say that he had been imprisoned for twenty days in 2013. The Appellant clearly stated in his asylum interview in answer to questions 51 and 52 he had been imprisoned for twenty days which was approximately three years ago. This was confirmed in paragraph 5 of his witness statement dated 30th December 2014.

21. In paragraph 12 the FtT rejects the Appellant’s claim that he had been detained for six days at a Basij base because this was not mentioned in the screening interview. No other reason for rejecting this claim was given. I do not find that adequate reasons have been given for rejecting this claim. In my view care is needed when weighing discrepancies between a screening interview, and a substantive asylum interview. I accept that failure to mention a central feature of a claim in a screening interview may affect credibility. However the following is read out to an interviewee at the commencement of a screening interview;

“The questions I am about to ask you relate to your identity, background and travel route to the United Kingdom. The information you will be asked to provide will be used mainly for administrative

purposes. You will **not** be asked at this stage to go into detail about the substantive details of your asylum claim as, if appropriate, this will be done at a later interview. However, some details you will be asked to provide may be relevant to your claim.”

22. The Appellant in his screening interview was asked whether he was having problems in Iran and he explained that he was in connection with satellite installation which is banned in Iran and he was caught “a few times” doing installations. He was put in prison for twenty days and had to pay a penalty to get out. He was asked when he started having these problems and he said in the past five years, and he was asked who he was having problems with, and he explained the Basij (security police). He went on to say that he had his nose broken by the Basij.
23. It is therefore clear that the Appellant was not asked any comprehensive details about his claim, and he was specifically told he was being asked primarily about his identity, background and travel route to the United Kingdom. I therefore conclude that inadequate reasons have been given by the FtT for rejecting his claim to have been detained for six days and ill-treated.
24. I make a similar finding in relation to paragraph 13 of the FtT decision, in which the Appellant’s relationship with the niece of a Basij commander is rejected, the only reason being given for this rejection, being that this was not mentioned in the screening interview.
25. For the reasons given above, I conclude that the FtT has not complied with the principles set out in MK and Budhathoki, and has not resolved key conflicts in the evidence, and has not given clear and adequate reasons for findings.
26. Therefore the decision of the FtT is unsafe and is set aside and needs to be re-made.
27. In considering whether the appeal should be re-made by the FtT or the Upper Tribunal I have taken into account paragraph 7 of the Senior President’s Practice Statements which for ease of reference I set out below;
 - ‘7.1 Where under section 12(1) of the 2007 Act (proceedings on appeal to the Upper Tribunal) the Upper Tribunal finds that the making of the decision concerned involved the making of an error on a point of law, the Upper Tribunal may set aside the decision and, if it does so, must either remit the case to the First-tier Tribunal under section 12(2)(b)(i) or proceed (in accordance with the relevant Practice Direction to re-make the decision under section 12(2)(b)(ii).
 - 7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless 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 and 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.

7.3 Re-making rather than remitting will nevertheless constitute the normal approach to determine appeals where an error of law is found, even if some further fact-finding is necessary.'

- 28. In my view, no findings made by the FtT can be preserved. There will therefore need to be extensive fact-finding, and I therefore conclude that it would be more appropriate for this appeal to be remitted to the FtT.
- 29. The appeal before the FtT will take place at the Sheldon Court Birmingham Hearing Centre. The appeal is to be heard by an FtT Judge other than Judge Stott.

Notice of Decision

The decision of the FtT involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the FtT with no findings of fact preserved.

Anonymity

The FtT made no anonymity direction, but I decided, as this is an appeal against refusal of asylum, and the Appellant claims that he is at risk, to make an anonymity order pursuant to 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 22nd January 2016

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

The issue of any fee award will need to be considered by the FtT.

Signed

Date 22nd January 2016

Deputy Upper Tribunal Judge M A Hall