



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/00150/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Liverpool

On December 8, 2017

**Decision & Reasons
Promulgated**

On December 12, 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR AMIN BABAKHANI
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Chaudry (Legal Representative)

For the Respondent: Mr McVeetie, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I do not make an anonymity direction.
2. The appellant is an Iraqi national. The appellant entered the United Kingdom on July 12, 2016 and after he was apprehended by Cheshire police on July 13, 2016 he claimed asylum. The respondent refused his protection claim on December 21, 2016 under paragraphs 336 and 339F HC 395.

3. The appellant lodged grounds of appeal on January 5, 2017 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. His appeal came before Judge of the First-tier Tribunal AJ Parker (hereinafter called "the Judge") on February 7, 2017 and in a decision promulgated on February 21, 2017 the Judge refused his appeal on all grounds.
4. The appellant appealed the decision on February 7, 2017. Permission to appeal was granted by Judge of the First-tier Tribunal Landes on June 15, 2017 who found grounds 4, 6 and 7 most arguable but found little merit in the grounds 1, 2, 3, 5 and 8. The respondent lodged a Rule 24 response dated July 6, 2017 in which she argues there was no error in law.
5. The matter came before me on the above date and the parties were represented as set out above.

SUBMISSIONS

6. Mr Chaudry adopted the grounds of appeal and agreed that grounds one and two were linked, grounds three to seven were linked and ground eight stood on its own. He argued that as the appellant was a vulnerable witness the Judge should have adjourned the case. With regard to grounds three to seven he submitted the Judge only really considered the religious side of his claim. There was a letter from the Komala Party and this had been given no weight. Whilst the Judge stated the appellant gave the wrong number of leaders it transpired the Judge was also wrong. There was evidence about the name of the leader which against suggested an error by the Judge. The final ground concerned [56] of the decision. The Judge stated "even given the high threshold test" when of course the test should have been the low threshold test. In the circumstances he submitted there was an error in law.
7. Mr McVeetie relied on the Rule 24 statement and submitted there was no error in law. Grounds one and two had no merit. There was no real evidence that the appellant was unfit to give evidence and in fact the appellant's counsel called him to give evidence and asked him questions about his claim. Grounds three to seven had no merit. The Judge listened to the evidence and did not enter the arena in the absence of a representative from the respondent. The appellant had provided a full statement and his counsel asked him questions to clear up any ambiguities. Whilst there may have been an error about the name of the leader this was perhaps understandable because there were many groups and leaders. In any event, both the Judge and the appellant were wrong about the numbers so any error by the Judge was irrelevant as the appellant got the answer wrong anyway. Importantly, the appellant's account of how he was accepted by the Komala Party was totally at odds with the country evidence. The Judge found he was not telling the truth and was entitled to attach no weight to the letter he had produced. With regard to how he approached the political claim Mr McVeetie accepted the Judge's reasoning was brief but there was nothing incorrect or perverse about his findings. Finally, with regard to the final ground this was clearly a typing error.

8. Having heard submissions I reserved my decision.

FINDINGS ON THE ERROR IN LAW

9. The appellant's solicitors lodged a pre-trial form with the Tribunal on January 23, 2017 and on that form there was no reference to any medical issues or expert reports. In fact, there was no indication anywhere on the form that there might be an issue. Mr Chaudry received the doctor's letter dated January 31, 2017. This letter was a document they had requested and they in turn supplied an electronic copy of the document to Counsel who represented the appellant at the hearing on February 3, 2017. A copy of this letter was not served either on the Tribunal or the respondent.
10. When the matter came before the Judge he was provided with a copy of the letter and according to his decision he considered its contents. The report was written by a trainee GP although the letter was approved by Dr Shah. There was nothing in that report that suggested the appellant was unable to give evidence. The doctor himself said as much in his report. On the morning counsel asked for an adjournment to have the appellant medically examined.
11. The Judge set out the exchanges at [11] of his decision. Due to the lack of information as to what would be achieved with an adjournment the Judge refused the adjournment. The appellant's counsel then proceeded to call him to give evidence. There is nothing in the record of proceedings that suggests the appellant appeared distressed. Grounds One and Two have no merit because the appellant was called to give evidence and there is nothing about the hearing that suggests he was unfit to give evidence. He was not cross-examined because there was no Home Office representative and the only questions asked of him were put to him by his own counsel.
12. With regard to Ground Eight I also find no merit in this ground. The Judge had clearly identified the correct burden and standard of proof in [6] of his decision. The error in [56] was a typo error which did not affect the decision.
13. The remaining grounds are connected. The grounds argue the Judge did not consider the appellant's political claim in any detail. How much detail the Judge went into to an extent depended on the evidence presented to him. Witnesses attended to give evidence but these witnesses were in connection with the religious aspect of his claim and not the political aspect of the claim. The Judge dealt with the political aspect of his claim based on the appellant's own evidence, the respondent refusal letter and any relevant evidence.
14. It was apparent from submissions made to me that the particular group the appellant claimed to be a member of had a number of leaders and branches. Key to his claim was his claim he was a member of the Komala Party and the Judge is criticised for not attaching any weight to the letter that was adduced. At [37] the Judge dealt with this aspect of his claim. In

submissions he became apparent the Judge may have erred over how many branches there were but as Mr McVeetie pointed out this could not be an error in law because the appellant had also given the wrong answer when questioned. Mr Chaudry made submissions over the name of the leader but in reality this part of his claim failed because the account he gave of how he joined this party was wholly inconsistent with the country evidence. He claimed he was asked to join and that was it whereas the country evidence indicated a rigorous interview process and detailed enquiries into his background before he was allowed to join. This fundamentally undermined the appellant's credibility-something Mr Chaudry was unable to address in his submissions. Whilst I accept there was no reference to the letter from the Komala Party I am satisfied that document would have not altered the Judge's perception of the case. Taking the document in the round he would not have attached any weight to it because he was satisfied he had never been a member of the party. Accordingly, grounds 3 to 7 have no merit.

DECISION

15. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I uphold the decision.

Signed

Date 09.12.2017



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT **FEE AWARD**

I make no fee award as the appeal was dismissed.

Signed

Date 09.12.2017



Deputy Upper Tribunal Judge Alis