



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA082282016

THE IMMIGRATION ACTS

Heard at Glasgow
on 24 August 2017

Decision and Reasons Promulgated
on 31 August 2017

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ARYAN MOHAMMEDI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr J Bryce, instructed by Gray & Co, Solicitors
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a decision by First-tier Tribunal Judge Kempton, promulgated on 23 February 2017, dismissing his appeal against refusal of asylum.
2. The grounds on which permission was granted are, in summary, as follows:

" ...

2. The FtT at ¶27 concluded that the appellant's account of distributing materials was inconsistent with objective information because, "*It is normally only small flyers of the 15 cm² size which are distributed or oral messages might be given*". In contrast, the FtT noted at ¶25 only that flyers "*might*" be 15 cm² according to objective evidence ... Whilst the distinction is superficially slight, its effect in this appeal is profound ... what *only* happens carries the necessary implication that anything else does not happen ... what *might* happen carries the implication that other happenings take place.

3. The FtT at ¶27 contends that it is surprising that such a volume of leaflets is distributed within a rural and remote community because such a community is not

thought to be literate. That observation has no evidential foundation and is contrary to objective information [cited] that *“many people in rural areas do not have access to the internet, political information is more often spread by word-of-mouth or by flyers and night letters”* ... The FtT’s conclusion is directly in conflict with the objective evidence ...

4. The FtT at ¶26 find it surprising that the applicant did not stay at school to learn to read but there is no basis for regarding that claim as far-fetched and it is contrary to the FtT’s earlier and correct observation that he emanates from a community where *“not many people bother to attend school”*.

5. The above grounds bear upon the core reasons for the FtT’s rejection of the claim to have been involved in the delivery of political material.”

3. Under cover of a letter of 11 August 2017 the appellant sought to amend the grounds by inserting the following (again in summary):

“6. The judge erred at ¶15 in her treatment of section 8 of the 2004 Act Entry into the UK without a passport did not engage section 8 and even if it did, the section does not directly determine the outcome of the consideration. The judge gave no reason for finding that a section 8 factor adversely affected credibility.

7. The judge errs in drawing an adverse inference at ¶27 from the appellant’s lack of interest in the KDPI youth wing and the absence of a letter from the party’s representative in Paris. Those points had not been put to the appellant and were procedurally unfair. In the case of the omission of a letter from the KDPI, there was no evidential basis for the inference drawn. The background report says the party will provide documentation for membership, but not for asylum applicants who do not belong to the party but seek corroboration of membership of another person [the appellant’s father].

8. The judge noted at ¶31 the appellant was a vulnerable individual, but failed to have regard to the Joint Presidential Guidance Note, or to identify and record the context in which he became distressed.

9. The judge erred in failing simply to allow the appeal. Reference is made to paragraph 5.5 of the 6 January 2015 API’s, *“Assessing credibility and refugee status”*, which is *“almost uncannily in point”*; to ¶196 and 204 of the UNHCR Handbook, the *“benefit of the doubt”*; and to Symes and Jorro, *“Asylum Law and Practice”*, 2nd edition, ¶2.7 – approaching the appeal in a manner contrary to the spirit of the inquiry.”

4. Mrs O’Brien, realistically and fairly, did not oppose the amendment of the grounds. She conceded that although the Judge referred to the vulnerability of the appellant, she did not explain how this had borne upon the assessment of his evidence; that whether or not section 8 applied, there was no explanation of why the appellant’s arrival without a passport was *“not the action of a genuine asylum seeker and ... seriously damaged his credibility”*; and that the grounds, taken together, were enough to show that the decision could not safely stand.

5. Mr Bryce, also realistically, did not seek to press ground 9 to its logical limit. The following outcome was agreed.

6. The decision of the FtT is **set aside**. None of its findings are to stand, other than as a record of what was said at the hearing.

7. The nature of the case is such that it is appropriate in terms of section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to **remit the case to the FtT** for an entirely fresh hearing.
8. The member(s) of the FtT chosen to consider the case are not to include Judge Kempton.
9. No anonymity direction has been requested or made.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

24 August 2017
Upper Tribunal Judge Macleman