



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

Appeal Number: PA/03416/2017

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
On 22 January 2018**

**Decision & Reasons Promulgated  
On 24 January 2018**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**AWARTH HAMEZE**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

For the Appellant: Mr S Winter, instructed by Latta & Co, Solicitors  
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The respondent refused the appellant's asylum claim for reasons explained in her letter dated 23 March 2017.
2. First-tier Tribunal Judge S T Fox dismissed the appellant's appeal for reasons explained in his decision promulgated on 18 May 2017.

3. The appellant states his grounds of appeal to the UT in his application filed on 18 October 2017:

(i) The FtT considers the failure of the appellant to claim asylum in Hungary at ¶14 – 15 ... in implementation of s.8 of the 2004 Act [which] provides that a judge should take such matters ... as damaging to ... credibility ... the FtT has erred in law in the assessment of ... credibility and placed undue weight on this one finding.

(ii) The FtT demonstrates a further disregard of material facts at ¶14 and constitutes *[sic]* the appellant's claim that the Hungarian authorities instructed him to "move on" as "wild and fanciful". This is a known practice in this country and should be within judicial knowledge as such.

(iii) A significant degree of speculation has been applied in order to reach a negative credibility finding ... at ¶12 ...: "in all probability he left Iran illegally" ... this was not suggested by the respondent or the judge at the hearing. This is a negative point against the appellant and it is ... unfair that the appellant was not placed on notice ... and given the opportunity to rebut any such concern.

4. In his skeleton argument Mr Winter advanced a further point as "Robinson-obvious":

(iv) ... some of the findings are unclear. In particular although the FtT reaches findings at ¶40 it is unclear whether these relate to the appellant's membership of Komala or whether they relate also to the smuggling of materials for Komala or both (see ¶22 - 25, 30, 33 - 34 which appear to support the position of smuggling materials for Komala). The unclear findings have coloured the approach of the FtT as if it is accepted he at least smuggled materials for Komala an assessment would have to be made in terms of the country guidance (CIG on Kurds) in conjunction with the country guidance case law of SSH as to whether the appellant would nevertheless be at risk of at least being perceived as supporting Komala in relation to the smuggling of materials for Komala. It is not inevitable that another judge would reach the same finding.

5. (The numbering (i) – (iv) has been added for ease of reference.)
6. Having considered the grounds and submissions, I find that no error on any point of law is disclosed.
7. Ground (i) fails to make any proposition of legal error. It is a bare disagreement with the weight given to one aspect of the case.
8. The s.8 point is only one of many reasons for the FtT's conclusions. The ground advances nothing to show that it was given more weight than it could properly bear.
9. Ground (ii) does not refer to any evidence of the practices of the Hungarian authorities. There was none before the judge. There has been no attempt to produce such evidence since.
10. The appellant has not begun to show that the alleged practices of the Hungarian authorities are so well established by evidence in the public or jurisdictional domain that they call for no proof and must be automatically assumed by FtT judges.
11. The facts are that the Hungarian authorities documented the appellant's presence in the country, fingerprinted him, and circulated details to other EU countries. As Mrs

O'Brien argued, those are powerful indications that they dealt with the appellant appropriately, and did not simply "wave him on" so as to pass a problem elsewhere.

12. Ground (iii) complains of a finding made without notice, but the finding of illegal departure tends in the appellant's favour not against him. Any complaint would lie with the respondent, not on his side.
13. Ground (iv) is not obviously well-founded. It depends on reading the decision in a rather compartmentalised and point-by-point fashion, rather than fairly and as a whole.
14. The appellant seeks an interpretation that although he was found for good reasons not to have had any political motivation, the judge leaves it open that he may have smuggled politically dangerous materials.
15. The appellant's credibility is rejected for numerous good reasons in which no error is alleged. That includes his suggestions that he placed his family in any danger, had dangerous materials at home to be discovered by the *Ettela'at*, and left friends and colleagues in a risky situation without giving thought to tipping them off. Those negative elements do not sit logically with the interpretation sought.
16. The overall rejection is in such clear terms as to leave no doubt, e.g., ¶47, "not a good witness as to fact and truth. His evidence may not be relied upon", and ¶48, "... the core ... lacks credibility and is a fabrication".
17. The reading that the judge may have accepted that the appellant, although otherwise not credible, was an unintentional pawn in a risky political game is not a sustainable one.
18. The FtT judge who refused permission commented on the extent of error apparently arising from transcription from a digitised dictation application, and the UT judge who granted permission found it very difficult to discern the meaning of some passages. The decision does contain more slips than it should, but its overall reasoning remains clear.
19. The decision of the FtT shall stand.
20. No anonymity direction has been requested or made.



23 January 2018  
Upper Tribunal Judge Macleman