



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06682/2016

THE IMMIGRATION ACTS

Heard at Liverpool
On 19th December 2017

Decision & Reasons Promulgated
On 23rd May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

FO
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Karnik, Counsel instructed by Broudie Jackson & Canter

For the Respondent: Ms H Aboni, Home Office Presenting Officer

DECISION AND REASONS

1. The First-tier Tribunal ("FtT") has made an anonymity order and for the avoidance of any doubt, that order continues. FO is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the appellant and to the respondent. Failure to

comply with this direction could lead to proceedings being brought for contempt of court.

2. The appellant is a national of Iran. He arrived the UK as an unaccompanied minor, aged 16, on 4th November 2015 and presented himself to the police. He made a claim for asylum. On 15th June 2016, the respondent refused the asylum and human rights' claims that had been made by the appellant. The appellant appealed the refusal to the First-tier Tribunal.
3. The appeal before me is an appeal against the decision and reasons promulgated by First-tier Tribunal ("FTT") Judge Brookfield in which she dismissed the appeal on all grounds.
4. At paragraph [9] of her decision, the Judge sets out a summary of the account of events relied upon by the appellant in support of his claim for asylum. The Judge's findings and conclusions are to be found at paragraphs [10(i)] to [10(xix)] of her decision. The Judge rejected the appellant's account of his activities in Iran, and the appellant's account of the events that led to his departure from Iran. For present purposes, it is sufficient to record that the Judge states at [10(xii)] as follows:

"Looking at the evidence in the round, I conclude it is highly improbable this appellant delivered political leaflets and CDs secretly in Tehran or wrote anti-regime slogans on walls in the night time with an older friend called M, or that M would drive down a main road in Tehran, where checkpoints are routinely established by the authorities, with items in his car boot which could lead to his arrest. I did not find it reasonably likely that the appellant would be able to evade the checkpoint when there were only two cars in front of him by pretending he was a taxi customer. I did not find it was reasonably likely that the appellant would walk around Tehran for a couple of hours very late in the evening before returning home after M's claimed arrest. I did not find it was reasonably likely that the Iranian authorities visited the appellant's home and searched it and arrested his father either within 20 minutes of M's claimed arrest or within a couple of hours of M's claimed arrest. In conclusion I did not accept any of the appellant's account. I take account of the appellant's evidence that he was aged 16 at the time he claims that the events took place, but conclude that it is highly unlikely his friend, M, who was aged 23 at this time, would take the risks claimed by the appellant. I conclude this appellant was of no adverse interest in Iran at the time he left the country, and is of no current adverse interest there as a result of a perceived political opinion."

The appeal before me

5. The appellant claims that in reaching her findings and conclusions at paragraph [10] of her decision, the Judge reaches conclusions as to the credibility of the appellant, when in fact, in a number of respects, the Judge found the account relied upon by the appellant to be implausible. The appellant submits that there is an important distinction between whether an account is incredible or implausible because relying upon inherent improbability can be dangerous, particularly in the context of how a particular regime might act. The appellant also claims that the FfT Judge, unfairly mischaracterised the appellant's account of events immediately after he was able to evade the checkpoint by pretending he was a taxi customer in the car being driven by M. It is said that the Judge reached findings that are based upon speculation.
6. Permission to appeal was granted by Upper Tribunal Judge Bruce on 11th October 2017. The matter comes before me to consider whether the decision of the FfT involved the making of a material error of law, and if so, to remake the decision.
7. Before me, Mr Karnik refers to the decision of the Upper Tribunal in KB & AH (credibility – structured approach) Pakistan [2017] UKUT 00491 (IAC). He submits that the appellant's account is one that was internally consistent, and that dismissing a claim because it lacks plausibility requires a certain degree of caution. He submits that is particularly so in this appeal, because the appellant was a child at the time that the events referred to, occurred, that the events took place in Iran and the matters referred to by the Judge, relate to the actions of others.
8. As to the Judge's consideration of the evidence, it has never been the appellant's case that it had taken him 20 minutes to get home from the checkpoint at which the car was stopped. In his witness statement dated 6th May 2016 that is to be found at pages A7 to A14 of the respondent's bundle, the appellant had in fact claimed at paragraph [25] that "*... I decided to go back home. I got a bus back, then when I got close by home, I saw that there were lots of people around my house ...*". The appellant's account at the hearing that he had walked around for a couple of hours before

going home, included the 20 minute bus journey. It had never been the appellant's case that he had arrived home within 20 minutes of the incident at the checkpoint.

9. Mr Karnik submits that at paragraphs [10(ii)] and [10(iii)], the Judge refers to the behaviour and conduct of third parties, that the Judge then considered to be implausible. He submits that the respondent had not considered the account being advanced by the appellant to be implausible.

Discussion

10. Dealing first with the Judge's consideration of the evidence, I accept that in his witness statement dated 6th May 2016, the appellant stated, at paragraphs [24] and [25], that when there were about two cars in front of them at the checkpoint, the appellant got out of the car and walked away. He claims that he stayed close by, and watched what happened. He claims that he saw the police search *M*'s car and open the boot, where the CDs were. The appellant claims that he decided to go back home. He got a bus back, and when he got close by his home, he saw that there were lots of people around his house and he noticed a police car. He then saw that his father was being led out of the house by the authorities, and he saw that a duplicator that *M* had given him to copy CDs, was being taken out. The appellant does not explain in that witness statement, how long it was before he returned home after the events at the checkpoint, but the impression given is quite clearly that the appellant was very scared of what had happened, and decided to go home.
11. It is right to note, as the *FtT* Judge notes at paragraph [10(viii)] of her decision, that there is no reference to the appellant having walked around for a couple of hours following the arrest of *M*. There is on the face of it, an inconsistency between the account of events set out in the appellant statement and the account given by the appellant during the hearing before the *FtT*.
12. In my judgement, the *FtT* Judge carefully considered both accounts. At paragraph [10(viii)], the Judge concluded that it was highly improbable that the appellant would risk walking around Tehran until the early hours of the morning, placing

him at risk of being stopped by the police and being unable to explain why he was out at that time of night. The Judge therefore rejected the account advanced by the appellant at the hearing. In her overall conclusion at paragraph [10(xii)], the judge found that it was not “... *reasonably likely the Iranian authorities visited the appellant’s home and searched it and arrested his father either within 20 minutes of M’s claimed arrest or within a couple of hours of M’s claimed arrest.*”. The judge did not accept either account.

13. I accept that the fact that the appellant's story may seem inherently unlikely, does not mean that it is untrue. It is clear that the ingredients of the story, and the story as a whole, have to be considered against the available country evidence, and any reliable expert evidence, and other familiar factors, such as consistency with what the appellant has said before, and with other factual evidence.
14. The assessment of credibility is always a highly fact sensitive task. The FfT Judge was required to consider the evidence as a whole. In assessing the credibility of the appellant and the claim advanced by him, the Judge was required to consider a number of factors. They include, whether the account given by the appellant was of sufficient detail, whether the account is internally consistent and consistent with any relevant specific and general country information, and whether the account is plausible. If an account is littered with internal inconsistencies that may be enough for a Judge to dismiss the evidence of an appellant as incredible. It does not follow that a Judge is entitled to dismiss an account in the same way, simply because the account is implausible. That is not however to say that a Judge is required to take at face value, an account of facts proffered by an appellant.
15. Here, at paragraph [10], the Judge confirms that she has not made findings without first looking at all the evidence in the round. In assessing the evidence she has kept in mind the appellant’s youth at the dates of key events.
16. What follows at paragraph [10] are findings that, in my judgement, arise from a combination of inconsistencies in the account, a lack of detail or sufficient explanation, and matters that appeared to the Judge, to be implausible.

17. The Judge had the opportunity of hearing the appellant and having his evidence tested. The Judge did not consider irrelevant factors, and the weight that she attached to the evidence was a matter for her. The obligation on a Tribunal Judge is to give reasons in sufficient detail to show the principles on which the Tribunal has acted and the reasons that have led to the decision. Such reasons need not be elaborate, and do not need to address every argument or every factor which weighed in the decision. It is sufficient that the critical reasons to the decision, are recorded.
18. In my judgment, a careful reading of the decision of the FfT establishes that the FfT Judge reached her overall findings by reference to a combination of inconsistencies in the account, a lack of detail or sufficient explanation, and matters that appeared to the Judge, to be implausible. The decision of the Judge is not based simply upon implausibility's in the account that was proffered by the appellant.
19. Having carefully considered the decision of the FfT Judge, I am entirely satisfied that it was open to the Judge to dismiss the appellant's appeal for the reasons set out in the decision.
20. It follows that in my judgment, there is no material error of law in the First-tier Tribunal Judge's decision and the determination shall stand.

Notice of Decision

21. The appeal is dismissed.

Signed

Date

15th March 2018

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT

FEE AWARD

22. The FfT Judge made no fee award. I have dismissed the appeal and there can be no fee award.

Signed

Date

15th March 2018

Deputy Upper Tribunal Judge Mandalia