



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09776/2017

THE IMMIGRATION ACTS

Heard at Field House
On 15 August 2018

Decision & Reasons Promulgated
On 17 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY

Between

NAVEED [M]
(ANONYMITY HAS NOT BEEN DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Knight, Counsel for Rahman & Company Solicitors, London
For the Respondent: Mr Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iran born on 23 July 1994. He appealed the respondent's decision of 13 September 2017 refusing to grant him asylum, humanitarian protection and refusing his claim on human rights grounds. His appeal was heard by Judge of the First-Tier Tribunal Paul on 23 February 2018 and was dismissed on all grounds in a decision promulgated on 1 March 2018.
2. An application for permission to appeal was lodged and permission was granted by Upper Tribunal Judge Chapman on 19 June 2018. The permission refers to the grounds in support of the application which assert that the First-Tier Tribunal Judge materially misstated the appellant's account, impermissibly speculated and invented facts, erred in that his approach to credibility was improper and failed to give due consideration

to the medico legal report. The permission states that these grounds of appeal raise arguable errors of law.

3. There is no Rule 24 response.

The Hearing

4. Counsel for the appellant submitted that he is relying on the grounds of application.
5. He first of all referred to the Judge misstating the appellant's account and referred me to paragraph 18 of the decision. He states in this paragraph that the core issue in this case is whether or not the appellant's account about his relationship with the young woman is credible and that the Judge misstated the appellant's case relating to this core aspect of the claim. The Judge refers to the appellant being allowed uncontrolled access to the girl's house. Her father is a clergyman and the Judge questions whether the appellant would have been able to be alone with this girl not only in her house but also in his own house. The Judge makes reference to the strict moral and social codes in Iran about contact between the sexes and Counsel submitted that nowhere does the appellant say that he had permitted access to his own home with the girl or permitted access to her home. Counsel submitted that theirs was an illicit relationship and the Judge appears to have misinterpreted the appellant's evidence about this. In the appellant's interview record at question 5 the appellant refers to the girl going to the appellant's house and him going to her house until her father saw him leaving her house one day. Counsel submitted that it was only when the appellant was found out that he was detained and beaten. Counsel referred to the appellant's witness statement at paragraph 3. The appellant refers to the girl's father seeing the appellant coming out of her house and seeing his photo on her phone and the appellant refers to the girl admitting the sexual relationship to her father. He submitted that the Judge has clearly misunderstood the appellant's evidence and so misstated the claim.
6. The next issue is whether the Judge impermissibly speculated and invented facts and I was referred to paragraph 19 of the Judge's decision. In this paragraph the Judge states that the appellant in his asylum interview states that he lost his previous phone and that was why he had not been in touch with the girl he abandoned. The Judge goes on to say that the appellant produced an iPhone and so he could have backed up all the information from his previous phone. Counsel submitted that this was not explored at the hearing and the evidence does not show that the appellant's previous phone was one which could be backed up or that the information could be transferred to an iPhone and he submitted that this paragraph is speculation and procedurally unfair. Counsel referred to paragraph 21 of the decision in which the Judge refers to the girl's family probably having servants or family members who would be keeping the girl under constant supervision, but Counsel submitted that this is speculation and there was no evidence before the Judge that that was the situation in the girl's house and he submitted that these comments by the Judge are pure conjecture.
7. Counsel submitted that the third issue, that the Judge erred in his approach to credibility was improper. Counsel referred to the case of HK [2006] EWCA Civ 1037

which deals with plausibility and the assessment of evidence in Immigration Tribunals. He submitted that the appellant's evidence is that he and the girl were having sexual relations and yet at paragraph 21 the Judge states "In my view it is incredible both having regard to their age and also the very powerful social conventions that apply in Iran that even if he had been engaged in some kind of courtship with this girl that it would advance to the stage of them having full sexual intercourse". Counsel submitted that this finding goes against the appellant's evidence which clearly is that they were having a sexual relationship and it is no more incredible that this would happen in Iran than it would in the United Kingdom.

8. Counsel then went on to deal with the way the Judge dealt with the medico legal report. The Judge refers to this report at paragraph 24 of the decision and Counsel submitted that the Judge appears to have given little or no weight to this report in spite of the report stating that there is a reasonable degree of consistency between the appellant's reported history of ill treatment and the photographic evidence of injuries documented in the report. He submitted that the Judge cannot in effect dump the report and cannot speculate on alternative reasons for the injuries. The doctor refers to the injuries being consistent with the appellant's account and Counsel submitted that the report basically supports the appellant's claim. At paragraph 25 of the decision the Judge states that the appellant may have been involved in inter-ethnic strife as he was a member of a Sunni minority community or he may have received ill treatment on his journey from Iran to the United Kingdom, but he submitted that again this is speculation on the part of the Judge and the report is supportive of the appellant's claim. The Judge also comments at paragraph 24 that the appellant only registered with his GP in 2016 but before that, Counsel submitted that he would have had to pay for treatment and had been unable to. Also the fact that the Judge comments on the appellant not telling the doctor about the adultery and finding that this lacks credibility and then referring to the doctor considering possible PTSD, should not have resulted in the Judge finding that this goes against the appellant's credibility as the doctor was dealing with the appellant's torture and his physical injuries as well as his mental state.
9. Counsel submitted that the Judge's findings on these four matters are all flawed. Each error is a material error of law and the Judge's decision should be set aside.
10. The Presenting Officer made his submissions relying on the case of *Gheisari* [2004] EWCA Civ 1854. He referred to paragraph 20 of the decision. He submitted that the First-Tier Judge heard the appellant's oral evidence, assessed its truthfulness and reliability and found the appellant not to be credible.
11. With regard to the Judge misstating his case, he submitted that the appellant states that the girl's father saw him coming out of her house so there was no error when the Judge state that it is not credible that the appellant was allowed access to his girlfriend's house as he clearly had access. I was referred to question 16 of the appellant's interview when the appellant was asked "Where did you meet when you met up together" and he said, "park or went shopping and she used to come to my house and I went to her house sometimes". The appellant then goes on to say that he

had been in his girlfriend's house and her father saw him coming out of the house. He submitted therefore that the Judge got his facts correct and he has not misstated the appellant's evidence.

12. With regard to the Judge impermissibly speculating and inventing facts, the Presenting Officer referred me to paragraph 19 of the decision. It is true that the appellant's evidence about his phone and him now having an iPhone was not explored at the hearing but the Judge makes findings of fact which were not challenged.
13. The Presenting Officer referred to the appellant's evidence that his father had been executed and submitted that there is only the appellant's oral evidence about this but although the appellant produced nothing to back up this assertion the Judge was entitled to make the findings he did, based on the evidence before him and that corroboration is not required in asylum cases. I was referred to the case of AG & Others which at paragraph 106 confirms that corroboration is not required and what the Judge has done is reach a conclusion in the absence of corroboration which he was entitled to reach.
14. The Presenting Officer referred to the issue of the Judge using an improper approach to credibility and I was referred to paragraph 21 of the decision. The Judge clearly does not believe the appellant's evidence about his relationship with his girlfriend, particularly because of his lack of interest in what had happened to his girlfriend after he fled. He submitted that it is clear that the Judge finds that the appellant's evidence about his relationship lacks a ring of truth and because of this the Judge was entitled to his plausibility and credibility findings. He submitted that the Judge's speculation as to whether the appellant's girlfriend would have servants is not material and he submitted that the Judge found that in a country like Iran what the appellant states happened is extremely unlikely to have happened.
15. With regard to the medico legal report, the Presenting Officer submitted that this is referred to at paragraph 10 of the decision as well as the psychiatric report by Dr Hussain. He submitted that it is true that after the appellant's injuries were examined some of them were found to be consistent with the appellant's account but the Presenting Officer submitted that in paragraph 15 of the decision the Judge makes reference to the scars, although being entirely consistent with the appellant's account of the injuries, perhaps having an alternative causation and he submitted that this is stated in the report. The Presenting Officer submitted that the Judge's findings about this form part of the evidence which has to be considered in the round. At paragraph 17 the Judge again refers to the report and at paragraph 24 the Judge finds that as the appellant was being examined in relation to possible PTSD it was strange that he had not divulged his sexual relationship with his girlfriend to the doctor. At paragraph 25 the Judge states that it is impossible to say exactly how the appellant got his injuries but he clearly did not believe that what the appellant states happened to him is the truth. The Presenting Officer submitted that there are no material errors of law in the Judge's decision.

16. Counsel made further submissions, submitting that the cases being referred to by the respondent are older cases than those referred to by him and that the up-to-date cases are the ones that should be relied on. He again referred to the said case of *Gheisari* and the low standard of proof in asylum cases. This case states that the choice is not normally which of the two parties to believe but whether or not to believe the appellant. He submitted that for a Judge to use common sense is not enough and when a Judge is assessing credibility his conclusions have to be properly reasoned based on the facts before him. He submitted that fact-finding is sensitive in asylum cases and the appellant's account has been consistent and when all the issues are considered the appellant's account is not incredible or improbable.
17. He submitted that corroboration is not required although the absence of corroboration may be relevant but he submitted that the question I have to consider is whether the credibility of the appellant as decided by the Judge has been properly reasoned.
18. I was asked to find that there are material errors of law in the Judge's decision and that this decision should be re-made and the appeal either allowed or remitted to the First-Tier Tribunal.

Decision and Reasons

19. There are four particular issues raised by the appellant on which leave to appeal is sought. The first one is the Judge materially misstating the core of the appellant's account. The Judge found there to be a lack of credibility that the appellant was allowed uncontrolled access to the house of his girlfriend whose father was a clergyman. It is clear from the appellant's evidence that that was not the case. The appellant's relationship was illicit and his house and his girlfriend's house were only used in secret. This could be an error of law and I have to decide whether it is material or not.
20. With regard to the Judge misstating the appellant's case and speculating on the evidence, the Judge's findings about the appellant's lost phone and the iPhone were not explored in evidence and the Judge made an assumption with no evidence that there would be servants or other members of the family in the girlfriend's house when the appellant went there. This involves speculation on the part of the Judge and this again may be an error of law.
21. I find that the Judge's approach to credibility is the most important issue raised in the grounds. Corroboration is not required and it is always difficult in asylum cases where a situation is totally different to a situation in a Western country. The Judge has to consider the objective evidence and the evidence given by the appellant and make an assessment about whether what the appellant states happened is possible when the background evidence is carefully looked at. The Judge appears to think that Iranian teenagers are unlikely to engage in sexual intercourse because of the objective evidence on Iran but the way the evidence has been assessed by the Judge is not realistic. This also may be an error of law.

22. With regard to the medico legal report, the Judge has referred to this on a number of occasions. When the report and the other doctor's report are read they appear, on the whole to support the appellant's account. The medico legal report refers to the appellant's injuries and finds many of them to be consistent. The Judge's finding that it lacks credibility that the appellant did not tell the doctor about his sexual relationship is a conclusion he was entitled to reach and is not an error of law.
23. When the first 3 issues are taken together I find that they form a material error of law and that the Judge's decision cannot stand.

Notice of Decision

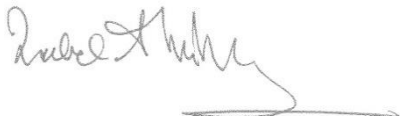
Because there is a material error of law in the First-Tier Judge's decision I direct that that decision is set aside. None of its findings are to stand other than as a record of what was said on that occasion. It is appropriate in terms of Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to remit the case to the First-Tier Tribunal for an entirely fresh hearing. The members of the First-Tier Tribunal chosen to consider the case are not to include Judge Paul.

Anonymity has not been directed.

Signed

Date 10 September 2018

Deputy Upper Tribunal Judge I A M Murray

A handwritten signature in black ink, appearing to read 'I A M Murray', with a long horizontal flourish underneath.