



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13493/2017

THE IMMIGRATION ACTS

Heard at Field House
On 11th June 2018

Decision & Reasons Promulgated
On 19th June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Claimant

and

A M
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Claimant: Mr N Bramble, Senior Home Office Presenting Officer
For the Respondent: Mr B Bundock of Counsel instructed by B H T Immigration
Legal Services

DECISION AND REASONS

Introduction and Background

1. The Secretary of State appeals against a decision of Judge Callow (the judge) of the First-tier Tribunal (the FtT) promulgated on 29th March 2018.
2. The Respondent before the Upper Tribunal was the Claimant before the FtT and I will refer to him as the Claimant. He is an Iranian national born 18th October 1999.

3. The Claimant claimed asylum on the basis of imputed political opinion, claiming that his father had been arrested while smuggling political leaflets. His application was refused on 7th December 2017 and he appealed to the FtT.
4. The appeal was heard on 25th January 2018. The Claimant was not called to give evidence, as he had been diagnosed by a chartered psychologist as having a moderate learning disability and moderate depression. The advice given by the psychologist was there should be no direct cross-examination of the Claimant as he had limited verbal dexterity and a limited ability to understand verbal information.
5. The judge at paragraph 18 found “that the Appellant has given credible evidence at the lower standard establishing his claim”. That finding must relate to the witness statements submitted by the Claimant and his interview record. The judge concluded that there was a real risk that the Claimant would face persecution if returned to Iran and the appeal was allowed on asylum grounds and with reference to Article 3 of the 1950 European Convention on Human Rights (the 1950 Convention).
6. The Secretary of State applied for permission to appeal to the Upper Tribunal. In summary it was accepted that the judge had been entitled to take into account at paragraph 15 the fact that the Claimant was a child when the claimed events which caused him to flee from Iran occurred, and that he was just 18 when interviewed. The Secretary of State challenged the findings of the judge at paragraph 18 in which it was concluded that the Claimant had given credible evidence establishing his claim on the basis that the judge had failed to engage with the Secretary of State’s refusal letter which sets out at paragraphs 26-30, consideration of the material facts of the Claimant’s claim, which is that he is wanted by the Iranian authorities for smuggling and supporting Komala.
7. The Secretary of State referred to MK (duty to give reasons) Pakistan [2013] UKUT 00641, and Budhathoki (reasons for decision) [2014] UKUT 00341, contending that the judge had failed to identify and resolve conflicts in the evidence, and had failed to give adequate reasons.
8. In conclusion the Secretary of State submitted that the judge had materially erred by failing to specifically explain why he disagreed with the findings made by the Secretary of State on the Claimant’s claim.
9. Permission to appeal was granted by Judge Cruthers of the FtT in the following terms;

“In my assessment, it is arguable, as per the grounds on which the Respondent seeks permission to appeal, that the judge may not have sufficiently engaged with the Respondent’s arguments (in the reasons for refusal letter) for contending that the Appellant’s core account should not be accepted. In other words, it is arguable that the judge should have demonstrated further engagement with the Respondent’s credibility points before any conclusion that the Appellant’s core asylum account fell to be accepted.”

10. Following the grant of permission the Claimant lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008. In summary it was submitted that the judge directed himself appropriately. It was contended that the judge set out reasons for accepting the Claimant's credibility at paragraphs 15-17. The judge had taken into account, and set out the Respondent's case. The judge had taken into account the fact that the Claimant was a child when the events claimed to have happened in Iran occurred, and took into account the expert evidence that the Claimant was suffering from a moderate learning disability and moderate depression. It was submitted that the judge had provided clear reasons for accepting the Claimant's account, taking into account his health and cognitive abilities, the fact that he is a minor, the cultural context and the country background evidence, and this was sufficient in terms of reasoning.
11. Directions were issued that there would a hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision should be set aside.

The Upper Tribunal Hearing

12. Mr Bramble relied upon the grounds contained within the application for permission to appeal, submitting that the judge failed to engage with the issues raised in the Secretary of State's refusal decision at paragraphs 26-30. It was accepted that the judge had set out the Respondent's case in summary at paragraph 6, and had made specific reference to paragraph 27 of the refusal decision and given reasons for not accepting the authority referred to in that paragraph.
13. Mr Bramble confirmed that there was no challenge to paragraph 15 of the judge's decision, but submitted that in paragraphs 17 and 18, the judge had failed to engage with the issues raised in the refusal decision.
14. Mr Bundock submitted that the FtT decision contained no material error of law. It was submitted that the reasoning required by a judge depends on the nature of the case. It was important in his decision that the judge correctly had in mind the Claimant's age, and the evidence of the psychologist as to his learning disability and depression. Reliance was placed upon the rule 24 response. With reference to paragraph 26 of the Secretary of State's refusal decision Mr Bundock submitted that the Claimant had not in fact given the answer referred to in that paragraph. Mr Bundock referred to the Claimant's answer to question 28 of his asylum interview in support of the submission that the Claimant had not actually said that leaflets and other items in the load to be smuggled were from Komala, which was based purely on his own research.
15. With reference to paragraph 27 of the Secretary of State's decision, the judge had adequately dealt with this paragraph at paragraph 6 of his own decision by confirming that the case referred to at paragraph 27 was "not verified and confirmed by the representatives in this case and is therefore disregarded".
16. With reference to paragraphs 28 and 29 of the Secretary of State's refusal, which make reference to the Claimant's account being speculative and hearsay, Mr Bundock questioned what exactly the judge was supposed to make findings upon.

17. It was submitted that the points made in the Secretary of State's refusal decision were inaccurate, lacking in structure, and poorly judged, and very little engagement with those points was required by the judge.
18. Mr Bundock submitted that the judge had considered the case put by both parties, correctly made reference to AM (Afghanistan) [2017] EWCA Civ 1123 and given adequate reasons for findings made.
19. In response Mr Bramble submitted that this appeal differed from AM (Afghanistan) as in this case the judge had accepted that the Claimant was a child, and suffered with a disability, but what he had failed to do was put that in the context of the claim and explain why the reasons given by the Secretary of State for refusing the application, were not accepted.
20. At the conclusion of submissions I reserved my decision.

My Conclusions and Reasons

21. Paragraph 15 of the FtT decision is not challenged. In this paragraph the judge records that the Claimant was a child when the claimed events in Iran occurred, and that he was just 18 when interviewed. The judge also records that because of the Claimant's age, there should be "a liberal application of the principle of the benefit of the doubt". At paragraph 16 the judge makes reference to HK [2006] EWCA Civ 1037 referring in particular to paragraph 25 of that decision which in summary states that inherent probability can be a dangerous, even a wholly inappropriate factor to rely on in some asylum cases. The judge goes on to note that there was approval in HK of guidance given in Awala [2005] CSOH 73 at paragraph 22, in which it was stated, in summary, that it was not proper to reject an applicant's account merely on the basis that it is not credible or plausible.
22. Also in paragraph 16 the judge makes a finding, which in my assessment refers to the paragraphs in the Secretary of State's refusal decision dated 7th December 2017 which deal with the material facts of consideration of the Claimant's claim. Those paragraphs are 26-30. The judge makes the following finding at paragraph 16;

"In refusing the Appellant's application, the Respondent re-characterised the Appellant's conduct in Iran through her own perception of reasonability without any evidential basis."
23. In deciding whether the judge has appropriately engaged with the reasons for refusal, it is necessary to consider the reasons given by the Secretary of State for refusing to accept the Claimant's account. At paragraph 26 the Secretary of State sets out the Claimant's claim that his father was working as a smuggler, his loads would include alcohol, and that he would also carry leaflets supporting Komala. I accept the submission made by Mr Bundock, that this paragraph inaccurately sets out the Claimant's answer to question 28 of his asylum interview. The Claimant specifically deals with this paragraph in his witness statement dated 9th January 2018 at paragraph 8 in which he confirmed that since his arrival in the UK he has spoken to other Kurdish

people from Iran and the political party they were supporting was Komola, which is why he thought that his father was also supporting Komola.

24. Paragraph 27 of the refusal decision is dealt with adequately by the judge at paragraph 6 of his decision.
25. Paragraph 28 of the refusal decision describes the Claimant's account of what happened the night his father was arrested as purely speculative.
26. Paragraph 29 makes reference to the Claimant's answers in interview in which he said he had not been arrested, and was hiding at his aunt's home, and he was told the authorities were looking for him. The conclusion of the Secretary of State is that this is considered hearsay as the Claimant did not have definite knowledge that he was a person of interest to the Iranian authorities.
27. In my view it is somewhat difficult to see what specific engagement the judge should have had in relation to claims by the Secretary of State that the Claimant had given a speculative account based on hearsay. The judge considered the Claimant's account contained in his witness statements, and found the account to be credible. In my view that was a finding that was open to the judge to make.
28. My conclusion is the FtT decision considers the case put by both parties, and does not demonstrate that the judge failed to engage with the credibility points referred to in the refusal decision. The judge made a specific finding at paragraph 16 of his decision that cogent reasons had not been given by the Secretary of State for rejecting the Claimant's account, and I find no material error of law disclosed in the FtT decision.

Notice of Decision

The decision of the FtT does not disclose a material error of law. I do not set aside the decision. The appeal of the Secretary of State is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Claimant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 13th June 2018

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

No fee has been paid or is payable. There is no fee award.

Signed

Date: 13th June 2018

Deputy Upper Tribunal Judge M A Hall