



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

Appeal Number: PA/01819/2018

THE IMMIGRATION ACTS

**Heard at Bradford
On 29 March 2019**

**Decision & Reasons Promulgated
On 18 April 2019**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

**DA
(ANONYMITY DIRECTED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Greer (Counsel)

For the Respondent: Mrs R Pettersen (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This decision of the Upper Tribunal is a short one. That is because of a conciliatory stance taken by Mrs Pettersen at the hearing before me, which meant that, in terms of the outcome of this appeal and indeed the preferred means of disposal, there was agreement between the parties. That level of agreement means that it is unnecessary for me to set out the whole of the evidence and the whole of the arguments in full. I need only explain why I am setting aside the decision of the First-tier Tribunal (the tribunal) and why I am, in consequence of that, remitting for a rehearing before a differently constituted First-tier Tribunal.

2. The claimant, who was born on 29 March 1998, is of Kurdish ethnicity and is a national of Iran. He entered the UK on 19 September 2017 and sought international protection on the basis that he had been, albeit for a short period, a political activist in Iran, that his activities had come to the attention of the Iranian authorities, and that, therefore, he would be at risk of persecution or serious harm if he were to be returned there.

3. The claim was refused by the Secretary of State and the claimant appealed to the First-tier Tribunal (the tribunal). The tribunal dismissed his appeal following a hearing of 7 August 2018 and it sent its decision to the parties on 31 August 2018. It is fair to say that the tribunal disbelieved most of what the claimant had asserted to it. It explained why it was disbelieving the bulk of the account in a passage running from paragraph 47 to 68 of its written reasons. It was its rejection of the claimant's credibility and consequently his account, which led to its decision to dismiss the appeal. In seeking permission to appeal the claimant, through Mr Greer, sought to attack almost all of the tribunal's adverse credibility findings asserting that it had misunderstood aspects of the claimant's evidence causing it to detect inconsistencies where there were none; and that it had impermissibly speculated in ways which led to it incorrectly rejecting aspects of the account.

4. An unlimited grant of permission followed the lodging of the grounds and the matter was then listed for a hearing before the Upper Tribunal (before me) so that consideration could be given as to whether or not the tribunal had erred in law and, if it had, what should flow from that. Representation was as stated above and as I have already indicated that Ms Pettersen took a conciliatory stance. She noted that no rule 24 (a reference to rule 24 of the Upper Tribunal's Rules of Procedure) response to the appeal had been filed. But she indicated that she took the view it was appropriate for this appeal to be redecided by a differently constituted tribunal. The hearing was short because, after that, there was really not much more which needed to be said.

5. I have decided to set aside the tribunal's decision because I do think that there are aspects of its credibility assessment which are unsafe for reasons which I shall explain. I also think that a consequence of that is that the credibility assessment as a whole, in the particular circumstances of this case, is unsafe. But I would wish to make it clear that it is apparent from the tribunal's written reasons that it has set about its task with care and diligence and I would also wish to make it clear that I do not accept all of the contentions which have been made on behalf of the claimant in the written grounds. But I have accepted enough of them to conclude that there has been legal error.

6. The tribunal thought that the claimant had been inconsistent about the date upon which he had left Iran. It said that, in his substantive asylum interview, he had variously given the date as being 9 June 2017, 12 June 2017 and 3 September 2017. At paragraph 67 of its written reasons it indicated its view that it considered that inconsistency and one other "to be significant" and that both had "damaged the appellant's credibility". So, it does appear that it gave quite significant prominence to its conclusion as to inconsistency with respect to the date of departure in its overall credibility assessment.

7. It is apparent, as identified in the grounds of appeal to the Upper Tribunal, that the claimant was, on a number of occasions during the course of the substantive asylum interview, asked to provide dates when various events had taken place. It appears that what was recorded in the typed record of that interview, usually at least, was a date in the Iranian calendar which would then be followed by an equivalent date in the Gregorian calendar. There is an example of that happening with respect to the answer to question 31. There is another such example with respect to the answer to question 39. There is another with respect

to the answer to question 71. But the answers which concerned the tribunal related to questions 127 and 130. As to question 127 and the answer to it, they read as follows:

“Q - what date did you leave Iran?

A – 12/06/2017 (03/09/2017)”.

8. The way the answer to question 127 is set out mirrors the way the answers, with respect to dates, have been recorded save for the fact that both have the appearance of being dates from the Gregorian calendar. But given the way in which the dates have been set out in the answers to earlier questions, there is good reason to think that the intention was to record an Iranian date first of all followed by a Gregorian date. So, it might be that rather than giving two different dates of arrival in answer to the same question which is how the tribunal had obviously interpreted this (see paragraph 66 of the written reasons) and which would have represented a clear inconsistency, the claimant had only given one date. In those circumstances I do not think it was open to the tribunal (in looking at the record of the interview as a whole) to safely conclude, at least without probing the matter further, that the claimant had been inconsistent with respect to dates or to accord such a consideration the prominence which it apparently did accord it.

9. One of the points taken by the tribunal against the claimant, with respect to credibility, related to the content of leaflets which the claimant had said he would distribute with his friend. His evidence was to the effect that he is illiterate so could not read the content himself but that his friend had told him something of the content. The tribunal noted that the leaflets did “not call for any action” and the tribunal said that such “would be expected on a leaflet”. That does seem to me to amount to impermissible speculation. Further, the tribunal’s thinking to the effect that such leaflets would call upon persons to take action against the authorities (that is presumably what was meant) is not explained. It seems to me it is perfectly possible that some political leaflets will express concerns about the treatment of minorities and will then specify action which it thinks should be taken or will urge people to take specific forms of action. But one might equally conclude that some leaflets would simply detail concerns with respect to perceived ill-treatment of minorities in order to draw their attention to the wider public or to foster disenchantment with the authorities. I have concluded that the tribunal’s conclusion that the leaflets would have called for specific action lacked any proper evidential basis and so was not open to it.

10. The tribunal indicated it thought the claimant’s explanation as to why he had joined a party as a political activist was unclear (paragraph 48 of the written reasons). But the tribunal, whilst it does quote from answers the claimant had given to questions put to him in the substantive asylum interview, does not really explain how it reached that view. It also said that no explanation had been offered by the claimant, if his motivation was a result of the killing of his father some years ago, as to why he would not have joined an oppositionist organisation earlier. The claimant though had offered something of an explanation as to why he had not acted earlier (and in any event, it appears that he was a child when his father was killed) at paragraph 5 of his witness statement of 5 March 2018 as Mr Greer points out. Perhaps the view could be taken that what he offered was not much of an explanation but that is not the point that the tribunal was seeking to make. Further, as to the claimed lack of clarity regarding his motivation, it seems to me that the thrust of what the claimant had to say was that his father had been killed when he was young but it was only as a result of his friend subsequently urging him to join and suggesting that the authorities had been responsible for the death of his father, that he did so. There might be an argument to say that a person would be unlikely to join a political party, become active and risk persecution or death, simply due

to the urging of a friend but again, that was not the tribunal's point. Perhaps what it really thought was that the claimant's explanation as to why he had become a political activist was simply unconvincing. It might have been open to it to so decide but it does not seem to me that it was open to it to decide that his motive was "unclear". He had stated what it was with some clarity.

11. I fully appreciate that there are other credibility concerns set out in the tribunal's written reasons. As indicated, Mr Greer attacks most of those, but I am not persuaded that what is said as to those remaining matters goes beyond re-argument or simply the identification of a different way of looking at the same evidence. That latter sort of point does not help unless the way the tribunal looked at it was not open to it. I fully appreciate that it will not by any means always be sufficient in seeking to establish legal error, to undermine certain of the credibility conclusions where others remain unchallenged or not successfully challenged. But I am persuaded, in this case, that the credibility assessment is not legally sustainable and I do note that Mrs Pettersen effectively expressed that view herself on behalf of the Secretary of State. That is not something which I should disregard.

12. In the circumstances then, I have concluded that the tribunal's decision ought to be set aside. Since I have decided to do that on the basis of the credibility assessment, I am not able to preserve any of the tribunal's findings. In those circumstances it seems to me, as was agreed by the two representatives, that the most appropriate course of action would be a remittal to the tribunal and that is what I have decided to do. There will, therefore, be a rehearing of the appeal before a differently constituted tribunal (a different judge). That rehearing will not be limited to the issues I have identified above and which have caused me to set aside the tribunal's decision. The tribunal will consider all aspects of the appeal, both fact and law, entirely afresh. The claimant should not assume, merely because I have set aside the tribunal's decision, that he will ultimately succeed. He might but, again, he might not. All of that will now be a matter for the good judgment of the new tribunal.

13. The Upper Tribunal, in circumstances where it sets aside a tribunal decision, is required to give directions for the rehearing. However, it does not seem to me that it would be appropriate to give detailed directions. That function may be carried out more appropriately by members of the judiciary within the First-tier Tribunal. I would simply direct, then, that there be a full rehearing of the appeal by way of oral hearing, on a date to be fixed.

Decision

The decision of the First-tier Tribunal involved the making of an error of law and is set aside. The case is remitted to the First-tier Tribunal for rehearing by a differently constituted tribunal (a different judge).

The First-tier Tribunal granted the claimant anonymity. I continue that grant pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Accordingly, no report of these proceedings shall identify the claimant or any member of his family. This direction applies to all parties to the proceedings. Failure to comply might lead to contempt of court proceedings.

Signed:

Dated: 15 April 2019

Upper Tribunal Judge Hemingway