



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03340/2018

THE IMMIGRATION ACTS

Heard at Field House
On 12th December 2018

Decision & Reasons Promulgated
On 5th February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

OMID [S]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hodson, Counsel

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iran born on 30th August 1988. The Appellant claims to have arrived in the UK on 26th September 2017 by plane claiming asylum at Stansted Airport. The Appellant's full immigration history is set out in the Secretary of State's bundle. The Appellant's application for asylum and humanitarian protection was refused on 25th February 2018. That application was based on a claim that the Appellant had a well-founded fear of persecution in Iran on the basis of his imputed political opinion.

2. The Appellant appealed the refusal of the Secretary of State and the appeal came before Judge of the First-tier Tribunal Hussain sitting at Birmingham on 9th April 2018. In a decision and reasons promulgated on 27th April 2018 the Appellant's appeal was dismissed on all grounds.
3. On 16th May 2018 Grounds of Appeal were lodged to the Upper Tribunal. On 4th June 2018 First-tier Tribunal Judge Lambert refused permission to appeal. Renewed Grounds of Appeal were lodged to the Upper Tribunal on 2nd July 2018.
4. In a very brief reasons Upper Tribunal Judge Coker granted permission to appeal on 29th October 2018 stating that it was arguable that the First-tier Tribunal Judge failed to engage with the evidence before him in relation to the Appellant's brother.
5. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel, Mr Hodson. The Secretary of State appears by her Home Office Presenting Officer, Mr Tufan.

Submission/Discussion

6. Mr Hodson indicated he relies on both sets of Grounds of Appeal, contending that the First-tier Tribunal Judge failed to provide sufficient or sustainable reasons for adverse credibility findings. Those grounds contend that the fundamental error in the First-tier Tribunal Judge's analysis was the failure to consider the risk that would be faced by the Appellant if returned from the UK and that this is wholly different to the circumstances pertaining at the time of the Appellant's return from Georgia in 2015.
7. Mr Hodson submits that the First-tier Tribunal Judge's determination is unusual as there is no summary given of the evidence before him or legal reasoning and no reference is made to the oral evidence at the hearing. He submits that this provides the basis of his concerns. He refers to the background facts, in particular that the Appellant's brother, Hussein, was granted refugee status in the UK in 2014 and that it was accepted that Hussein was considered a spy and therefore at risk of persecution. His submission is that it is inevitable that if the Appellant is returned to Iran he would be interrogated about his association with his brother in the UK. He points out that the failure of the First-tier Tribunal Judge to consider the risk to the Appellant if returned to Iran is a material error of law. He specifically refers me to paragraphs 5 to 10 of the Grounds of Appeal and the findings made at paragraphs 13 to 19 of the decision which leads to the judge's conclusions of adverse credibility.
8. He submits that there are two points in the grounds that are particularly worth emphasising
 - (i) The findings set out at paragraph 13 of adverse credibility based on the fact that the Appellant did not suffer more problems on return to Iran from Georgia in 2015. He submits that the analysis of the judge here is materially flawed and that the Appellant suffered repeated arrests based solely on the Appellant's link

to his brother and that given his direct contact with his brother in the UK, the risk of persecution on return is far greater now than it was in 2015.

- (ii) He takes me to paragraph 19 of the decision, submitting that the judge needed to assess the Appellant's risk on return from the UK as a failed asylum seeker and that the judge failed to appreciate the distinction between the Appellant's return from Georgia in 2015 and what, he submits, are very different circumstances that would await him if he returned from spending time with his brother in the UK.
- 9. He points out that the Appellant would, as a failed asylum seeker, be questioned and assumed to know something regarding his brother bearing in mind it is accepted that his brother had been involved in spying. He submits the judge needed to assess that risk and has failed to do so and that the scenario of what happened on return from Georgia does not give a reasonable examination of this. He submits that it is not relevant that the judge seems to think that he has done so and the judge needed to address the risk of the Appellant having been in contact with his brother.
- 10. Mr Tufan responds by submitting that the judge has considered what was in front of him. Even on his brother's account it is submitted that there is no interest in the Appellant by the Iranian authorities. It is not in dispute that the Appellant was previously in Georgia and that he returned to Iran and that nothing happened when he returned.
- 11. He submits that the judge considered the Section 8 issues at paragraph 18, pointing out the judge made credibility findings that he was entitled to and that the judge has considered what was put to him and made findings based on that. He reminds me that at paragraph 20 that the judge was also satisfied, nor was it argued on his behalf, that the Appellant would face persecution as a failed asylum seeker following *SSH and HR* that if any confirmation of this was needed it was only necessary to look at the actions of the Iranian authorities when the Appellant returned to Iran from Georgia. He asked me to dismiss the appeal.

The Law

- 12. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
- 13. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law

for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

14. This appeal turns entirely on the judge's findings of credibility and whether the judge has given proper and due weight to the arguments and submissions made that the Appellant would be returning to Iran as the brother of someone who has been granted asylum in this country having claimed to be a spy against his own country. Those facts are not in dispute nor is the fact that the grant of asylum to the Appellant's brother predates the Appellant returning to Iran from Georgia and the fact that he was not detained as a result by the Iranian authorities, albeit that it is contended at paragraph 5 of the Grounds of Appeal that the Appellant did suffer repeated arrests.
15. I remind myself that a proper approach to credibility requires an assessment of the evidence and of the general claim and that in asylum claims relevant factors would include the internal consistency of the claim, the inherent plausibility of the claim and the consistency of the claim with external factors of the sort typically found in country guidance. In this case the judge has in extensive paragraphs gone on to consider all of the evidence that was put before him. He has made findings of fact leading to adverse findings of credibility that he was entitled to. In effect the submissions made by Mr Hodson amount to little more than disagreement with the findings of the judge. It has to be remembered that this is an Appellant who is basing his claim solely on the fact that he would be returning to Iran as the brother of someone who has been granted asylum on the basis that he was spying. It also has to be remembered that the Appellant has previously returned to Iran in similar circumstances from Georgia. All these factors were considered thoroughly by the judge.
16. The basis of the submissions made by Mr Hodson and the Grounds of Appeal are that the judge was not entitled to make the adverse findings of credibility that he did. I completely refute that submission. This is a judge who has very carefully looked at all the facts that were placed before him. He has made findings at paragraphs 13 through to paragraph 19 setting out exactly the basis upon which he has made his findings of adverse credibility. He has considered carefully and thoroughly all the evidence that was before him.
17. In such circumstances the submissions made amount to little more than disagreement with the decision. The decision is sound and discloses no material error of law. Full reasons are given based on the evidence that was before the judge

for the findings of fact and findings of adverse credibility that he has made. The decision consequently discloses no material error of law and the Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Notice of Decision

The decision of the First-tier Tribunal Judge discloses no material error of law and the Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed

Date 13th January 2019

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris