



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

Appeal Number: AA/04636/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 30 September 2013
Prepared 30 September 2013**

**Determination Sent
On 8 October 2013**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**HEBEN ABUBAKRY ALIPOOR
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Draycott, Counsel, instructed by Paragon Law
For the Respondent: Miss H Horsley, Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals, with permission, against the determination of First-tier Tribunal Judge Forrester, promulgated on 24 June 2013, dismissing his appeal against the decision of the respondent made on 30 April 2013 to refuse him leave to enter the United Kingdom and to refuse him asylum.
2. The appellant is an ethnic Kurd from Iran whose case is that he faces persecution on return on account of his suspected involvement with the

KDPI and/or the risk of being treated as a draft evader. He fears also that he will be ill-treated on return as a failed asylum seeker.

3. The respondent accepts that the appellant is an ethnic Kurd from Iran but did not accept his account of being suspected of membership of the KDPI and that he would not be at risk on return to Iran, having no adverse profile other than his illegal exit.
4. Judge Forrester found that the appellant was not credible on the grounds:-
 - (i) that although the basic facts were consistent, his account lacks credibility in detail; [11.1] that it was “completely incredible that a village so small could support a shop as contended for by the appellant given the limited descriptions of the shop given by the appellant and the inconsistencies in what the shop sold” [11.1],
 - (ii) that none of the items the appellant claims he sold would “in my judgment be items that the tiny community in which the shop was located would have needed” [11.2]; and, that as the shop was a fabrication, he could not accept that KDPI literature was found in the shop and found it inconceivable when arrangements were made that the appellant was not given the means and method of making contact with his uncle [11.4],
 - (iii) that on his return to Iran the appellant would not have a history which aroused the appellant’s suspicions [13].
5. The grounds of appeal challenged the decision on the basis that the judge materially erred in law
 - (i) in his approach to the findings regarding the family shop given that its existence had not been challenged by the Home Office in the refusal letter [5, 6] and at no point during the hearing did the Presenting Officer or the judge question whether the appellant’s family owned a shop in Iran, thereby depriving him of the opportunity to address this matter, there being no challenge in the respondent’s submissions that the shop existed [8].
 - (ii) in finding that the appellant’s family’s ownership of the shop was implausible, which amounted to unlawful speculation not based on any objective evidence,
 - (iii) in determining the entire case on a single issue;
 - (iv) in failing to have proper regard to the expert report which, even were the appellant not credible, indicated that he was at risk; and,
 - (v) in failing to have regard to the Respondent’s failure to trace the appellant’s family in Iran [14 to 15].

6. On 18 July 2013 First-tier Tribunal Judge Blandy granted permission to appeal on all grounds. The respondent replied to that letter pursuant to Rule 24 in a letter dated 31 July 2013 submitting that the judge gave cogent reasons for disbelieving that there was a shop, a finding open to him to make.
7. I heard submissions from both representatives. Mr Draycott submitted, relying on the grounds, that the judge's decision was irrational and not grounded in evidence.
8. Ms Horsley submitted that the judge reached conclusions open to him and he had been entitled to make findings about what he thought a small store would sell. She also submitted that, contrary to what was put forward in the grounds of appeal, that the respondent had accepted the shop existed and it was not clear that there had been no cross-examination on the point or that the judge had not asked questions [7]. At that point it became clear that there was no Record of Proceedings on the court file.
9. The determination does not identify any proper basis on which the judge could properly have come to the conclusion that it was "completely incredible that a village of so small a size could conceivably support a shop as contended for by the appellant". Whilst the judge is entitled to use commonsense in assessing the evidence, as Neuberger LJ noted in **HK v SSHD [2006] EWCA Civ 1037** at 28 to 29, inherent improbability can be a dangerous even a wholly inappropriate factor to rely on in asylum cases. As Keene LJ noted in **Y v SSHD [2006] EWCA Civ 1223** at [27] care must be taken in concluding an account is incredible without looking at the issue through the evidence of the country information. The determination does not disclose any reliance on such evidence and thus the findings on credibility are inadequately reasoned. Further, at [11.2] the judge impermissibly relies on his own speculations as a basis for rejecting the appellant's evidence.
10. In the circumstances, I am satisfied that the First-tier Tribunal's determination did involve the making of an error of law affecting the outcome of the appeal and must be set aside. The determination must be remade. The Senior President of the Tribunals' Practice Statement of 25th September 2012 provides as follows at paragraph 7:

"7. "Disposal of appeals in Upper Tribunal

Where under section 12(1) of the 2007 Act (proceedings on appeal to the Upper Tribunal) the Upper Tribunal finds that the making of the decision concerned involved the making of an error on a point of law, the Upper Tribunal may set aside the decision and, if it does so, must either remit the case to the First-tier Tribunal under section 12(2)(b)(i) or proceed (in accordance with relevant Practice Directions) to re-make the decision under section 12(2)(b)(ii).

[7.2] The Upper Tribunal is likely on each occasion to proceed to re-make the decision instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-

- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
- (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."

11. The effect of the error here is such that none of the findings can be preserved, and as the record of proceedings appears to be absent, an extensive judicial fact-finding exercise is required and, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal for a fresh determination of the appellant's appeal on all issues.

Directions

- 1. The determination of the First-tier Tribunal is set aside.
- 2. None of the findings made by Judge Forrester are preserved
- 3. The appeal is remitted to the First-tier Tribunal to be remade.

Signed

Date: 1 October 2013



Upper Tribunal Judge Rintoul