



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

Appeal Number: PA/00240/2017

THE IMMIGRATION ACTS

**Heard at Manchester
On 18th December 2017**

**Decision & Reasons
Promulgated
On 21st December 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**B S H
(ANONYMITY DIRECTION MADE)**

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Gayle of Elder Rahimi Solicitors

For the Respondent: Mr M Diwncyz, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Wedderspoon of the First-tier Tribunal (the FTT) promulgated on 21st March 2017.
2. The Appellant is an Iranian citizen born [] 1997. He arrived in the UK on 26th June 2016 and claimed asylum on the basis of his imputed political opinion.

3. His asylum and human rights application was refused on 16th December 2016 and his appeal was heard and dismissed by the FTT on 16th February 2017.
4. The FTT heard evidence from the Appellant's brother and uncle, both of whom had been granted refugee status in the UK. The FTT noted that the Appellant's case was that he had no political involvement in Iran until his brother requested him to deliver a package. This caused the Iranian authorities to raid the Appellant's home and in his absence, arrest his father. This caused the Appellant to flee from Iran.
5. The FTT was not satisfied that the Appellant had any political profile and was not satisfied that the Appellant's delivery of a package provided him with any political standing, and was not satisfied that as a result of this he came to the knowledge of the authorities. The FTT was not satisfied that such a package actually existed. The FTT did not find that the Appellant had given a credible account and rejected his evidence.
6. The Appellant applied for permission to appeal to the Upper Tribunal. In summary it was contended that the FTT had erred by failing to provide sufficient or sustainable reasons for adverse credibility findings, and had failed to make any findings on compelling, corroborative evidence.
7. Permission to appeal was granted by Judge Adio of the FTT who noted the absence in the FTT's decision, of any analysis of the evidence given by the Appellant's two witnesses.
8. Following the grant of permission to appeal the Respondent submitted a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008, contending that the FTT was aware that the Appellant's brother had been granted refugee status, and that the grounds did not show that a different decision could have been reached by the FTT, and the FTT directed itself appropriately.
9. Directions were issued making provision for there to be a hearing before the Upper Tribunal to ascertain whether the FTT decision contained an error of law such that it should be set aside.

The Oral Submissions

10. At the hearing before me Mr Gayle relied upon the grounds contained within the application for permission to appeal submitting that the credibility findings of the FTT were flawed for the reasons given in those grounds. In addition the FTT had erred by failing to assess risk on return, in the light of the accepted political profile of the Appellant's family in opposition to the Iranian regime.
11. Mr Diwncyz did not concede an error of law, but indicated that he had no oral submissions to make in opposition to the Appellant's claim that an error of law existed within the FTT decision.

My Conclusions and Reasons

12. In my view the FTT materially erred in law for the following reasons.
13. The FTT acknowledged that the Appellant's brother had been granted refugee status on the basis of his political opinion and stated that this in itself did not establish the Appellant's asylum claim, and there is no error of law in that finding. However, the Appellant's brother had provided a witness statement and given oral evidence to the FTT, and the oral evidence is summarised at paragraphs 32 - 33. That evidence corroborated the Appellant's account as to being asked by his brother to deliver a package. There is no analysis of the brother's evidence. Failure to consider and analyse potentially material evidence amounts to an error of law.
14. Evidence was also given by the Appellant's uncle, also a recognised refugee. There was no analysis of this evidence by the FTT, although I find that this evidence was not potentially as relevant as the brother's evidence, in that the uncle gave evidence in relation to the political profile of the family, rather than the delivery of the package which is said to have caused the Iranian authorities to have an adverse interest in the Appellant.
15. The findings of fact made by the FTT are set out in paragraphs 45 - 52. Linked to the failure to analyse potentially relevant evidence, is a failure to provide adequate reasons for finding the Appellant had not given a credible account.
16. The Upper Tribunal in **Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC)** stated in the headnote:

"It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost."
17. I find that the FTT did not resolve key conflicts in the evidence in this case, as there is no analysis of the evidence given by two witnesses, one of whom gave evidence that corroborated the Appellant's account. It is not clear from reading the FTT decision why no weight has been given to the evidence of the two witnesses.
18. Credibility was a core feature of this appeal. The FTT credibility findings are flawed for the reasons given above, and therefore the decision is unsafe and is set aside.
19. Both representatives suggested that it would be appropriate to remit this appeal to the FTT to be heard afresh. I have considered paragraph 7.2 of

the Senior President's Practice Statements, and find it is appropriate to remit the appeal back to the FTT with no findings of fact preserved. This is because credibility is a central issue, and there is a substantial fact-finding exercise to be carried out. Because of the nature of the fact-finding it is more appropriate that this is carried out by the FTT rather than the Upper Tribunal.

20. The parties will be advised of the time and date of the hearing in due course. The appeal is to be heard by an FTT Judge other than Judge Wedderspoon.

Notice of Decision

The decision of the FTT involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the FTT with no findings of fact preserved.

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

Unless and until a Tribunal or court directs otherwise, the Appellant 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 Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

19th December 2017

TO THE RESPONDENT FEE AWARD

No fee award is made by the Upper Tribunal. The issue of any fee award will need to be considered by the FTT.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

19th December 2017