



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

Appeal Number: PA/05371/2016

THE IMMIGRATION ACTS

**Heard at Stoke
On 13 July 2017**

**Decision &
Promulgated
On 14 July 2017**

Reasons

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**AK
ANONYMITY DIRECTION MADE**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Holt (Counsel)

For the Respondent: Mr Bates (Senior Home Office Presenting Officer)

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication

thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

1. I have anonymised the appellant's name because this decision refers to his asylum claim.

Summary of asylum claim

2. The appellant is a citizen of Iran. He contends that he has a well-founded fear of persecution in Iran for reasons because of his involvement in supporting the KDPI by distributing leaflets.

Procedural history

3. In a decision dated 4 January 2017 First-tier Tribunal Judge Swinnerton dismissed the appellant's appeal. The First-tier Tribunal comprehensively rejected the credibility of the appellant's account.
4. In a decision dated 4 April 2017 First-tier Tribunal Judge Gillespie granted permission to appeal observing that it was arguable that the wrong standard of proof was applied.

Hearing

5. At the beginning Mr Holt relied upon the three written grounds of appeal and invited me to allow the appeal. Mr Bates submitted that the errors identified by Mr Bates elevated form over substance. He asked me to find that when the decision is read as a whole, the First-tier Tribunal's credibility findings are not vitiated by any material error of law.
6. After hearing from both representatives I reserved my decision.
7. Both representatives agreed that should I find an error of law, the decision shall need to be remade completely.

Error of law discussion

8. The First-tier Tribunal correctly directed itself to the "*reasonable degree standard of proof*" at [33], [36] and [37] and indicated that all the evidence was considered in the round at [34]. I am nonetheless satisfied that when the decision is read as a whole that it contains fundamental errors, in relation to the approach to section 8 and the approach to the application of the standard of proof.
9. Mr Holt submitted that when commencing the credibility assessment at [39], the First-tier Tribunal did that which it is prohibited from doing. At [39] as a starting point and before making any other findings or actually considering all the evidence, the First-tier Tribunal regarded the appellant's credibility to be damaged solely by reason of a matters relevant to section 8 of the Asylum and Immigration

(Treatment of Claimants etc) Act 2004. In SM (Section 8: Judge's process) Iran [2005] UKAIT 00116 the Tribunal cautioned against section 8 considerations being treated as the starting point of the assessment of credibility. However it must be acknowledged that credibility findings must start somewhere and it is not an error of law to merely start with the appellant's failure to claim asylum en route to the UK. The error of significance is the finding that this in itself damages credibility.

10. In JT (Cameroon) v SSHD [2008] EWCA Civ 878 Laws LJ at [24] recommended reading the adverb "potentially" into section 8(1) before "damaging". The First-tier Tribunal has not adopted this approach. Right at the beginning and before considering all the evidence in the round the First-tier Tribunal found that the appellant's failure to claim asylum in countries en route to the UK "*has damaged his credibility*". There has been no acknowledgement that such behaviour is capable of damaging credibility but all the evidence must be considered in the round.
11. I have considered whether this error in approach is saved by other parts of the decision, read as a whole. I acknowledge that the First-tier Tribunal considered the appellant's claims to be implausible and lack credibility "overall" at [41] but it is difficult to know what is meant by the use of "overall" and the extent to which the First-tier Tribunal regarded credibility as already damaged by reason of section 8. It is also difficult to understand why the "overall" finding at [40] comes after [41] and not before it. When read as a whole, the First-tier Tribunal appears to have found the requirements of section 8 to have damaged the appellant's credibility before addressed its mind to considering all the evidence in the round.
12. It is also difficult to understand why the First-tier Tribunal regarded it as appropriate to decide "on a balance of probabilities" that the appellant is an economic migrant at [54]. Mr Bates invited me to find that this was "added on" and was in no way relevant to the adverse credibility findings. The difficulty with this submission is that the statement "*I decided, on a balance of probabilities he is an economic migrant*" at [54] raises a number of uncertainties. Why use the expression "decided"? At which point was this decision reached? The use of the past tense implies that the decision was made at an earlier point in the decision. What role did the finding regarding section 8 damage play? Was this decided as a result of the failure to claim asylum en route?
13. There is also some force in the submission at ground 3 that the appellant provided all the evidence he possibly could about his brother's limited role with the KDPI and the finding that he was unclear about it is not reasoned and difficult to follow.

14. The First-tier Tribunal undoubtedly made wide-ranging adverse credibility findings at [42]-[54]. However, the First-tier Tribunal's approach to section 8 and credibility raises issues of concern that when viewed together indicate that an error of approach to credibility that constitutes an error of law. The correct application of the standard of proof and the correct, holistic approach to credibility are fundamental requirements in the determination of an asylum appeal.

Disposal

15. It follows that the conclusion on credibility is vitiated by error of law and unsafe. The decision must be remade entirely and de novo. I have had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I have decided that this is an appropriate case to remit to the First-tier Tribunal.

Decision

16. The decision of the First-tier Tribunal involved the making of a material error of law. Its decision cannot stand and is set aside.
17. The appeal shall be remade by the First-tier Tribunal de novo.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
13 July 2017