Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/09584/2016**

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
On 4 May 2017	**On 16 May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

B I
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Martin, of Jain Neil & Ruddy, solicitors
For the Respondent: Ms M O'Brien, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant, preserving the anonymity order made by the first-tier tribunal.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge AMS Green promulgated on 18 March 2017, which dismissed the Appellant's appeal

Background

3. The Appellant was born on 25 August 1992 and is a national of Iran. On 26 August 2016 the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge AMS Green ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 6 April 2017 Judge M J Gillespie granted permission to appeal stating inter alia

> Proposed grounds of appeal raise arguable points which if established might constitute material errors of law. In particular the averment in paragraph 4 of the grounds that the learned Judge misunderstood a submission for the appellant concerning *sur place* activities, has apparent arguable merit. Further, the remaining averment, that the learned Judge erred in dismissing the claim of the appellant solely on the grounds of immigration history and without examination of the central core of his claim of past persecution and without giving adequate reasons for failing to address the central core, is fairly arguable.

The Hearing

5. Mr Martin moved the grounds of appeal. He told me that he had already had discussions with the Senior Home Office presenting officer, and was optimistic that the appeal was no longer opposed.

6. Ms O'Brien, for the respondent, told me that she could no longer insist on the terms of the rule 24 note and now accepts that the Judge did not deal with the core aspects of the appellant's claim. Instead he relied too heavily on the provision of section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004.

7. I was invited by both representatives to set the decision aside and remit this case to the First-tier to be considered of new.

Analysis

8. At [1] of the decision the Judge sets out the background to this appeal and summarises the appellant's position. At [2] the Judge summarises the respondent's decision. At [3] the Judge summarises the grounds of appeal. At [4] the Judge succinctly summarises the sources of evidence.

9. At [5] and [6] the Judge summarises the law relevant to this appeal. At [7], [8] & [9] the Judge summarises the evidence and submissions. At [10]

the Judge carries out a brief analysis of the evidence before concluding that the appellant has fabricated his claim, and at [11] the Judge considers whether the appellant can safely return to Iran.

10. [10] does not contain adequate findings of fact nor does it contain adequate reasons relating to the core aspects of the appellant's claim. There are no findings in fact about the reasons the appellant left his country of origin. The appellant's claim focuses on what he says happened to him in Iran. The Judge has not analysed the evidence. The Judge has not made findings of fact about core issues in the appellant's claim.

11. Instead, the Judge has focused on the appellant's attempts to enter the UK and his failure to claim asylum in European countries before arriving in the UK. The Judge has focused on section 8 of the Asylum & Immigration (Treatment of Claimants etc) Act 2004 only. That is not adequate consideration of the appellant's claim.

12. In JT (Cameroon) v SSHD 2008 EWCA Civ 878 the Court of Appeal said that section 8 factors should be taken into account in assessing credibility and were capable of damaging it but the section did not dictate that the relevant damage to section 8 inevitably results. It was possible to read the adverb "potentially" into section 8(1) before the word "damaging". In that case the Court of Appeal concluded that there was a real risk that section 8 matters were given a statement and compartment of their own and were not taken into account as part of a global assessment of credibility.

13. In SM (2005) UKIAT 00116**,** the Tribunal said section 8 should not be the starting point for the assessment of credibility. The behaviour identified in that section is a factor to be taken into account in the overall assessment of credibility and its importance will vary from case to case. Although section 8 required the deciding authority to treat certain aspects of the evidence in a particular way it was not intended to and did not otherwise affect the general process of deriving facts from evidence.

14. In MT, Petition for Judicial Review of a decision of the Upper Tribunal (Immigration and Asylum Chamber) [2013] CSOH 93 it was said that Section 8(1) provided that a deciding authority should take account as damaging the claimant's credibility, of any behaviour to which the section applied. Where no reason was given for the conclusion that the Claimant's actions had "seriously" damaged credibility as opposed to simply damaging credibility this amounted to an obvious error of law.

15. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

16. I therefore find that the decision is tainted by material errors of law.

17. I have already found material errors of law in the fact-finding process carried out by the First-tier in the decision promulgated on 18 March 2017. I therefore find that I cannot substitute my own decision because of the extent of the fact-finding exercise required to reach a just decision in this appeal.

Remittal to First-Tier Tribunal

18. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if 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.

19. In this case I have determined that the case should be remitted because a new fact finding exercise is required. None of the findings of fact are to stand and a complete re hearing is necessary.

20. I remit the matter to the First-tier Tribunal sitting at Glasgow to be heard before any First-tier Judge other than Judge Green.

Decision

21. The decision of the First-tier Tribunal is tainted by material errors of law.

22. I set aside the Judge's decision promulgated on 18 March 2017. The appeal is remitted to the First-tier Tribunal to be determined of new.

Signed Paul Doyle Date 8 May 2017

Deputy Upper Tribunal Judge Doyle