



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10479/2016

THE IMMIGRATION ACTS

Heard at Liverpool
On December 6, 2017

Decision & Reasons Promulgated
On December 8, 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MR TONI MASOUD
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Schwenk, Counsel, instructed by Broudie Jackson & Canter

For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I do not make an anonymity direction.
2. The appellant is an Iranian national. The appellant entered the United Kingdom on March 29, 2016 and following his arrest for illegally entering the United Kingdom he claimed asylum.
3. The respondent refused his protection claim on September 16, 2016 under paragraphs 336 and 339F HC 395.

4. The appellant lodged grounds of appeal on September 28, 2016 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. His appeal came before Judge of the First-tier Tribunal Devlin (hereinafter called "the Judge") on May 10, 2017 and in a decision promulgated on June 14, 2017 the Judge refused his appeal on all grounds.
5. The appellant appealed the decision on June 19, 2017. Permission to appeal was granted by Judge of the First-tier Tribunal Boyes on September 19, 2017 who found the grounds arguable primarily because the sheer length of the judgement made it almost impossible for the appellant to understand how he lost. The respondent lodged a Rule 24 response dated September 28, 2017 in which she argues there was no error in law.
6. The matter came before me on the above date and the parties were represented as set out above.

SUBMISSIONS

7. Mr Schwenk adopted the grounds of appeal and argued there was an error in law. He referred me to a number of typographical errors in the decision which suggested that the decision had not been proof read. Whilst nothing specifically turned on these errors they added to the problems facing the appellant because he would have had difficulty understanding what was being written. The decision itself was 45 pages in length and contained 299 numbered paragraphs. The Judge was required to spell out why a party had "lost" and in delivering such a long-winded decision, when the issue was relatively simple, the Judge had fallen foul of the advice in MK (duty to give reasons) (Pakistan) [2013] UKUT 00641 (IAC). The Judge had also criticised aspects of the Dorodian witness evidence but had not actually put these issues to the witness. With regard to the appellant's sur place activities the Judge wrongly applied AB and others (internet activity-state of evidence) Iran [2015] UKUT 0257 (IAC) in that he distinguished between religious activities as against political activities. The same risks would face an appellant whether he was publicising religious or political issues that the government frowned on.
8. Mr Harrison adopted the Rule 24 letter and submitted the length of the decision demonstrated the Judge had given careful consideration to each and every aspect of the case. Rather than making it difficult for an appellant the decision actually spelt out why he had lost and whilst it could have been shorter it was not a material error simply because the decision was longer than Mr Schwenk thought it should be. The Judge made clear findings at [265] about the appellant's case including why he rejected all his claims. He invited me to dismiss the appeal.
9. Having heard submissions I reserved my decision.

FINDINGS ON THE ERROR IN LAW

10. Permission to appeal had been granted although the permission itself did not discuss why there maybe an error save that the decision was too long and the appellant would have been unable to follow it.
11. In his opening submissions Mr Schwenk drew my attention to a number of errors in the decision. These errors appeared to have been caused in part through the use of an

audio dictation system. Having dictated his decision it is arguable the Judge did not proof read the decision because if he had done so then he would have noticed that a number of the sentences did not make sense. I indicated at the hearing that these errors, whilst avoidable, did not amount to what I considered to be an error in law because they were not material. Ironically, given the length of the decision the errors faded into the background.

12. The three main grounds advanced were (a) the length of the decision; (b) the treatment of the Dorodian witnesses and (c) the Judge's approach to the appellant's sur place activities.
13. I was referred to the decision of MK which emphasised that an appellant needs to know on what grounds their cases are decided and why they lost. MK is not an authority over how a decision should be written and nowhere in MK does it suggest that decisions must be short. I accept this decision is unusually lengthy but in assessing whether there has been an error in law I find nothing that suggests the length of a decision created an error in law. If there is an error in law then it will be because the content of the decision did not address the issues or because conclusions were perverse.
14. The Court of Appeal in R (Iran) [2005] EWCA Civ 982 provided guidance on what could amount to an error in law. These included:
 - (a) Making perverse or irrational findings on matters that were material to the outcome.
 - (b) Failing to give reasons or any adequate reasons for findings on material matters.
 - (c) Failing to take into account and/or resolve conflicts of fact or opinion on material matters.
 - (d) Giving weight to immaterial matters.
 - (e) Making a material misdirection of law on any material matter.
 - (f) Committing or permitting a procedural irregularity capable of making a material difference to the outcome or fairness of the proceedings.
 - (g) Making a mistake as to a material fact.
15. There is nothing to support Mr Schwenk's argument that the fact the decision was lengthy that in itself should amount to an error in law.
16. The decision contained emboldened titles of areas considered by the Judge and the Judge's findings contained a number of sub-headings which set out which parts of the evidence the Judge was considering. Contained within each section were findings. Whilst the decision was lengthy it would be wrong to say that in itself was an error in law.
17. The two main grounds of appeal in my view were the submissions that the Judge erred by not putting concerns to the Dorodian witnesses or making findings about

the witnesses which were inappropriate and the way he dealt with the sur place activities.

18. Mr Schwenk addressed me on the approach taken to Reverend Livingstone. He argued that the Judge should have put concerns he had to the witness. A Judge finds himself in a difficult situation because he is often criticised for intervening during the hearing and “entering the arena” but when he does not and simply assesses the evidence he is then criticised for not asking enough questions. The Judge is not required to put every concern he may have to a witness. The witnesses give their answers and it is open to the representatives to pursue those answers if they believe there is merit to do so. The Judge fully explained his reasons for questioning the evidence given and he did this in some detail. I conclude that the grounds of appeal amount to disagreements with what the Judge stated. That is not an error in law.
19. The final area raised was the Judge’s approach to the appellant’s sur place activities. The Judge had made findings about the appellant’s claimed activities at [265] when he wholly rejected his claim to have converted in Iran to Christianity and he concluded the Iranian authorities had no interest in him. The Judge did not stop his assessment there because he then considered what he had been doing in the United Kingdom with particular reference to the appellant’s Facebook posts.
20. The Judge was aware of the decision of AB but because the case was about political blogging he stated at [277] that he did not assume the findings of that Tribunal applied to religious activities. At [279] the Judge considered the evidence in the round and concluded his activities would not bring him to the attention of the authorities. This finding was made in the knowledge of what the Tribunal’s concerns were. At [274] and [275] the Judge set out important extracts from the decision and reminded the parties that AB was not an authority which said all posts on Facebook meant an appellant would be a risk of persecution.
21. The Judge assessed in some detail the evidence and he concluded, as was open to him, that this appellant would not be at risk. Such a finding was open to the Judge.
22. Accordingly, I find there was no error in law in this decision.

DECISION

23. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I uphold the decision.

Signed

Date 06.11.2017



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I make no fee award as the appeal was dismissed.

Signed

Date 06.11.2017

A handwritten signature in black ink that reads "SPALIS". The letters are written in a cursive, slightly slanted style. A horizontal line is drawn underneath the signature.

Deputy Upper Tribunal Judge Alis