



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal number: PA/00408/2020 (V)

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC

Decisions & Reasons Promulgated

On 2 November 2020

On 9 November 2020

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

AB

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the appellant: Mr F Lawson, Cohesion Legal Services Centre

For the Respondent: Mr C Bates, Senior Presenting Officer

DECISION AND REASONS (V)

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote

hearing. At the conclusion of the hearing I reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is an Iranian national of Kurdish ethnicity, with date of birth given as 5.1.86, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Davies) promulgated 3.4.20, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 26.11.19, to refuse his claim for international protection made on 3.10.17.
2. In summary, the grounds as drafted argue that the judge failed to give proper reasons for dismissing the appeal. Central and core findings were unsupported by reasoning. It is submitted that the judge failed to explain in what way the answers given by the appellant in his screening interview undermined the credibility of his claim. It is asserted that no or no sufficient reasoning was provided to support the finding that the claim is a complete fabrication and the appellant is no more than an economic migrant. In particular, although the respondent accepted that the appellant was an Iranian Kurd who had engaged in illegal smuggling activity, the judge found this claim also to have been fabricated, going behind the respondent's concession.
3. Permission was granted on all grounds by the First-tier Tribunal (Judge Adio) on 5.5.20, on the basis that going behind the respondent's concession arguably amounted to an error of law and that all other grounds were also arguable, although the judge granting permission committed the same error alleged against the judge deciding the appeal, by failing to provide any reasons to support the grant of permission in relation to the other grounds.
4. By directions issued on 9.7.20, the Upper Tribunal proposed that the error of law issue should be determined in a remote hearing, providing the opportunity for written submissions on the proposed course of action.
5. Subsequent to those directions, on 16.7.20 the appellant objected to a remote hearing and sought a face to face hearing, on the basis that the appellant was "not comfortable with the technology" and, therefore, unlikely to be able to participate in the hearing effectively. In consequence, on 7.8.20 the Upper Tribunal issued further directions for a face to face hearing.
6. In due course, the appeal was listed for a face to face hearing before me on 2.11.20. However, by letter dated 28.10.20, the respondent indicated that the appeal was not opposed, in the following terms:

"The respondent does not oppose the appellant's application for permission to appeal and invites the Tribunal to remit the matter to the First Tier Tribunal for a 'de novo' hearing.

"The SSHD accepts that the FTTJ has materially erred in not giving adequate reasons for concluding the Appellant's evidence was 'vague' (**Para 31-33**) absent any examples of what evidence was considered 'vague'. Given this goes to the Appellant's credibility it is conceded that no findings are sustainable in the round.

“For the sake of completeness the SSHD rejects any suggestion that the FTTJ went behind the SSHD’s concession at **Para 31**. The FTTJ was not disputing that the Appellant was a ‘smuggler’ (see **Para 29**), but was making a finding (albeit inadequately reasoned) that he did not smuggle ‘Komala Party’ materials.”

7. In light of its concession, the respondent invited the Upper Tribunal to convert the face-to-face hearing to a remote video or telephone hearing in order to discuss “disposal” of the appeal, if deemed necessary. The appellant responded to the concession, submitting that the appropriate course was to remit the appeal to the First-tier Tribunal for a *de novo* hearing. Following consultation with myself and the parties, I agreed for the face to face hearing to be relisted as a remote hearing to enable me to consider the error of law concession and decide on the appropriate course of action for disposal of the appeal. I advised that the appellant need not attend and that no parties should attend in person.

8. At the remote hearing before me, the respondent confirmed the concession that the decision of the First-tier Tribunal disclosed a clear error of law in the failure to provide any or any adequate reasons for finding the appellant’s evidence ‘vague’ and for his credibility to be thereby undermined. The respondent also accepts that in light of this error of law none of the factual findings made by the First-tier Tribunal Judge are sustainable.”

8. After carefully considering the impugned decision, I entirely agree that the respondent’s concession is properly made. It is clear that whilst the judge found the appellant’s account to have been fabricated, little substantiation is provided for the findings made and conclusions reached. For example, at [31] the judge suggested that the appellant could give only vague details about his claimed smuggling activities on behalf of the Komala Party but not a single example is cited. Similarly, at [32] of the decision the judge found the appellant’s account of how he came to the attention of the Iranian authorities to be vague and incredible, but without explaining why or in what way the account was vague and what in particular was incredible about his account. The findings call out for cogent reasoning but such reasoning is absent.

9. However, I agree with the respondent that the judge did not go behind the respondent’s concession that the appellant was a smuggler. What the judge did not accept was the claim to have smuggled items on behalf of the Komala Party. The judge did not dispute that the appellant was a smuggler by occupation. It follows that the grounds in this respect have no merit and disclose no error of law.

10. Nevertheless, the errors of law made by the absence of cogent reasoning to support findings made are so fundamental that no findings of fact can survive. The errors of law are material and require the decision to be set aside and remade *de novo*.

11. When a decision of the First-tier Tribunal has been set aside, section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions, or it must be remade by the

Upper Tribunal. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. The errors of the First-tier Tribunal Judge vitiates all other findings of fact and the conclusions from those facts so that there has not been a valid determination of the issues in the appeal.

12. In all the circumstances, at the invitation and request of both parties to relist this appeal for a fresh hearing in the First-tier Tribunal, I do so on the basis that this is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2.

Decision

The appellant's appeal to the Upper Tribunal is allowed.

The decision of the First-tier Tribunal is set aside.

The remaking of the decision in the appeal is remitted to the First-tier Tribunal sitting at Manchester to be made *de novo* with no findings preserved. An interpreter in Kurdish Sorani will be required.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 2 November 2020

Anonymity Direction

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

"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 to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings."

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 2 November 2020