



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: PA/12485/2019

THE IMMIGRATION ACTS

**Heard remotely at Field House
By UK Court Skype
On 4 March 2021**

**Decision & Reasons
Promulgated
On 13 May 2021**

Before

UPPER TRIBUNAL JUDGE OWENS

Between

**AEC
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Unrepresented

For the Respondent: Mr D Clarke, Senior Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Hatton sent on 6 March 2020. Permission to appeal was granted on 31 July 2020 by Upper Tribunal Judge Jackson.
2. The hearing was held remotely. Neither party objected to the hearing being held by video link. Both parties participated by UK court Skype. I am satisfied that a face-to-face hearing could not be held because it

was not practicable due to the current COVID-19 situation and that all of the issues could be determined fairly by way of a remote hearing. Both parties confirmed at the end of the hearing that it had been conducted fairly.

Background

3. The appellant is a Lebanese national of Palestinian ethnicity. He claims to have last arrived in the UK on 6 February 2017. He claimed asylum on the basis that he is at risk of serious harm from Hezbollah as a result of carrying out charity activities for a Syrian charity in Lebanon and opposing Hezbollah's activities in Syria.

The decision of the respondent

4. The respondent found the appellant to be lacking in credibility and did not accept his account because of discrepancies in his evidence, his adverse immigration history and the inherent implausibility of his account. The respondent also placed reliance on s8 of the Asylum and Immigration (Treatment of Claimants Act etc) 2004.

The hearing before the First-tier Tribunal

5. The appellant was unrepresented. He gave his evidence through an independent interpreter. The respondent was similarly unrepresented. The appellant gave oral evidence, and the judge made a typed note of the record of proceedings.

Grounds of appeal

6. The grounds were drafted by the unrepresented appellant and are poorly particularised. In general, the appellant's grounds amount to an allegation that the judge made errors of fact, misunderstood the evidence, accepted the reasons for the Secretary of State's refusal and did not clarify matters with him. The grounds amount to an assertion that the hearing was procedurally unfair because the appellant was not given an opportunity to respond to points taken against him by the judge.

Grant of permission

7. Permission was granted by UTJ Jackson on the basis that;

“... there were a number of matters raised by the appellant which are more substantive and which highlight arguable errors by the First-tier Tribunal. In particular it is arguable that the First-tier Tribunal have placed too much weight on the appellant's screening interview when making credibility findings; placed too much weight on what appears to be differing spellings in translation from Arabic when making adverse credibility findings and placed too much

weight on the fact that the appellant was briefly legally represented (but not before the First-tier Tribunal) and assumed that this was competent representation (a matter disputed by the appellant) such that the appellant acting in person could not reasonably have failed to know what was required to present his own appeal and what evidence he should produce. It is arguable that the First-tier Tribunal have failed to properly take into account that the appellant was acting in person and held this against him when making adverse credibility claims”.

Analysis and Discussion

8. At the outset of the hearing, Mr Clarke for the respondent stated that he accepted that all of the reasons given by Upper Tribunal Judge Jackson for granting permission were valid grounds of appeal. He conceded that the judge had given too much weight to discrepancies in the screening interview, too much weight to discrepancies in spellings in the name of the charity referred to by the appellant and that the judge had failed to take into account that the appellant was unrepresented when assessing credibility.
9. Mr Clarke also pointed to another more serious ‘Robinson obvious’ error made by the judge. When making negative credibility findings against the appellant, the judge referred to a matter that was put to the appellant in the asylum interview. In the asylum interview, the appellant was shown a witness statement signed by himself in which it was said that the appellant entered the UK in 2014. However, the witness statement itself was not before the Tribunal, there was no Presenting Officer present at the appeal and the issue was not taken in the respondent’s refusal letter. Mr Clarke conceded that it was manifestly unfair to hold this apparent inconsistency against the appellant in these circumstances.
10. I am in agreement with Mr Clarke that the judge made a number of errors.

Inconsistencies between the screening interview and substantive interview

11. When making adverse credibility findings against the appellant, the judge relied on inconsistencies between the appellant’s screening interview and his asylum interview.
12. At [42] the judge notes that in his substantive interview the appellant claimed to fear persecution from Ansar Allah and that he “conspicuously” failed to mention this group in his screening interview.
13. In JA (Afghanistan) 2014 EWCA Civ 450, Moore-Bick LJ cautions against judges placing too much weight on inconsistencies between

asylum interviews and screening interviews because “there is room for mistakes and misunderstandings”.

14. Where a judge intends to give weight to such a discrepancy, particularly where an appellant is unrepresented, it is incumbent on the judge as a matter of procedural fairness to put the inconsistency to the appellant to see if there is a reasonable explanation for the inconsistency. From the typed record of proceedings, the judge did not put this inconsistency to the appellant at any point during the hearing. The consequence of this is that the appellant was not given an opportunity to put forward an explanation. In these circumstances it was unfair on the judge to rely on the discrepancy to make a negative credibility finding.
15. Further, in his asylum interview, the appellant states at Question 165,

“On the screening interview at Question 4 they asked me why did I leave Lebanon [sic]. I did explain because of Hezbollah and my life was in danger. They stopped me and said I can explain it later at the interview. She said you don’t need to carry on now”.
16. This statement if it had been taken into account by the judge may have provided an explanation as to why the appellant did not mention Ansar Allah at the outset.
17. The appellant clearly explained in his substantive asylum interview that Ansar Allah is connected to Hezbollah and works on behalf of Hezbollah in the camps because Hezbollah are not able to enter the camps. At questions 62 and 63 of his interview, he states;

“They [Hezbollah] have a group that it actually part of them [sic] which is called Ansar Allah. They are in our camp. They are in every PSE camp. Ansar Allah is a PSE group that is with Hezbollah”.
18. The judge appears to ignore this evidence which in turn indicates a lack of anxious scrutiny.

Differences in spellings

19. Secondly, the judge gave great weight to the fact that the name that the charity that the appellant had worked for has been spelled in several different ways in the evidence, including Nabih at [43], Nabi at [44] and Nabea and Nirba at [68].
20. At [68] the judge states;

“The appellant’s lack of consistency in this regard is striking”.
21. At no point during the hearing, according to the typed record of proceedings did the judge put these spelling inconsistencies to the

appellant so that he could provide an explanation. This was procedurally unfair because the appellant had no opportunity to give an explanation for the discrepancies. In his grounds of appeal, he explains that the original name of the charity is in Arabic which can be translated into English with different spellings. This is a feasible explanation, particularly in circumstances when the different spellings sound similar when pronounced phonetically in English. Had the appellant been given an opportunity to explain, the judge may not have given the discrepancies between the spellings weight when assessing credibility.

22. In circumstances where there is no representative for the Secretary of State, it is for the judge to put adverse points or issues of concern to the appellant to seek his explanation in order to ensure fairness and in this appeal the judge plainly did not do so.

Weight given to lack of supporting evidence

23. Further, the judge gave considerable weight to the lack of witnesses who attended court to support the appellant. At [80], [81], [82], [83], [84], [87], [88] and [90], the judge comments on the fact that the appellant did not bring additional witnesses to the appeal including his uncle, wife and nephew despite the appellant explaining repeatedly that he was not aware that he needed to do so.

24. The appellant is recorded as stating in the record of proceedings which is replicated at [89];

“I didn’t know otherwise I would have brought a lot of people forward to support me to help my case. The solicitor told me you need to be personally there in court, you don’t need anyone else”.

25. The judge rejects this explanation finding it incredible. The judge states that it is;

“beyond the realms of credibility that a reasonably diligent legal representative would advise a client that it was not necessary to obtain supporting evidence or a witness statement from such an individual”.

26. This appears to ignore the appellant’s evidence at the outset of his hearing that he had been unhappy with his representative and that he had tried to seek other representation. The appellant explained his representatives had messed him about in terms of funding, had failed to take calls from him and hidden documents from him. The appellant said he was not informed about the deadline and did not trust his representative. Although the appellant confirmed that he wanted to continue with the hearing, it is not clear why the judge assumes that his representative was reasonably competent in light of the appellant’s evidence.

27. According to the Equal Treatment Bench Book, the principles of which are reiterated in AM (Afghanistan) v SSHD [2017] ECWA Civ 1123, considerable care should be taken when a litigant is unrepresented, and the judge must take into account that an individual may find it difficult to present his case and will not necessarily know what evidence he has to adduce nor in what format. In circumstances where this appellant was unrepresented the judge did not give enough leeway to the fact that the appellant may not have been aware what evidence he was supposed to present.

'Robinson Obvious' error - Reliance on material not placed before the judge/ not relied on by respondent. - Findings on appellant's presence in the UK in 2014 inadequately reasoned/irrational

28. Mr Clarke drew my attention to a significant error on the part of the judge. his error was not raised by the appellant in his grounds of appeal, however in line with AZ (error of law: jurisdiction; PTA practice (Iran)) [2018] UKUT 245, I find this error to be obvious, serious and relate to the appellant's claim for protection. I find that the error is material to the outcome of the appeal.

29. At question 153 of the asylum interview, the interviewer states;

"I have a witness statement dated 20/3/17 submitted by you stating that you entered the UK in 2014 and that when you claimed asylum in 2017 you tried to cover up the real date. Is this correct?".

30. The appellant replies;

"This is not correct there must be a mistake".

31. The appellant is shown a witness statement. He said the statement was taken over the phone with his solicitor. It is not correct and that he was present in Lebanon when the events took place which gave rise to his fear of persecution which was after 2014.

32. At [95] the judge states;

"I find that the Appellant entered this country clandestinely later that same year [2014] and has resided here continuously ever since. In so finding, I note that the appellant's substantive asylum interview reveals the existence of a witness statement signed and dated by the appellant on 20 March 2017 in which he confirmed that he entered the UK in 2014 and that thereafter when he claimed asylum in 2017 he tried to cover up his actual entry".

33. At [97] he continues;

“Whilst I note that the appellant has subsequently rejected the contents of this statement, I find that the information provided by the appellant to the respondent therein is true and accurate. In so finding, I can find no credible reason why the appellant would have sought to fabricate such an assertion”.

34. In the refusal letter it is stated that the appellant was encountered on a train by Border Enforcement in Paris in possession of a Danish passport. It is next said that he travelled to Beirut on 25 January 2017, that he flew to Belgium on 28 January 2017 and entered the UK on 6 February 2017. The implication from this is that the appellant left Lebanon on 25 January 2017 to travel to Beirut before travelling onto the UK.
35. At no point is it asserted in the refusal letter that the appellant entered the UK in 2014 and has remained in the UK since then. Nor is it asserted that the appellant’s credibility is undermined by the earlier witness statement. This is not a reason relied on by the respondent in the refusal letter. The witness statement dated 20 March 2017 was not produced in the respondent’s bundle, so the judge did not have sight of it, nor was the Border Enforcement document. The judge therefore relied on unsubstantiated evidence to undermine the appellant’s credibility, going far beyond the reasons given by the respondent. There was no Presenting Officer at the appeal to make this assertion or to produce this evidence and the judge did not put this matter to the appellant so that he could provide an explanation in his oral evidence. It is unclear why the judge has taken it upon himself to go behind the reasons given by the respondent, made findings of fact wholly unsupported by the evidence in the bundle without even giving the appellant an opportunity to respond. This error on its own amounts to procedural unfairness.
36. This error informs the judge’s finding at [100] that;

“I also note that the substance of the appellant’s asylum claim relies on events which purportedly took place in 2016-2017. As I have found that the appellant had been continuously in the UK since 2014, I consider the substance of the appellant’s protection claim to be a total fabrication”.
37. This error is manifestly material to the outcome of the appeal.
38. I am satisfied for all the above reasons that the appellant did not have a fair hearing and that the findings in respect of the appellant’s credibility are flawed. I am satisfied that had the appellant had a fair hearing, the judge may have formed a different view of the appellant’s credibility and may have come to a different conclusion on the risk to the appellant on return.

39. It is agreed by both parties that given the extent of the errors in relation to the credibility findings that no findings should be preserved, and that the decision should be set aside in its entirety. While mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010, it is the case that the appellant has yet to have an adequate consideration of his asylum appeal at the First-tier Tribunal and it would be unfair to deprive him of such consideration. I am therefore in agreement with this course of action.
40. The appellant indicated that he was trying to obtain permission to get married in a Registry Office and I indicated that he could seek legal advice in respect of this and that, if possible, he should seek to be represented at the next appeal hearing, so that he can prepare his appeal properly and ensure that he brings the necessary evidence and witnesses to the appeal.
41. The fact that the appellant now has a British citizen partner and child are potentially 'new matters'. It will be for the appellant to take advice on how this information should be communicated to the respondent and whether he will be able to rely on these new matters at the next appeal hearing. It is for the appellant to complete any relevant s120 notices and witness statements in relation to these new facts.

Notice of Decision

42. The decision of the First-tier Tribunal involved the making of an error of law and is set aside in its entirety.
43. I remit the appeal to the First-tier Tribunal for a fresh hearing de novo in front of a different judge than First-tier Tribunal Judge Hatton.

Anonymity Order

44. This appeal concerns a claim made under the Refugee Convention. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders, I therefore consider it appropriate to make an order 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 her or any member of her 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

Date:11 March 2021

R J Owens
Upper Tribunal Judge Owens