



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001140

First-tier Tribunal No: PA/53026/2023
LP/03130/2023

THE IMMIGRATION ACTS

**Decision and Reasons issued:
On 27 June 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**FI
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. D. Lemer, Counsel instructed by Kidd Rapinet Solicitors
For the Respondent: Ms. A. Everett, Senior Home Office Presenting Officer

Heard at Field House on 11 June 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal by the appellant against a decision of a panel of the First-tier Tribunal, Judge Parkes and Judge Howard (the "Panel"), promulgated on 4 February 2024, in which they dismissed the appellant's appeal against the

respondent's decision to refuse his protection claim. The appellant is a national of Iran who claimed asylum on the basis of membership of a particular social group, on account of committing the crime of "Zina", adultery, which the respondent accepts is punishable by disproportionately severe sentences.

Anonymity

2. I have continued the anonymity direction made in the First-tier Tribunal given the nature of the appellant's claim.
3. Permission to appeal was granted by First-tier Tribunal Judge Sills in a decision dated 13 March 2024 as follows:

"2. The grounds identify that the Tribunal may have used the term 'reasonably likely' incorrectly at [29]. The Tribunal found that it was reasonably likely that the Appellant would know H's surname and birthday, but fail to consider whether it is reasonably likely that the Appellant would not know these details, the former not precluding the latter. Hence it is arguable on this discreet issue that the standard of proof has been misapplied and that adverse findings have been made misapplying the standard of proof.

3. It is also arguable that the Tribunal erred in finding that the Appellant's answers at the interview as recorded at [30] were inconsistent. It is arguable that there is no inconsistency in the three statements recorded. I consider that it is arguable that these two issues, whether singly or cumulatively, amount to an error of law in the assessment of credibility. While I am less persuaded about the other matters raised, I do not restrict the grant of permission to appeal."

4. There was no Rule 24 response.

The hearing

5. The hearing was held remotely. I heard submissions from both representatives. I reserved my decision.
6. At the outset of the hearing Ms. Everett confirmed that the appeal was opposed although said that she had some concerns about the decision. Mr. Lemer stated that while he was not withdrawing the ground of appeal relating to the "pinch point", he would not be pursuing it further than as set out in the grounds.

Error of law

7. The first ground asserts that the Panel applied an incorrect standard of proof when finding that it was reasonably likely that the appellant would have known H's family surname and that, if he was in a genuine relationship with H, it was reasonably likely that he would have known when her birthday was. With reference to the case of Demirkaya v SSHD [1999] Imm AR 498 it was submitted that rather than finding that there was "a real risk or possibility that he should have known her surname and her birthday", the Panel's approach should have been the exact opposite.
8. Further it was submitted that irrespective of this, bearing in mind the brief nature of the relationship and "within the context of Iranian social and cultural background", a lack of knowledge of her surname and/or birthday was not indicative of a lack of credibility.

9. This ground further submits that the Panel erred or acted unreasonably at [30] in asserting that there was an inconsistency or conflicting evidence. The appellant had never suggested that he and H were literally “caught” in the act of adultery. His evidence was that he was not sure how they had been caught, but that it may have been through H’s husband seeing her mobile.
10. Mr. Lemer submitted that this was not a “balance of probabilities” assessment, but “reasonably likely”, so the benefit of the doubt should be given to the appellant. While the Panel gave other reasons for rejecting the appellant’s account, these findings came first and infected the entire assessment of credibility. In relation to the alleged inconsistencies, he submitted that no further details were sought by the interviewer after it was recorded that the appellant and H were “caught” (Q60). If they had been literally caught in the act, it would be expected that further detail would have been sought. In the second part of his asylum interview the appellant said that they may have been discovered from her mobile (Q26). With reference to the appellant’s witness statement where he said at [13] that H’s husband “came to know” about the relationship, there was nothing inconsistent in this.
11. Ms. Everett made no specific submissions in relation to the first part. In relation to the alleged inconsistencies, she accepted that she could see that the appellant’s evidence was not necessarily inconsistent. Words such as “caught” in this context led to a myriad of scenarios. However, the Panel had had the benefit of hearing the appellant’s oral evidence and cross-examination. They gave reasons why they considered his evidence to be inconsistent. These were not the only credibility findings and the decision could stand. His account was not consistent with the background evidence.
12. Mr. Lemer submitted in response that the Panel had not relied on any oral evidence in support of their conclusion that the appellant’s evidence was inconsistent. At [30] the Panel had carried out a comparison of the written evidence. Credibility was considered cumulatively. It was not inevitable that, had these two issues been construed in the opposite way, the credibility findings would have been the same.
13. I have carefully considered the decision. I find that the Panel erred both in effectively reversing the burden of proof in relation to H’s surname and her birthday, and in finding that there were inconsistencies in the appellant’s evidence as to how he and H came to be found out.
14. I accept the submissions set out in the grounds that the Panel should have asked whether it was reasonably likely that the appellant would “not” know H’s surname and/or birthday, and that effectively, following Demirkaya, the Panel reversed the burden of proof. The decision states at [29]:

“The Panel does not find it credible that the appellant did not know ‘H’’s family name / surname. In oral evidence the appellant stated that he did not ask her. In his first substantive home office interview with the respondent on 22 June 2022 (AIR1), the appellant stated that he did not know ‘H’’s surname (see Q108 AIR1). If the appellant did in fact have a relationship with ‘H’, and if ‘H’ was in fact a neighbour of the appellant, the Panel finds that it is reasonably likely that the appellant would have known ‘H’’s family name. Furthermore, in AIR1, the appellant did not know when ‘H’’s birthday was apart from that it was ‘sometime in March to April’ (see Qu 111 of AIR1). The Panel finds that if the appellant was in a genuine relationship with H, it is reasonably likely that he would have known when her birthday was.”

15. I further accept that there is no consideration of the circumstances, in particular with reference to the finding that he would have known about her birthday. There is no reason why, given the brevity of their relationship, that he would have known when her birthday was. There is further no consideration of the cultural context. I find that this is an error of law.
16. In relation to the alleged inconsistency, I accept Mr. Lemer's submission in response to Ms. Everett that there is nothing in the Panel's finding to suggest that they relied on anything other than the written evidence in coming to this conclusion. The decision states at [30]:

"The Panel finds that the appellant has been inconsistent as to how 'H's husband, 'M' found out about the purported relationship.

In his home office interview of 22 June 2022 (AIR1), in reply to the question '*When did your problems begin?*' (Q60), the appellant replied:

'It was the time when we got caught and when there was a complaint made against me from her husband. Her husband made a complaint against me.

However, in his home office interview of 7 July 2022 (AIR2), in reply to the question '*How did her husband find out?*' (Q26), the appellant replied:

'I don't know maybe from the mobile. Or maybe something happened between husband and wife and he realised.'

In his statement of 15 September 2023, the appellant states that 'M' was aware of the relationship that the appellant had with 'H' (see [28] on page 97 of SB).

The Panel finds that these responses by the appellant are conflicting. In AIR1, the appellant's response suggests that the appellant and 'H' were 'caught'. However, in AIR2, the appellant's response suggests that the appellant is not aware of how 'M' found out. By his statement of 15 September 2023, the appellant suggests that 'M' was aware of his purported relationship with 'H'. The Panel finds that the differing responses by the appellant undermine his overall credibility."

17. I find that there is no inconsistency in the appellant's answers. There is nothing in the appellant's first answer which indicates that they were literally caught in the act, and I accept the submission that, if this had been the case, further questions would be expected. There is nothing inconsistent between the answers to Q60 and Q26. The appellant did not know how H's husband found out. This is not inconsistent with his answer that his problems began when they were caught. Neither of these answers are inconsistent with his witness statement where the appellant states that H's husband was aware of their relationship. I find that the Panel have erred in finding that the appellant's evidence was inconsistent.
18. In relation to the materiality of these errors, I accept that the Panel gave further reasons for not finding the appellant's account credible. However, first the assessment of credibility must be holistic. Secondly, these are the very first credibility findings of the Panel and will have affected the rest of their assessment. Further, I accept that as set out in the grounds that the Panel's assessment of the "rape" claim does not take account of the background evidence. I accept that, if H's husband considered that she had been raped, it is not inconsistent that she would not have been killed by her husband. Taking all

of the above into account, I find that the Panel made a material error of law in their assessment of credibility.

19. I find that the decision involves the making of a material error of law in the assessment of credibility. I find that the grounds are made out, and that the findings cannot stand. In considering whether this appeal should be retained in the Upper Tribunal or remitted to the First-tier Tribunal to be remade I have taken into account the case of Begum [2023] UKUT 46 (IAC). At headnote (1) and (2) it states:

“(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is that the case will be retained within the Upper Tribunal for the remaking of the decision.

(2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal.”

20. I have carefully considered the exceptions in 7(2)(a) and 7(2)(b). It was agreed by Mr. Lemer and Ms. Everett that, were I to find a material error of law, the appeal should be remitted to the First-tier Tribunal. I am in agreement, having found that there are no findings which can be preserved.

Notice of Decision

21. The decision of the First-tier Tribunal involves the making of material errors of law and I set the decision aside. No findings are preserved.
22. The appeal is remitted to the First-tier Tribunal for a de novo hearing.
23. The appeal is not to be listed before Judge Parkes or Judge Howard.
24. An interpreter in Farsi is to be booked for the hearing.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
18 June 2024