



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002595

First-tier Tribunal No: PA/52794/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 17th of September 2024

Before

UPPER TRIBUNAL JUDGE NEVILLE

Between

M M
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Mair, counsel instructed by GMIAU

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

Heard at Field House on 5 September 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. The appellant's protection claim was refused on 24 April 2023, and his appeal against that decision dismissed by First-tier Tribunal Judge McAll ("the Judge") on 26 February 2024. The Judge rejected the appellant's account of having been involved in an anti-government demonstration in

Iran that had attracted the interest of the authorities, found that the appellant's political activity online and at demonstrations since arriving in the United Kingdom was contrived to bolster his asylum claim, and that the appellant could delete his Facebook account prior to return so that it would not come to the authorities' attention.

2. Challenging the approach taken by the Judge to assessing credibility, the appellant was granted permission to appeal to the Upper Tribunal on three grounds: first, that the Judge failed to properly take into account that the appellant was only 15 years old at the time of the claimed events in Iran; second, that the Judge had unfairly taken adverse points of credibility against the appellant without giving him the opportunity to respond and had furthermore placed impermissible weight on the perceived plausibility of the account; and third, that the Judge had rejected the genuineness of the appellant's political views expressed in the UK and found that he would delete his Facebook account without a proper evidential basis or with those matters ever being put to the appellant for comment.
3. It is convenient to start with the second ground. The principal reasons given by the Judge for rejecting the appellant's account are accurately summarised in the grounds of appeal:
 - a. "I do however find that the Appellant's account of going on such a journey with his friends and an adult who he does not know, does not have a ring of truth about it given his description of his domestic circumstances and the distances and time involved in getting to B." [21]
 - b. "I also considered the role of the adult male and I do not find it credible he would take a group of unsupervised children to a demonstration, one to one and a half hours away from their homes and families. There would appear to be no credible motive for him to do that. His actions at best would put him at risk not only from the authorities but also from the parents of the children. The adult appears to have risked the health and well-being of the children and does not appear to have anything to gain from behaving in such a way. I find the claim does not ring true." [22]
 - c. "There is no explanation as to why three children, unknown to the area and unknown to the authorities would attract the authority's attention. There is no explanation as to how the authorities would be able to identify the Appellant, particularly in such a short timeframe. I find the account does not ring true." [25]
 - d. "The Appellant has failed to satisfactorily explain how his cousin discovered he was wanted by the authorities... The suggestion that the authorities were able to identify the persons present in a five thousand strong crowd within a matter of hours and they would then prioritise early arrests against children from a village who were simply walking through the crowd does not ring true." [26]

4. None of these adverse indicators of credibility appear in the refusal decision nor, as Mr Mc Veety was able to confirm is common ground, were they ever raised at the hearing by the presenting officer or the Judge. As argued by Ms Mair, and as Mr McVeety realistically conceded, the appellant might well have had a response to the Judge's concerns. He was not given the opportunity, nor was Ms Mair (who also represented the appellant at the First-tier Tribunal) given the opportunity to make submissions on what weight those factors should carry in the Judge's assessment.
5. Numerous authorities emphasise that a party must be given the opportunity to respond to a potentially adverse consideration before it can be fairly relied upon. In SSHD v Maheshwaran [2002] EWCA Civ 173, Schiemann LJ held at [4] that "failure to put a party to litigation a point which is decided against him can be grossly unfair". This was qualified at [6] by a reminder that the requirements of fairness are nonetheless conditioned by the facts of each case. To the same effect, in Abdi v Entry Clearance Officer [2023] EWCA Civ 1455, Popplewell LJ held as follows:
 33. The recent decision of the Supreme Court in TUI UK Ltd v Griffiths [2023] UKSC 48 re-emphasises the principle that fairness generally requires that if the evidence of a witness is to be rejected, it should be challenged at the hearing so as to give them an opportunity to address the challenge; and that that is a matter of fairness to the witness as well as fairness to the parties, and necessary for the integrity of the court process in enabling the tribunal to reach a sound conclusion: see especially at [42]-[43], [55], and [70]. The rule is subject to certain exceptions and is to be applied flexibly in the circumstances of any individual case in application of the criterion of the overall fairness of the trial ([61]-[69] and [70(vii) and (viii)]).
6. This Tribunal made a similar observation in AM (fair hearing) [2015] UKUT 656 (IAC) at [7]:
 - (v) If a judge has concerns or reservations about the evidence adduced by either party which have not been ventilated by the parties or their representatives, these may require to be ventilated in fulfilment of the "audi alteram partem" duty, namely the obligation to ensure that each party has a reasonable opportunity to put its case fully. ...
7. Whether failure to put a party on notice of a point constitutes procedural unfairness such as to amount a material error of law depends on the facts of the particular case. I am quite satisfied that it does so here. The Judge's consideration extracted above clearly formed a substantial part of his assessment of credibility, and were undoubtedly material reasons for his overall conclusion. In her submissions, Ms Mair illustrated the lack of fairness by reference to the Judge's finding at [22] that there was no credible motive for the man to take the appellant and his friends to the protest. If given the opportunity, she would have directed the Judge to the accepted country evidence of widespread protests in that province at the

time and reminded him that political protesters would be understandably motivated to boost the number of attendees by bringing along anyone who might be interested. The Judge would have been provided with a possible explanation to either accept or reject. I agree.

8. The proceedings were therefore unfair to the appellant such as to constitute a material error of law, such that the Judge's findings must be set aside.

9. While unnecessary to decide the appeal, I also record my agreement with the appellant's other submissions under this ground. On plausibility as an adverse indicator of credibility, in HK v SSHD [2006] EWCA Civ 1037 Neuberger LJ made the following observations, which are now well-known in this jurisdiction:

28. Further, in many asylum cases, some, even most, of the appellant's story may seem inherently unlikely but that does not mean that it is untrue. The ingredients of the story, and the story as a whole, have to be considered against the available country evidence and reliable expert evidence, and other familiar factors, such as consistency with what the appellant has said before, and with other factual evidence (where there is any).

29. Inherent probability, which may be helpful in many domestic cases, can be a dangerous, even a wholly inappropriate, factor to rely on in some asylum cases. Much of the evidence will be referable to societies with customs and circumstances which are very different from those of which the members of the fact-finding tribunal have any (even second-hand) experience. Indeed, it is likely that the country which an asylum-seeker has left will be suffering from the sort of problems and dislocations with which the overwhelming majority of residents of this country will be wholly unfamiliar. The point is well made in *Hathaway on Law of Refugee Status* (1991) at page 81:

"In assessing the general human rights information, decision-makers must constantly be on guard to avoid implicitly recharacterizing the nature of the risk based on their own perceptions of reasonability."

30. Inherent improbability in the context of asylum cases was discussed at some length by Lord Brodie in Awala v Secretary of State [2005] CSOH 73. At paragraph 22, he pointed out that it was "not proper to reject an applicant's account merely on the basis that it is not credible or not plausible. To say that an applicant's account is not credible is to state a conclusion" (emphasis added). At paragraph 24, he said that rejection of a story on grounds of implausibility must be done "on reasonably drawn inferences and not simply on conjecture or speculation". He went on to emphasise, as did Pill LJ in Ghaisari, the entitlement of the fact-finder to rely "on his common sense and his ability, as a practical and informed person, to identify what is or is not plausible". However, he accepted that "there will be cases where actions

which may appear implausible if judged by...Scottish standards, might be plausible when considered within the context of the applicant's social and cultural background".

10. In KB & AH (credibility-structured approach : Pakistan) [2017] UKUT 491 (IAC) the Upper Tribunal confirmed that plausibility remains a legitimate indicator of credibility, but requires a certain degree of caution in its application.
11. While recognising that the weight to be placed on individual considerations was a matter for the Judge, I am satisfied that he fell into the error identified in HK. The Judge did also rely on a minor inconsistency in interview, but held that it would carry little weight in isolation. I also consider his reliance on the concerns at paragraph 3(d) above to be unobjectionable (had they been put to the appellant for comment). Yet a fair reading of the decision shows the Judge's negative assessment as almost entirely predicated upon finding the account of attending the protest to "not ring true". As the country evidence accepted by the Judge showed, there were numerous protests in the appellant's home province at that time. Neither the man offering the lift nor a group of impulsive 15 year olds accepting it were so manifestly implausible as to rationally support the adverse weight placed on them by the Judge.
12. The appeal is therefore allowed on the second ground. While I record that both other grounds also had merit, there is no need to formally address them.
13. Applying the principles set out in the Practice Direction and the Practice Statement, according to the guidance given in Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC), I consider it appropriate to remit the appeal to the First-tier Tribunal for complete re-hearing. Significant findings of fact are required, and the appellant has not yet received the fair first-instance consideration of his appeal to which he is entitled.
14. These proceedings were anonymised in the First-tier Tribunal. I consider it appropriate to do likewise in this decision, the risk of harm upon the appellant's identification justifying derogation from the principle of open justice.

Notice of Decision

- (1) The decision of the First-tier Tribunal contains a material error of law and is set aside.
- (2) The case is remitted to the First-tier Tribunal in Manchester for re-hearing with no findings of fact preserved, to be heard by any judge other than Judge McAll.

J Neville

Judge of the Upper Tribunal
Immigration and Asylum Chamber

5 September 2024