



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01588/2019

THE IMMIGRATION ACTS

Heard at Field House
On 21st August 2019

Decision & Reasons Promulgated
On 16th September 2019

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

Z M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Professor Rees, Counsel instructed by Lei Dat & Baig Solicitors

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is national of Iran born on 28th February 1995 and he appeals against the decision of First-tier Tribunal Judge Maka promulgated on 20th May 2019 which dismissed his appeal. The appellant had appealed against the Secretary of State's refusal. His asylum, humanitarian protection and human rights claim made on 2nd February 2019.

2. Permission to appeal was initially refused by the First-tier Tribunal but granted by Upper Tribunal Judge Grubb on the basis that it was arguable that the judge failed properly to consider all the appellant's evidence when identifying inconsistencies particularly at paragraphs 48 and 51. Secondly, the judge failed to consider the appellant's claim under paragraph 276ADE(1)(vi) and so Article 8 based on discrimination as occurred on return.
3. Much of the grounds to the Upper Tribunal engage with the refusal of the First-tier Tribunal for permission to appeal but nevertheless I concentrate on the grounds specific to the First-tier Tribunal determination. These were as follows.

Ground (i). The First-tier Tribunal erred in the approach to credibility with reliance on **SB (Sri Lanka) v Secretary of State [2019] EWCA 160**. The judge stated at paragraph 8 that the appellant was unable to give much detail in interview, with reference to questions to 45, 48 and 49 and the judge agreed with the respondent that the answers were vague and lacking in detail. That was incorrect. The Tribunal needed to assess the evidence in the round applying **Karanakaran [2000] EWCA Civ 11** and identify the most relevant pieces of evidence and give sufficient reasons (which might be concise) for accepting or rejecting it, **SB (Sri Lanka) v Secretary of State [2019] EWCA Civ 160**.

4. The judge erred at paragraph 51 when finding that the answer at Q47 of the appellant's asylum interview was discrepant with his evidence in relation to in the number of people travelling together; the answers/evidence were not contradictory.
5. Further at paragraph 51 the judge misunderstood the evidence by stating the appellant was contradictory in how goods were transported. If the judge did not find clear evidence, it was incumbent on the Tribunal to seek clarification. At paragraph 53 that the First-tier Tribunal Judge concluded that he was not satisfied the appellant's uncle would have been able to raise the money within a day and in the absence of providing the opportunity to address this point the appellant had not received a fair hearing contrary to **AM (fair hearing) Sudan [2015] UKUT 00656**. In dismissing the protection claim the First-tier Tribunal failed to address the evidence of the appellant in his interview at 62 where he expressed anti-regime opinion.
6. Overall the First-tier Tribunal failed to properly analyse the evidence and made erroneous adverse credibility findings and core features of the appellant's account including smuggling.
7. Ground (ii). The second ground of appeal was a failure to make findings in relation to paragraph 276ADE of the Immigration Rules. This was contrary to **MK (duty to give reasons) Pakistan [2013] UKUT 00641**. The level of discrimination '*accepted to arise against Kurds in HB (Kurds) Iran CG [2018] UKUT 00430 was directly relevant to the question of very significant obstacles that the appellant would face on return'* (sic).

Analysis

8. The appellant claimed and this was accepted that he was an Iranian national and in 2015, five months before leaving he started working for someone with whom he had discussed the Iranian regime. Having initially refused to assist, he eventually agreed to help this person and transported letters from the PJAK (Freedom of Life for Kurds Party). He transported letters for the PJAK a total of four times. He asserts he escaped a raid by the police during one trip, he fled to his maternal uncle's home, but his home was visited by the police in relation to his anti-government materials and his uncle subsequently arranged for him to escape from Iran.
9. In the reasons for refusal letter the respondent noted the appellant was not a supporter of any political party in Iran and given this found it was not credible he would agree to help someone when he was aware of the risks. He did not see the letters he transported. His account of transporting and working for the named individual lacked detail. He provided an inconsistent account of the night he was ambushed and his account lacked detail.
10. On analysis of the decision the judge at the outset states that there is very little about the appellant's claim that he accepts, did not accept he was smuggling goods and does not accept he ever came to the attention of the authorities. The errors identified in the grounds are well-founded.
11. In the first point of ground (i), the appellant does give detail at questions 48 onwards of his interview when describing smuggling activities which was a core feature of his account. At the second point there would appear to be no inconsistency in the appellant's account of the number of people travelling on the night of August 2015 and the answers in the interview and witness statement appeared not to be contradictory. Thirdly the judge, when finding the appellant was contradictory as to how the goods were transported, failed to consider to the interview answers at 40 and 46 and 47 and 48 and 49 where the appellant describes the method of transport including that being by horse. If the judge was unclear he did not raise this at the hearing contrary to **MM (unfairness) E&R Sudan [2014] UKUT 105**. Fourth, the judge does not appear to have put the point about the uncle raising money to the appellant. Fifth, the judge did not address the evidence of the appellant given in his interview at question 62 of the asylum interview where he does express anti-regime dissent.
12. Overall the judge appears at the outset to have dismissed the appellant's claim and proceeded on the basis of some key factual errors which undermined the assessment of the evidence and led to a finding of adverse credibility. That was a material error of law.
13. In addition, there was a total absence of a consideration of paragraph 276ADE of the Immigration Rules. I can see that Articles 2 and 3 were said to be in issue only in the grounds of appeal but the judge at paragraph 9 of the decision acknowledges that reliance was placed on paragraph 276ADE on the basis of significant obstacles faced

as a Kurd including discrimination in Iran. There was no consideration as this aspect of the claim. Even if the appellant was not considered to be at risk on protection grounds it was incumbent, on the basis of the discrimination point, to address paragraph 276ADE of the Rules (Article 8).

14. The Judge erred in law for the reasons identified, and, in a manner which could have a material effect on the outcome. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Helen Rymington*

Date 11th September 2019

Upper Tribunal Judge Rymington