Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04865/2018

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 29 MAY 2019	**On 05 June 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

KARWAN [M]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mrs Mawaha, instructed by Bankfield Heath, solicitors
For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 6 June 1993 and is a male citizen of Iran. By a decision dated 7 March 2018, the Secretary of State refused his application for international protection. By a decision promulgated on 19 December 2018, the First-tier Tribunal dismissed his appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. I find that the decision of the First-tier Tribunal should be set aside. My reasons for reaching a decision are as follows. First, the decision contains factual errors which is likely have influenced the judge's assessment of the credibility of the appellant's account. At [7], the judge states that:

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> "The question of whether a person has a well-founded fear of persecution… must be looked at in the round in the light of all the relevant circumstances and judged against the situation as at the time of the hearing of the appeal particularly and although, as in this case, there is a considerable history of similar application, adverse decisions and unsuccessful appeal…"

3. The appellant arrived in the United Kingdom on 3 October 2017. The appeal before the First-tier Tribunal was his first challenge to the only refusal of his claim for protection. It is simply not the case that there has been a 'considerable history' of previous adverse decisions and unsuccessful appeals. I consider that it is likely that the judge's approach to the credibility of the appellant as a witness has been influenced by this misunderstanding of the facts.

4. Secondly, the appellant relied upon an expert report from Dr Kakhki. In his assessment of the report, the judge has fallen into an error of methodology. He states at [15] the expert 'opines upon the level of risk the appellant might face if returned to Iran subjected him coming up to proof on the facts he seeks to rely upon.' Later, at [23], the judge remarks that the report of the expert 'expresses opinion as to risk dependent on an appellant coming up to proof of his assertions which is not happened in this case. I am not bound by or persuaded by [the expert's] report impressive and learn it though it be.' As Mrs Mawaha, who appeared for the appellant, pointed out, the expert report offers helpful background information regarding country conditions in Iran which are not conditional upon the appellant's account being found credible but which the judge has ignored solely because he found that the appellant had not 'come up to proof.' The judge's rejection entirely of the report and its contents for the reason he is given amounts to an error of law.

5. Thirdly, the judge failed to have regard to parts of the appellant's account which the Secretary of State had accepted as true and accurate in the refusal letter. At [53] of that letter, the respondent accepts the appellant's nationality and his 'smuggling activities.' Notwithstanding that acceptance of part of the account, the judge at [17] mischaracterises the respondent's case before the Tribunal by wrongly asserting that respondent did not accept that appellant had been 'a smuggler in the border region.'

6. Fourthly, in his analysis of the appellant's account, the judge unreasonably finds against the appellant in part because he was unable to produce corroborative evidence of parts of his account. I accept that it was reasonable for the judge to note that the appellant had not produced evidence from PJAK representatives in Iran or the United Kingdom to endorse his claim to be a supporter of that organisation but the judge did err at [20.4] when he indicates that the credibility of the account is diminished because there was 'no supporting evidence to show that [the appellant] had been ambushed whilst portering PJAK goods and his accompanying cousin wounded and arrested.' The judge makes no attempt to specify what 'supporting evidence' he expects to be produced

of this event which, by its nature, is unlikely to have been reported in the media whilst those who witnessed it are unlikely to be willing or able to provide evidence in court proceedings in the United Kingdom.

7. In the light of what I have said above, I find that the decision of the First-tier Tribunal should be set aside. The errors go to the core of the Tribunal's analysis of credibility; in the circumstances, it will be necessary to return the appeal to a differently constituted First-tier Tribunal for that Tribunal to remake the decision.

Notice of Decision

The decision of the First-tier Tribunal promulgated on 19 December 2018 is set aside. None of the findings of fact shall stand. The decision is returned to the First-tier Tribunal (not Judge Drake) for that Tribunal to remake the decision at or following a hearing.

Signed Date 30 May 2019

Upper Tribunal Judge Lane