



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/08235/2018

THE IMMIGRATION ACTS

**Heard at North Shields
On 29 March 2019**

**Decision & Reasons Promulgated
On 10 April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

**M B O I
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs L Brakaj, Counsel.

For the Respondent: Mr Diwnycz, Home Office Presenting Officer.

DECISION AND REASONS

1. The Appellant is a citizen of Iran who made an application for international protection. He failed to attend an asylum interview on 5 May 2016 and his claim was treated as withdrawn on 20 May 2016 and he was recorded as an immigration absconder. He submitted further submissions again claiming asylum. Ultimately his application was refused on 6 June 2018.
2. The Appellant appealed the Respondent's decision and following a hearing at Birmingham, and in a decision promulgated on 8 August 2018, Judge of the First-tier Tribunal Row dismissed the Appellant's appeal. The Judge found at paragraph 27 of his decision that there were aspects of the

Appellant's case that he did not find plausible and which affected the Appellant's general credibility. The Judge found that albeit the Appellant was Iranian and of Kurdish ethnicity his father was not involved in any way with the PJAK as claimed. Further, he did not find the PJAK suggested to the Appellant that he should join their organisation, that the Iranian authorities sought to question the Appellant and issued a summons to bring him to court or that the said summons is a genuine document. He went on to find that the Appellant had not exited Iran illegally.

3. The Appellant sought permission to appeal. It was granted by Judge of the First-tier Tribunal Blundell on 7 September 2018. His reasons for so doing were: -

"1. The appellant seeks permission to appeal, in time, against a decision which was issued by Judge Row on 8 August 2018, dismissing his appeal against the respondent's refusal of his second claim for international protection.

2. The points made at [8] and [14] of the grounds are arguable. It is firstly arguable, therefore, that the judge reached an irrational conclusion when he found that the appellant could have approached PJAK for a letter confirming his father's membership of that group. That finding was arguably irrational in light of the appellant's expressed fear of that group. It is arguable, secondly, that the judge failed to give any, or any adequate reasons for concluding that the summons was not genuine. It is far from clear that any such allegation was made by the respondent, as opposed to submitting - - on a Tanveer Ahmed - basis - that the document was unreliable.

3. Had it not been for those two points, I would have refused permission. I consider the remaining grounds to be decidedly less meritorious and poorly pleaded. Nevertheless, in light of Ferrer [2012] UKUT 304 (IAC), I grant permission generally."

4. Thus, the appeal came before me today.
5. At today's hearing Mrs Brakaj relied upon the grounds seeking permission to appeal. In addition to those identified by Judge Blundell in paragraph 2 of his above-mentioned decision, she also emphasised ground 3 and the issue of whether the Judge applied adequate weight to the independent evidence of a third party, the Appellant's mother. This was a written witness statement. She did not attend the hearing.
6. Mr Diwnycz acknowledged that so far as ground 3 is concerned the issue is what weight the Judge felt able to attach to such a statement where the evidence cannot be tested in cross-examination. However, he conceded that for the reasons given in paragraph 2 of Judge Blundell's decision there is here material errors which infect the totality of the credibility findings.
7. I find that to be the case. On my analysis the Judge has materially erred. The Judge has reached an irrational conclusion in finding that the

Appellant could have approached PJAk for a letter confirming his father's membership of that group. It was irrational in the context of the Appellant's expressed fear of the group. The Judge also failed to give any, or any adequate reasons for concluding that the summons was not genuine.

8. On my own analysis the impact of these material errors is such that the decision cannot stand.

Notice of Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge Row.

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

Date 6 April 2019

Deputy Upper Tribunal Judge Appleyard