



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

Appeal Number: PA/10334/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 31st January 2019**

**Decision & Reasons Promulgated
On 6th March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR S H
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss A Nizami of Counsel, Duncan Lewis & Co Solicitors
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iran born on 1st January 1998. The Appellant made application for asylum claiming to have a well-founded fear of persecution on the basis of his imputed political opinion namely that he is in fear of the authorities in Iran due to his believed support of the PDKI Party. The Appellant's application was refused by Notice of Refusal dated 29th September 2017.
2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Henderson sitting at Taylor House on 30th August 2018. In a

decision and reasons promulgated on 14th September 2018 the Appellant's appeal was dismissed on all grounds.

3. On 28th September 2018 Grounds of Appeal were lodged to the Upper Tribunal. On 11th October 2018 First-tier Tribunal Judge Davidge refused permission to appeal noting quite properly that the grounds did not contain any errors of law but simply recited extracts from *R (Iran) and others [2005] EWCA Civ 982* as to what sort of matters might constitute an error.
4. On 25th October renewed Grounds of Appeal were submitted to the Upper Tribunal contending that there had been a procedural or other irregularity capable of making a material difference to the outcome of the proceedings by failing to take into account that the Appellant suffered from PTSD when considering whether the Appellant's return to Iran would breach his rights under Articles 2 and 3.
5. On 10th December 2018 Upper Tribunal Judge Grubb granted permission to appeal concluding that in assessing the Appellant's evidence, the judge had failed to take into account the letter from a consultant psychiatrist and also the medical record which recorded that the Appellant suffered from PTSD although he accepted that the latter, in the absence of a report may not carry great weight and that in such circumstances there may have been a material error of law.
6. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel Miss Nizami. The Secretary of State appears by his Home Office Presenting Officer Mr Tufan.

Preliminary Issue

7. As a preliminary issue there is a request made to amend and expand the Notice of Appeal. The ground contends that the First-tier Tribunal Judge erred in its approach to credibility, firstly in respect to the relevance of the Appellant's vulnerability and secondly in its approach to plausibility. After hearing submissions from both parties I agreed to allow it in solely on the basis the ground is an extension of the grant of permission previously granted by the First-tier Tribunal Judge and did not constitute a new ground in its entirety.

Submission/Discussion

8. Miss Nizami submits that the First-tier Tribunal Judge erred in her assessment of credibility regarding the vulnerability of the Appellant and his medical condition and refers me to two documents to be found at page 467 of the Appellant's bundle from the consultant psychiatrist and pages 31 to 36 with regard to the Appellant's PTSD. She contends that there had been no reference made to the Appellant's mental health condition save

for paragraph 16 of the judge's decision which notes that the Appellant's medical notes are in front of her. She contends there has been no assessment of the PTSD/anxiety/depression and that the judge's approach has been flawed. She further submits there has been a lack of anxious scrutiny and that the judge should have taken into account the Appellant's condition and ability to give extra evidence when making findings on plausibility. So far as the second additional ground is concerned, her contention is that the judge has therefore failed to comply with the vulnerable witness guidance which constitutes an error of law and that the judge has not carried out a proper analysis. It is her submission that the finding at paragraph 31 is contrary to the vulnerable witness guidance and that it would have been relevant for the judge to consider his mental health.

9. She further considers that there are fundamental errors with regard to the judge's approach to plausibility and that the judge has ignored that it is not unusual for agents to control those that they are trafficking, something that was recognised by the Court of Appeal in *Q v SSHD [2003] EWCA Civ 364*. She asked me to find there are material errors of law and to remit the matter back to the First-tier Tribunal for rehearing.
10. In response Mr Tufan comments that the judge has made a reference to the medical evidence at paragraph 16, in particular the notes and that the document at page 467 of the Appellant's bundle merely regurgitates what the Appellant has said. The other document is very short and he reminds me that Upper Tribunal Judge Grubb has indicated that it may not carry great weight. He submits that there are no full medical reports. Further, he contends that it has been accepted and agreed that Articles 2 and 3 rise and fall on the Appellant's asylum claim. He submits that there is nothing to show that vulnerability was raised before the First-tier Tribunal Judge and that the judge considered vulnerability based on all documents that were before her. He submits judge's findings are properly made and asked me to dismiss the appeal.

The Law

11. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
12. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law

for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

13. I restrict my consideration in this matter to the grounds set out for which permission was granted and so far as they are extended in the submissions made on the amendment to the grounds. The question very much arises within this decision as to whether the submissions made by Counsel amount merely to disagreement with the findings of the First-tier Tribunal Judge. The First-tier Tribunal Judge makes reference to the medical records. She has considered the document in the round and heard the evidence. She has made findings that she was entitled to. It is not incumbent upon a judge to make reference to every single document that is before her and I note, as is set out to me by Mr Tufan, that the letter from the psychiatrist does no more than reflect what the Appellant has said and that the documents do not constitute full and proper medical reports.
14. I find that the judge has given consideration to the medical evidence albeit that I acknowledge that the specific reference to the letter from the psychiatrist is not referred to. My finding is that even if that constitutes an error of law it is not material.
15. It is further contended that the judge failed in her approach to plausibility. I do not accept that. This is a judge who has given full reasons for her findings and set out those findings and the evidence upon which they are based clearly. A proper approach to credibility will require an assessment of the evidence in the general claim and the relevant factors would be the internal consistency of the claim and its inherent plausibility along with external factors typically found in country guidance. I am satisfied that the judge has within this matter carried out a full and detailed analysis and made findings relating to credibility and plausibility which she was fully entitled to and which are factually based. In such circumstances I am satisfied that this decision contains no material error of law and the Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Notice of Decision

The decision of the First-tier Tribunal Judge discloses no material error of law and the Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

The First-tier Tribunal Judge granted the Appellant anonymity. No application is made to vary that order and that order is maintained. No application is made to vary that order and that order is maintained.

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 March 2019

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris