



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

Appeal Number: PA/09217/2019

THE IMMIGRATION ACTS

**Heard at Manchester (via Microsoft Teams)
On 20 July 2021**

**Decision & Reasons
Promulgated
On 4 August 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

AS

(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Schwenk instructed by Greater Manchester Immigration Unit.

For the Respondent: Mr Tan, a Senior Home Office Presenting Officer.

DECISION AND REASONS

- 1.** The appellant appeals with permission a decision of First-tier Tribunal Judge Mack ('the Judge') promulgated on 6 November 2019, in which the Judge dismissed the appellant's appeal on the basis it was concluded the appellant had presented a weak case that lacked credibility and that the Judge did not accept the material facts claimed for the reasons set out in the decision under challenge.
- 2.** Permission to appeal was initially refused by a judge of the First-tier Tribunal but granted on a renewed application by a judge of the Upper Tribunal, the operative part of the grant being in the following terms:

Permission to appeal is granted for these reasons:

1. In the FtT, this appeal was heard before Judge Mack. The decision is headed accordingly at page 1, but at page 19 bears to be signed by Judge Mack and by Judge Pickup.
 2. The two purported signatures are under the secondary heading "To the respondent ... No fee award." However, the grounds at [16] also observe that at [6] and [52] the decision uses "we" not "I".
 3. It is debatable whether the decision leaves an impression of a judge who did not hear the case being involved in the decision, which would offend against natural justice.
 4. The rest of the grounds, [3-15], may turn out to be no more than insistence and disagreement, but permission is not restricted.
3. The application is opposed by the Secretary of State in her Rule 24 response dated 29 March 2021.

Error of law

4. The ground asserting that a judge other than Judge Mack may have been involved in the decision-making process is a timely reminder to any judge of the need to take care when using pro forma paragraphs and ensuring that all the details of a determination are carefully checked.
5. At [6] the Judge sets out a self-direction in relation to the burden and standard of proof in which it is stated "We are obliged to look at the case in the round". That is clear failure of the Judge to change the "we" to "I" which is used with far greater frequency throughout the determination.
6. Similarly, at [52] the Judge, when setting out a self direction relevant to section 8 of the 2004 Act, does state "We found the appellant in his substantive interview" but also in the second and fourth lines "I".
7. The Record of Proceedings indicates the appeal was heard by Judge Mack sitting alone.
8. The final reference to the use of the pleural is in the section of the determination which comes after the actual decision and relates to whether a fee was to be paid or not, in which there are typed entries purporting to be signatures for both Judge Mack and Judge Pickup. I find this is an example of earlier text being used by Judge Mack with inadequate attention to the detail of the content.
9. Upper Tribunal Judge Pickup recused himself on the last occasion when he was allocated the appeal to consider whether an error of law had been made and this issue arose before him. Judge Pickup has filed a statement himself in which he confirms that he has had no involvement in the decision-making process. In that document Judge Pickup writes:

"The last ground of appeal raises an issue of fairness in that as drafted, the decision of the First-tier Tribunal bears my name in addition to First-tier Tribunal Judge Mack. In addition, there are two references to 'we' in the body of the decision.

I confirmed with Mr Schwenk at the outset of the hearing that he wished to pursue this ground of appeal, notwithstanding my indication to him that I was not involved in the making of the decision. It was agreed, however, that I could not give evidence in the matter, nor was he obliged to accept any assurance given by me. In the circumstances, the appeal needs to be heard by a different judge.

I can confirm that I know Judge Mack and that as a Salaried First-tier Tribunal Judge I was her mentor when she was first appointed to the First-tier Tribunal, sitting in Manchester. I did sit with her on a number of panel hearings in the First-tier Tribunal.

However, I was appointed as an Upper Tribunal Judge in 2019 and began sitting exclusively in the Upper Tribunal from April 2019. I did not sit on PA/09217/2019 with Judge Mack and to the best of my knowledge have not discussed the case with her or played any part in the making of the decision of the First-tier Tribunal. In the period between the hearing date and its promulgation I was in fact sitting at Field House in London.

I have not discussed with Judge Mack how this error came about and can only assume that Judge Mack has inadvertently added my name to the decision from a template she may have used previously. Whether the error is material is a matter that will need to be determined by a different Upper Tribunal Judge.

I consent to this note being disclosed to the parties, if appropriate.”

- 10.** The note was sent to the advocates. Mr Schwenk accepted in light of this material that although he could prove the use of the plural and reference to Judge Pickup was an error he could not, in isolation, establish it was material, although he referred to it demonstrating a lack of care being taken by the Judge.
- 11.** In relation to the remaining grounds, Mr Schwenk challenged the finding of the Judge at paragraph [48(a)] the Judge finds the appellant’s evidence has been contradictory. It was submitted that no such contradiction arises as the Judge’s conclusion there were differences in the accounts given by the appellant between his Asylum Screening Interview on 15 January 2019 and the answers in his later Preliminary Information Questionnaire (PIQ) on 20 May 2019 is incorrect.
- 12.** I do not find it made out the Judge failed to consider the evidence with the required degree of anxious scrutiny or placed undue weight upon the Screening Interview contrary to the guidance provided by the Upper Tribunal in *YL (China) [2004] UKIAT 000145*. Indeed, at [48(a)] the Judge acknowledges that the appellant might have been tired, which is a clear indication of the factors the Judge took into account when considering the weight that could be given to the answers in the screening interview.
- 13.** The appellant’s case in relation to this is summarised at [5] of the ground seeking permission to appeal where it is written:

“The Appellant submits that, properly considered there is no discrepancy between his Screening Interview and the account he later gives. The latter is simply an elaboration of the former. To criticise the Appellant for failing to mention that the threats from Daesh (which he does mention) was via a letter is unfair and fails to recognise the limited purpose of the screening interview as acknowledged in *YL*, among other cases.”

- 14.** There are however clear discrepancies in the appellant's evidence considered by the Judge. An example relied on by Mr Tan in his response is the answer given in the screening interview at question at 4.1, specifically referred to by the Judge, in which the Appellant, when asked to provide brief reasons for why he could not return to his home country, stated:

"My life is in danger in Iran, I stayed 20 days in Turkey to try to make the situation better for me to go back but it did not get better. My life is in danger from the Iranian government, I was the driver of a minibus and somebody paid me to take them somewhere and pick them up at 1600. When I went to pick them up they were arrested. At 0500 in the morning they came to arrest me but I wasn't in. When they come to arrest you know hundred percent what they want to do with you. I will not give more details today."

- 15.** When asked whether there were any other reasons he cannot return to Iran the appellant replied:

"Yes, I have been threatened by Daesh in Iran, god knows what would happen to me if I returned. My wife and child have gone into hiding."

- 16.** The initial reply was clearly a reference to an individual, singularly paying the appellant to drop him off and later pick him up from the unstated location whereas in reply to questions 12 -14 of the appellant's PIQ the appellant's case is now stated to be:

12. After working for one month, on 22 November 2018 (1 Azar 1397) I was waiting for passengers to arrive, and six people came to me. Two of the six people who approached me were from Dezil, I need them. I thought they were passengers and they were about to get into the minibus.

13. One of them approached me and asked me how much I was earning per day, I asked why he wanted to know. He said he wanted to book me privately and for the whole day. I told them that, overall, I would earn between 140,000 and 150,000 Toman.

14. They told me they would pay me 200,000 Toman in order to pick us up in the morning and take us to the place where we want and in the evening, and collectors and take us where we needed to go. Because I knew two of them from Dezil, I said I would do it, and from tomorrow and pick them up.

- 17.** There may be an issue of an interpretation of the evidence at this stage, the reference to somebody paying the appellant is clearly a reference to an individual and the reference to "them" could also clearly be to that individual. The appellant would no doubt prefer it to be interpreted as reading that if one person approached the appellant initially the reference to 'them' is to the group later referred to in the PIQ, but there was clearly no reference in the earlier evidence to the later claim. There also appears to be a discrepancy between the initial claim of only one approach in the screening interview yet in the reply in the PIQ to this occurring on two occasions (see paragraphs 12-18).

- 18.** As noted above, the appellant also claimed to face a threat from Daesh, a clear reference to ISIS, yet in the further detail provided in the PIQ there is no reference to a threat from this organisation.

- 19.** It is accepted that in the appellant’s asylum interview there is reference to a threat from Daesh which is recorded at questions 107-109:

Q107: When did Daesh threaten you?

A: Perhaps about 20/22 days after the incident.

Q108: Where were you when they threatened you?

A: I was in Turkey.

Q109: How did they threaten you?

A: They had sent a letter, the family of two guys who were from Dezil had told my dad a few times that they hold me responsible for the family members.

- 20.** I do not find it made out that the Judge’s conclusion that there are discrepancies in the evidence given by the appellant from various sources is a finding outside the range of those reasonably available to the Judge. It is a finding that is adequately reasoned and was an issue for the Judge to consider in a case in which it was established that the key issue was the credibility of the claim.

- 21.** Mr Schwenk also asserted the Judge had erred in law in relation to her findings concerning the appellant’s contact with his family in Iran at [48 (d)]. In this paragraph the Judge found very little reference to the appellant’s wife in the papers, the appellant claiming in his initial interview that his wife and child had gone into hiding, in his Asylum Interview that he knew this as he had been told by another, which the Judge found to be a reference to the appellant’s uncle for credible reasons, although the Judge also records the appellant also claiming at the hearing that he did not mean his uncle told him his wife was in hiding, but that a friend had told him, despite the previous reference identified by the Judge to the uncle. The Judge was clearly cautious about holding this issue against the appellant, noting there was reference to the friend S throughout the evidence and that the appellant could simply have made a mistake, although the Judge did not accept this was the situation when analysing other aspects of the evidence as referred to in the decision.

- 22.** The Judge did not find it credible that the appellant who had been in contact with a friend, his own mother, and an uncle in Iran, via the Internet, had had no contact with his wife or his son. The finding of the Judge who had the benefit of considering not only the documentary evidence but also seeing and hearing the appellant gave oral evidence that on this issue, and who found the appellant was being “deliberately evasive”, has not been shown to be a finding outside the range of those available to the Judge on the evidence.

- 23.** It is not made out the Judge misunderstood the evidence given in relation to this issue. For even if the appellant’s wife has no access to the Internet and the appellant cannot afford to pay for data to contact his wife on his mobile phone as claimed, the finding of the Judge that notwithstanding having contact with individuals in Iran the appellant

had not made any contact with his wife, even if they had to travel to the property of a friend or his own mother, was not plausibility has not been shown to be a finding outside the range of those available to the Judge on the evidence. The appellant's claim in relation to costs was a matter of which the Judge was clearly aware for which adequate reasons are given for rejecting the appellant's account in relation to his allegation he has not had contact those family members.

- 24.** Mr Schwenk also asserts the Judge engaged in "impermissible speculation" at [48 (e)] when finding that the vehicle driven by the appellant would stand out somewhat in a small village and at [48 (i)] that Daesh would not send a letter to the appellant threatening him, claiming there was no evidence to support either of the findings, such that they amounted to speculation without which the Judge's conclusions might have been different.
- 25.** Mr Tan, in his response referred to the fact the Judge had available to her a picture of the minibus which the Judge specifically refers to as being a photograph of a large coach type vehicle which she would not normally assume would be referred to as a minibus. The Judge noted that although this is not a photograph of the exact vehicle the appellant claims he drove the appellant accepted the picture resembled the vehicle that he had driven, which he stated was a 17-seater vehicle. There is nothing arguably irrational, speculative, or outside the range of reasonable conclusions in the Judge finding that a vehicle of that size would stand out in a small village environment, especially as it was not from that village. There was no evidence before the Judge or even this tribunal to show that small villages are populated on a regular basis by such vehicles. The Judge's observation that if members of Daesh wanted to go to a village where they would undertake activities that could have the most dire consequences should they be discovered it appears unlikely they would use such a large and conspicuous vehicle has not been shown to be a finding outside the range of those available to the Judge on the evidence.
- 26.** In relation to the letter, at [48(i)] the Judge noted it was part of the appellant's claim that when he was in Turkey a letter was sent to his home containing threats to him, as noted above, but the finding of the Judge that there was a local connection between the appellant and those who had allegedly been arrested, which would make it known that he had left Iran, and that as a terrorist organisation it was not credible that such a letter would have been sent in the first place, has not been shown to be an arguably rational finding. The modus operandi of Daesh (ISIS) is well known as much has been written in the public domain and in country reports of the brutal nature of this organisation who detain, behead, and seriously ill treat those who come to their adverse attention. The Judge is an experienced Judge of the First-tier Tribunal who would have judicial knowledge of the way in which this organisation acts. It is not to be made out the Judge's findings are infected by legal error on the basis of impermissible speculation. There was no country information or other such evidence adduced by the appellant to support his claim such as to establish legal error.

- 27.** Mr Schwenk also asserted the Judge erred in law in relying upon demeanour without exercising the required degree of caution in relation to the weight that could be given to such issues. This is a criticism of the Judge's finding at [48 (d)] that the Judge found the appellant to be deliberately evasive when giving his evidence. I do not find the appellant has established that this is a conclusion based upon demeanour, but rather a finding of the Judge based upon the manner in which the appellant answered questions put to him. As noted above, the Judge clearly had the benefit of seeing and hearing the appellant give oral evidence and is not made out the Judge was not entitled to conclude, having had such an advantage, that the appellant was being deliberately evasive in his answers.
- 28.** The term 'demeanour' normally refers to outward behaviour or bearing. It is clear the Judge makes no adverse findings in relation to such issues but focuses upon the nature of answers given and the relevance of the same to the questions put to the appellant. The Judges approach and assessment of the evidence is in accordance with the decision of Mr Justice Ousley sitting in the Immigration Appeal Tribunal in MM (DRC) [2005] UKIAT 00019 in which it was found that in general the demeanour of a witness should not be relied on but rather it is the content of the evidence as a whole which must underpin any credibility findings.
- 29.** Mr Schwenk also asserted the Judge erred by relying upon a further example of "inherent implausibility" when finding the appellant's mother would not be able to escape by a back door, or that the appellant would switch his mobile phone off or be unable to safely stay at an orchard as he claimed. This ground of challenge is to the findings made at [48 (c)] and [48(g)].
- 30.** In [48(c)] the Judge discusses the credibility of the appellant's claim that his mother came to warn him that the authorities were at his house. The Judge notes that to do this the appellant's mother would have to leave the house, which the respondent in the Reasons for Refusal Letter found to be inconsistent in light of the claim that the IRCG who the appellant had claimed are an intelligence service in Iran had a spy keeping an eye out for him at his home, which the Judge accepts. It is not unreasonable to assume that if individuals have been arrested as being members of Daesh in Iran by the security services and that they wish to arrest the appellant who they believe may have been involved in transporting such individuals that they would have ensured that once their arrival at the property was known they would have taken steps to prevent the appellant from running away i.e. through the back door. The Judge's findings in relation to this matter are within the range of those available to the Judge on the evidence.
- 31.** It is important to note the specific finding of the Judge in relation to the appellant switching off his mobile phone which is a reference to the appellant's claim that he was so concerned when he was told the men he dropped off had been arrested that he went to his uncles who told him to stay the night and see what the situation was in the morning, yet the appellant claiming he had switched his phone off for

a bit of “peace and quiet”. If the appellant wanted to know what was developing it is more plausible that he would have left his phone switched on, which can be inferred as the concern of the Judge. This has, again, not been shown to be a finding outside the range of those available to the Judge on the evidence.

32. Mr Tan also referred to a number of findings made by the Judge which have not been challenged in the grounds seeking permission to appeal such as at [50] in which the Judge found the evidence of the appellant relating to Daesh to be equally vague and lacking in detail for the reason stated. Findings are also made by the Judge at [51], [52], and [53] including the claim the appellant had left Iran illegally which was dismissed by the Judge.

33. What has not been shown to be infected by legal error material to the decision to dismiss the appeal is the Judge’s overall conclusion at [54] in which the Judge writes:

54. In all the circumstances, having regard to the totality of the evidence, for the reasons set out above, and applying the lower standard of proof, I conclude that the appellant has failed to establish well-founded, or a real risk of serious harm, such as would qualify him for international protection on the claimed ground.

34. Whilst the appellant disagrees with the Judge’s assessment of the evidence and findings made, suggesting the decision cannot stand on the basis of the submissions made and the lack of care identified in the matters concerning Judge Pickup, and seeks a more favourable outcome to enable him to remain in the United Kingdom, the grounds fail to establish legal error material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in this matter.

Decision

35. There is no material error of law in the Immigration Judge’s decision. The determination shall stand.

Anonymity.

36. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated 21 July 2021

