



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

Appeal Number: PA/04569/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 13th September 2017**

**Decision & Reasons
Promulgated
On 26th September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

**MR M.S.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Wass, Counsel

For the Respondent: Ms Willocks-Briscoe, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity direction was made by the First-tier Tribunal. As a protection claim, it is appropriate to continue that direction.

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of the First-tier Tribunal (Judge Davidson) promulgated on 21st June 2017, which dismissed the Appellant's appeal on asylum/humanitarian protection grounds.
2. The Appellant, who is a citizen of Iran, was born on [] 1996. He entered the UK in May 2016 and claimed asylum on 8th June 2016. On 11th April 2017 the Respondent refused his asylum/humanitarian protection claim.
3. The Appellant appealed to the First-tier Tribunal. Following a hearing on 14th June 2017, the FtT promulgated its decision on 21st June 2017 dismissing the appeal on all grounds.
4. Grounds of Appeal against the FtT's decision were lodged and on 24th July 2017 Judge Chohan granted permission in the following terms:
 - “3. The grounds submit, in essence, that the judge erred in law by failing to give adequate reasons for the findings made.
 4. I state from the outset that there is substance in the grounds seeking permission. The judge's findings are set out in two paragraphs in which the judge concludes that the appellant failed to establish his claim for asylum. However, the judge has failed to give adequate reasons for the findings made. In other words, due to the lack of reasoning, it is not clear on what basis the judge made the findings”.

The Respondent lodged a Rule 24 notice defending the decision. Thus the matter comes before me to decide initially whether the decision of the FtT discloses such error of law that it needs to be set aside and re-made.

Error of Law Hearing

5. Before me Ms Wass appeared for the Appellant and Ms Willocks-Briscoe for the Respondent. Ms Wass's submission kept to the lines of the grounds seeking permission. She said that the FtT decision is altogether lacking in any proper reasoning or consideration of the issues before it. She referred to the decision itself and said that the decision is set out in twenty paragraphs but only paragraph 18 sets out any sort of findings. She said there is one sentence only which deals with the reasoning behind the dismissal.
6. In support of her submission that the findings are inadequate, she said that the Appellant answered twelve questions in cross-examination and gave no evidence in examination-in-chief. She said it is unclear from the decision whether that evidence is accepted or rejected. No indication is given of what evidence is inconsistent internally or otherwise.
7. In addition, Ms Wass submitted that the judge misdirected herself. The Appellant's Convention reason has always been imputed political opinion based on his brother's claimed actions in Iran. Those errors go to the core

of the decision and because this is a matter where credibility lies at the heart of the claim, the decision is not sustainable.

8. Ms Willocks-Briscoe defended the decision. She submitted that whilst it is correct that the judge did not go into significant detail in her findings, nevertheless the findings made were adequate. She referred to **Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085 (IAC)** and said a fair reading of the decision showed that as a whole it made sense in the light of the material available to the judge.
9. At the end of submissions I announced that I was satisfied that the decision of the FtT contained material errors sufficient that it should be set aside and re-made. I now give my reasons for this finding.

Consideration

10. In **MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC)** it was held that:
 - (a) It was axiomatic that a determination disclosed clearly the reasons for a Tribunal's decision.
 - (b) If a Tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.
11. In looking at the present decision, I find force in Ms Wass's submissions. At [18] the judge says:

"Having considered the totality of evidence, I find that the Appellant has failed to establish his claim for asylum or humanitarian protection. ... The basis for his contention that the Iranian authorities are interested in him in 2015 in Evaz is that his brother was involved in a demonstration over a number of days in June 2009 in Tehran. The account he gave in his asylum interview and the evidence he gave before the Tribunal lacked credibility *because of inconsistencies and the absence of any detail.*" (my italics)
12. I find there is no depth to this statement. The judge has relied on an overall approach and it is hard to see from a reading of [18] what merited a finding that there were inconsistencies in the asylum interview and the oral evidence given before the Tribunal. I find that this is as a result of there being no analysis of either piece of evidence. Credibility is at the core of this Appellant's claim, and it is of fundamental importance that there is a proper assessment of all the relevant evidence when relying on adverse credibility findings.

13. I find therefore that the decision must be set aside for legal error. I set aside the decision in its entirety. Because of the nature and extent of judicial fact-finding in this case, the decision will need to be re-made in the First-tier Tribunal. The effect of the error has been to deprive the Appellant of a fair hearing or other opportunity of having his case put to and considered by that Tribunal. None of the findings of fact are to stand. A complete rehearing is necessary.
14. Having announced my decision that I would remit this matter to the First-tier tribunal, Ms Willocks-Briscoe sought permission for a decision relating to the Appellant's brother, whose initials are also M.S, to be submitted in evidence as part of the Respondent's case. That decision was promulgated on 30th May 2017 and it is correct to say that the Appellant's brother's asylum appeal has been dismissed. I therefore make a direction that this decision be admitted as evidence before the First-tier Tribunal.
15. I remit this case to the First-tier Tribunal sitting at Hatton Cross to be heard before any judge other than Judge Davidson.

Notice of Decision

The decision of the First-tier Tribunal is set aside for material error of law. The appeal is remitted to the First-tier Tribunal to be determined afresh (not before Judge Davidson).

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 his 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
September 2017

C E Roberts

Date

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Deputy Upper Tribunal Judge Roberts