



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

Appeal Number: PA/06430/2019

THE IMMIGRATION ACTS

**Heard at The Royal Courts of Justice
On 9 December 2019**

**Decision & Reasons Promulgated
On 18 December 2019**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

**BAHMAN [M]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Bandegani, Counsel, instructed by Duncan Lewis Solicitors

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Judge of the First-tier Tribunal Trent (the judge) who, in a decision promulgated on 28 August 2019, dismissed the appellant's protection and human rights appeal against the respondent's decision of 28 June 2019 to refuse his protection and human rights claim.

Background

2. The appellant is a national of Iran, of Kurdish ethnicity, born on 21 March 1990. He arrived in the UK on 1 December 2015 and claimed asylum fearing persecution from the Iranian authorities based on his Kurdish ethnicity and his activities as a smuggler, and on the basis of a political opinion that would be imputed to him by the Iranian authorities based on his Kurdish ethnicity and the belief likely to be held by the Iranian authorities that he was smuggling arms for Kurdish insurgent groups.
3. The respondent did not believe the appellant gave a credible account of events that caused him to leave Iran. The respondent pointed to inconsistencies in the appellant's account and his initial failure to mention being tortured when detained by the Iranian authorities.
4. The appellant exercised his right of appeal under s.82 of the Nationality, Immigration and Asylum Act 2002.

The decision of the First-tier Tribunal

5. The judge had before him a bundle of documents prepared by the appellant's representatives. This included, inter alia, a country expert report prepared by Dr Emile Joffe dated 2 August 2019, a scarring report prepared by Dr Lohawala dated 20 May 2018, a psychiatric report prepared by Dr Lohawala also dated 20 May 2018, a letter from the appellant's GP dated 15 July 2019 and a psychiatric report by Dr Syed Zia Ali dated 5 August 2019.
6. The judge heard oral evidence from the appellant and from one of his friends and summarised the appellant's account, the basis of his appeal (which also included an Article 3 suicide risk), and the submissions made on his behalf (the respondent failed to field a Presenting Officer). The judge noted that the appellant made an asylum application in Bulgaria (where he claimed to have been seriously ill-treated) and that the respondent had initially sought to remove him to Bulgaria pursuant to the Dublin III regulation (according to the Grounds the respondent only decided to process the asylum claim in the UK on 10 May 2019).
7. At [24] and [25], under the heading 'The Appellant's activities in Iran', the judge found that the appellant's credibility was undermined by several inconsistencies and omissions relating, inter alia, to his failure in the early stages of his asylum application to mention a letter allegedly left by the Iranian authorities at his family home, the length of his detention by the Iranian authorities, and his claim to have been tortured by the Iranian authorities while detained. At [26] the judge rejected the appellant's claim to be of adverse interest to the Iranian authorities and to have been previously detained and ill-treated by those authorities.
8. Then under the separate heading 'The Appellant's mental state', the judge considered, inter alia,

9. The judge then went on to consider the appellant's mental state making reference to the two psychiatric reports ([27] - [28]). At [29] to [32] the judge concluded there was no real risk that the appellant would be subjected to persecution or Article 3 ill treatment by the Iranian authorities, and at [33] to [35] the judge concluded there was no real risk that the appellant would commit suicide if removed to Iran. There being no significant private or family life, the appeal was dismissed.

The challenge to the judge's decision and the error of law hearing

10. The grounds contend that, in making his adverse credibility findings, the judge failed to take into account or have regard to material evidence, and in particular, the expert report from Dr Joffe and the medical evidence, and the circumstances in which the appellant's first witness statement (1 April 2016) was taken. The grounds further contend that the judge made a number of factual mistakes, including a mistake as to whether the appellant mentioned being tortured while in Iran prior to his asylum interview. The grounds argue that the judge failed to give any or adequate reasons in relation to findings on material matters and that he misdirected himself in respect to his approach to the medical evidence. Permission was granted on all grounds, although with particular reference to the absence of any reference to Dr Joffe's report.
11. At the error of law hearing Mr Lindsay accepted that the judge's decision contained an error on a point of law requiring it to be set aside. Mr Lindsay accepted that the judge failed to make any mention of Dr Joffe's report, and that there was consequently no consideration of Dr Joffe's assessment of specific issues relating to the appellant to be found at C46 and C47 of the appellant's bundle. Mr Lindsay accepted that several of the factors considered by Dr Joffe potentially fed into the issue of the appellant's credibility. In these circumstances Mr Lindsay considered that, in light of the low threshold relating to the materiality of the existence of an error of law, the outcome of the judge's decision may have been different if he had specifically referred to and considered those parts of the expert report. As the judge's credibility findings were not sustainable, both parties agreed that there had not been a fair hearing and that the matter should be remitted back to the First-tier Tribunal for a de novo hearing.
12. I indicated my agreement with the agreed position of the parties.

Discussion

13. For the reasons that are apparent in light of the agreed position of the parties I need only summarise my reasons for finding that the judge made errors on points of law. It is surprising that the judge failed to make any material reference to Dr Joffe's expert report. Dr Joffe is a renowned expert on Iran and his report was specifically written for the appellant. Dr Joffe contextualised the appellant's claim and provided

support for the plausibility of the appellant's account of events. Dr Joffe found the appellant's account of being tortured by the Iranian authorities plausible as well as his claim to have been initially released after first being caught smuggling. Dr Joffe also found plausible the appellant's claim that poverty forced him to engage in smuggling, and that the Iranian authorities would have issued an arrest warrant for the appellant if arms had been discovered. While the judge was not obliged to accept Dr Joffe's analysis, and whilst the judge may have found that Dr Joffe's analysis was outweighed by his other findings, the judge could not ignore this relevant evidence. It was incumbent on the judge to have engaged with the expert opinion contained within Dr Joffe's report. Had he done so, it is far from certain that his conclusions on credibility would have been the same.

14. I am further persuaded that, in finding the appellant's account of events causing him to leave Iran incredible, the judge failed to take into account the medical evidence relating to the appellant's mental state concerning his fear of being returned to Iran. While the judge accurately noted that some of the medical evidence concerned the appellant's earlier fear of being removed to Bulgaria, there was evidence, particularly the psychiatric report dated 5 August 2019, stating that the appellant suffered from severe depression and severe symptoms of PTSD and presented in a 'fragile mental state'. This evidence was capable of supporting the appellant's claim to have a genuine fear from the Iranian authorities. While the judge was not obliged to accept this evidence, it was incumbent on him to have engaged with it in the context of his assessment of the appellant's credibility and not just in respect of the mental health Article 3 claim.
15. I have additional concerns with the judge's finding at 24(b)(iii) that the appellant's description of the ill-treatment he claims to have suffered in Bulgaria had "very little, if any, overlap with his description of torture in Iran" when assessing Dr Ali's evidence of the likelihood of the appellant merging two different traumatic events in his memory. There were in fact several instances of potential overlap as described in paragraph 10 of the Grounds of Appeal. This evidence does not appear to have been considered by the judge.
16. For these reasons I am satisfied that the entirety of the judge's adverse credibility findings are unsustainable. This was material to the judge's decision.

Remittal to First-Tier Tribunal

17. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 18 June 2018 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:
 - (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal;
or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

18. In this case I have determined that the adverse credibility findings cannot stand. The appeal will be remitted to the First-tier Tribunal so that a new fact-finding exercise can be undertaken. None of the findings of fact are to stand and a complete re-hearing is necessary.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and requires the decision to be set aside.

The case is remitted back to the First-tier Tribunal for a fresh (de novo) hearing, to be heard by a judge other than Judge Trent.

D.Blum

13 December 2019

Signed

Date

Upper Tribunal Judge Blum