

ASYLUM AND IMMIGRATION TRIBUNAL

SM (Section 8: Judge's process) Iran [2005] UKAIT 00116

THE IMMIGRATION ACTS

Heard at: Field House

Date of Hearing: 25 May 2005
Date Promulgated: 5th July 2005

Before:

Mr C M G Ockelton (Deputy President)
Miss E Arfon-Jones (Deputy President)
Mr A Jordan (Senior Immigration Judge)

Between

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Bandegani of Refugee Legal Centre
For the Respondent: Mr G Phillips, Home Office Presenting Officer

Even where section 8 applies, an Immigration Judge should look at the evidence as a whole and decide which parts are more important and which less. Section 8 does not require the behaviour to which it applies to be treated as the starting-point of the assessment of credibility.

DETERMINATION AND REASONS

1. The Appellant is a citizen of Iran. She claimed asylum in the United Kingdom on 18 October 2004, saying that she had arrived that very day. After examining her claim, the Secretary of State refused it on 16 December 2004 and on 17 December 2004 he decided to give directions for her removal as an illegal entrant. She appealed. Her appeal was heard by an Adjudicator, Mr J D Atkinson, on 28 February 2005 and, in a determination sent out on 7 March 2005, he allowed her appeal. The Secretary of State applied for permission to appeal to the Immigration Appeal Tribunal, which was granted. Following the commencement provisions of the 2004 Act, that grant takes effect as

an Order for reconsideration by this Tribunal of the Appellant's appeal to the Adjudicator.

2. The Adjudicator's findings of fact are set out in paragraph 29 of his determination in the following terms:

"The Appellant was born on 7 April 1955 in Abadan, Iran. The Appellant is a member of the Lorr Bakhtiari ethnic group who live generally in the north of Khuzestan. On 4 May 1980 the Appellant's husband was executed by the authorities because of his political opinion. On 28 November 2003 the Appellant's son, Mohamedreza Sardisian Junaki, was arrested and detained by the authorities for his political activities. On 24 March 2004 Mohamedreza Sardisian Junaki fled Iran. He was subsequently granted asylum in the United Kingdom on 26 May 2004. On 9 April 2004 the Appellant was arrested and detained by the authorities. The Appellant was detained until 15 July 2004 during which time she was beaten, raped and ill treated. On 18 September 2004 the Appellant was re-arrested and detained until 25 September 2004. During the detention period the Appellant was raped and hanged by the neck until she lost consciousness. The Appellant was released on her signature of a blank piece of paper. On 5 October 2004 the Appellant left her home town and travelled to Tehran. From there, the Appellant made arrangements with the assistance of her family to leave the country. On 18 October 2004 the Appellant arrived in the United Kingdom and claimed asylum the same day."

3. Those findings are stated to be based on the totality of the evidence before him, including oral evidence from the Appellant and her son, and documentary material submitted by both parties. In his analysis of that evidence, the Adjudicator considers submissions made to him on behalf of the Secretary of the State that the evidence, or an important part of it, was not entitled to credit, because it was vague, or implausible, or showed inconsistencies. In paragraphs 23 and 24 of his determination, the Adjudicator specifically rejects those submissions item by item. Before setting out his final conclusions as to fact, the Adjudicator also alludes to section 8 of the 2004 Act, which was already in force at the time he heard this appeal. In paragraph 28 of his determination, he states that he has taken into account all relevant matters under that section, "*including all matters pertaining to her account of travelling from Iran to the United Kingdom*". He finds, nevertheless, that the evidence before him is consistent, detailed, plausible and supported.
4. The Secretary of State's grounds of appeal to the Immigration Appeal Tribunal, which form the basis of this reconsideration, assert that the Adjudicator erred in law in assessing credibility. Paragraphs 4, 5 and 6 of the grounds assert that the Adjudicator did not properly consider certain matters of detail in the Appellant's evidence. Before us, Mr Phillips told us that he had no need to make further submissions on those points. We agree that it would have been a waste of time to do so. There is clearly no merit in them, in the light of the Adjudicator's careful treatment of these matters, to which we have already alluded.
5. Paragraphs 2 and 3 of the grounds of appeal are as follows:

- "2. It is submitted that the Adjudicator has erred in his decision when assessing the Applicant's credibility. The Adjudicator deals with Section 8 of the 2004 Act at paragraph 28 of his determination, after he has considered the credibility of the Applicant earlier in his determination (paragraphs 23-26). It is submitted that Section 8 of the 2004 Act should be the starting point for assessing an Applicant's credibility and should not merely be taken in the round having already drawn a conclusion on credibility as a whole. Section 8 of the 2004 Act states that '... a deciding authority shall take into account, as damaging the claimant's credibility, of any behaviour to which this section applies' (my emphasis).
3. It is also submitted that the Adjudicator has erred in law as he has failed to address the particular submission made by the Presenting Officer in relation to Section 8 of the 2004 Act. Specifically, the Adjudicator made no findings regarding the Applicant's failure to claim asylum en route to the United Kingdom in a safe country."
6. Mr Phillips made brief submissions in support of these grounds. We did not need to call upon Mr Bandegani to reply to them.
7. The purpose of section 8 of the 2004 Act is no doubt to reverse dicta which have appeared from time to time suggesting that, contrary to what might be regarded as ordinary experience, certain matters have no impact at all on a person's credibility when it is assessed in an asylum claim. It has the incidental effect of interfering with the well-established rule that the finder of fact (in this case, the Adjudicator or Immigration Judge) should look at the evidence as a whole, giving each item of it such weight as he or she considers appropriate. That is unfortunate, and may in some circumstances be difficult to manage.
8. The impact of section 8 will no doubt be different in different types of case. In cases where there is some reason to doubt a variety of elements of the Appellant's story, the effect of section 8 may well be simply to reinforce the salutary principle that if a person does not appear to be telling the truth on those parts of his evidence that can be checked, there is no real reason for believing that he is telling the truth in those parts of his evidence that cannot be checked. Where, on the other hand, for example, a person appears to be telling the truth about having passed through a number of countries on his or her journey to the United Kingdom, the effect of section 8 on a deciding authority will be to draw clear and specific attention to certain features of the evidence as aspects which must (by statute) be regarded as casting some doubt upon the credibility of the Appellant's claim to be a refugee.
9. Given the terms of section 8, it is inevitable that the general fact-finding process is somewhat distorted, but that distortion must be kept to a minimum. There is no warrant at all for the claim, made in the grounds, that the matters identified by section 8 should be treated as the starting point of a decision on credibility. The matters mentioned in section 8 may or may not be part of any particular claim; and their

importance will vary with the nature of the claim that is being made, and the other evidence that supports it or undermines it. In some cases, (of which the most obvious are perhaps those where there is contested evidence about the journey to the United Kingdom) it will simply not be possible to know whether section 8 applies until a preliminary view has been taken on the credibility of some other part of the evidence.

10. In our judgment, although section 8 of the 2004 Act has the undeniably novel feature of requiring the deciding authority to treat certain aspects of the evidence in a particular way, it is not intended to, and does not, otherwise affect the general process of deriving facts from evidence. It is the task of the fact-finder, whether official or judge, to look at all the evidence in the round, to try and grasp it as a whole and to see how it fits together and whether it is sufficient to discharge the burden of proof. Some aspects of the evidence may themselves contain the seeds of doubt. Some aspects of the evidence may cause doubt to be cast on other parts of the evidence. Some aspects of the evidence may be matters to which section 8 applies. Some parts of the evidence may shine with the light of credibility. The fact-finder must consider all these points together; and, despite section 8, and although some matters may go against and some matters count in favour of credibility, it is for the fact-finder to decide which are the important, and which are the less important features of the evidence, and to reach his view as a whole on the evidence as a whole.
11. It follows from the foregoing that we reject paragraph 2 of the grounds of appeal. The summary of the determination which we have set out above is sufficient to show that there is no merit in paragraph 3 of the grounds.
12. For the foregoing reasons, we find that the Adjudicator made no error of law and we affirm his determination.

C M G OCKELTON
DEPUTY PRESIDENT
Date: