



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/12379/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at: Manchester

Decision and Reasons

Promulgated

On: 20th December 2017

On: 22nd December 2017

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

SH

(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G. Patel, Counsel instructed by the Greater Manchester

Immigration Aid Unit

For the Respondent: Mr G. Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Iran born in 1990. He appeals with permission¹ the decision of the First-tier Tribunal (Judge Tully), who on the 4th April 2017 dismissed his protection claim.
2. The basis of the Appellant's claim is that he faces a real risk of serious harm in Iran for reasons of his imputed political opinion. He fears arrest by the Iranian authorities because they believe him to have

¹ Permission was granted by Designated Judge of the First-tier Tribunal MacDonald on the 17th August 2017

employed/accommodated two members of Jaish UI Adl, a banned Sunni extremist group. The Respondent disbelieved the Appellant's account and so did the First-tier Tribunal who respectively rejected the protection claim and dismissed his appeal. The central point raised in this appeal is whether the First-tier Tribunal acted unfairly in its disposal of the claim, taking as it did several new credibility points against the Appellant that were not made by the Respondent. The second ground is that in the remainder of its reasoning the Tribunal failed to weigh in the balance the evidence of the Appellant.

3. It is accepted that if the Tribunal did indeed take points against the Appellant of which he had no notice, this would be an error of law, since the Appellant would be deprived of an opportunity to respond to the forensic challenge made, a fundamental component of the common-law right to a fair hearing. See for instance: HA & Anr v Secretary of State for the Home Department [2010] ScotCS CSIH 28. Mr Harrison further agreed that it would be an error if the Tribunal had failed to take material evidence into account.

Discussion and Findings

4. The reasons for refusal letter is dated 25th October 2016. Therein the Respondent makes the following adverse comments about the Appellant's version of events:
 - i) He said at his interview that his employee had never expressed any opinions about Jaish UI Adl but this is inconsistent with the Appellant's alternative evidence that he did not spend any time with the man outside of work: "it is therefore unclear how you would know if he expressed any such views";
 - ii) The Appellant claims that his father was arrested after going to check on the Appellant's factory. This is found to be inconsistent with the Appellant's evidence that he trusted his employee to look after the company in his absence;
 - iii) The Appellant states that when he heard that his father and others had been arrested he decided not to return to the factory but instead dispatched another employee to go and see what was happening. The Respondent does not consider that behaviour to be reasonable or consistent with the Appellant's evidence that he regarded himself as being responsible for the running of the factory;
 - iv) It is not considered reasonable that the Appellant's father would tell the authorities that it was the Appellant who was responsible for recruiting staff;

- v) It is unclear why the authorities did not search the Appellant's uncle's house where he was hiding;
- vi) The Appellant was unable to give much detail about what had happened to his father after his arrest;
- vii) The evidence was inconsistent and vague in respect of why the Appellant was advised to leave Iran.

5. At the hearing the Appellant gave oral evidence and both parties were represented. The Tribunal considered the reasons given by the Respondent for rejecting the claim, summarised above. It found no merit in points (i) or (ii). As to point (vi) it agreed with the Respondent. The Tribunal made no findings either way about the remaining points. The determination sets out three more reasons why the account is not to be believed:

- i) It is not credible that the Appellant would not know a man was living at his factory, given that there were only a few employees;
- ii) The Appellant had not explained how he came to know the reason that the authorities searched his factory, namely that when they arrived one of the Jaish UI Adl men ran away;
- iii) The Appellant was unable to explain how it was so quickly discovered that one of the men arrested was his employee's brother.

6. In her written grounds Ms Patel submits that in taking these new points a fundamental unfairness arose. She points out that the Appellant was cross-examined by an experienced HOPO who did not put any of these points to him. He was further asked 15 questions in 'clarification' by the Tribunal. At no point was he asked about these three matters. As to the forensic challenges that were made in the refusal letter, the Appellant had given a detailed statement in rebuttal, none of which appears to have been considered by the Tribunal.

7. Although neither party was able to provide me with copies of their notes from the hearing before the First-tier Tribunal I have had regard to the judge's note and I can see no reference to the new matters being raised. I bear in mind that there was a general challenge to the Appellant's credibility as a witness in this case and he can have been under no illusion about whether any of his account was accepted. It remains the case, however, that perfectly reasonable explanations might have been available for the concerns held by the Tribunal and in those circumstances it must have been unfair for the points to be weighed against him without hearing from him first. As to the second

ground Harrison was unable to direct me to any part of the determination where the Tribunal had considered the matters set out in the Appellant's statement. It follows that the appeal must succeed.

8. The parties agreed that in the circumstances the most appropriate disposal would be to remit the matter for hearing afresh in the First-tier Tribunal. I agree.

Anonymity Order

9. This appeal concerns a claim for protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“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 to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Decisions

10. The decision of the First-tier Tribunal is set aside.
11. The decision in the appeal is to be re-made in the First-tier Tribunal
12. There is an order for anonymity.



Upper Tribunal Judge Bruce
21st December 2017