

**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Number: PA/08965/2017**

**THE IMMIGRATION ACTS**

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| **Heard at Field House** | **Decision Promulgated** |
| **On 23 April 2018** | **On 12June 2018** |
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**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**M L**

(ANONYMITY DIRECTION MADE)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Anonymity**

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

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. 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.

**Representation:**

For the appellant: Ms E. Sanders, Counsel instructed by Elder Rahimi Solicitors

For the respondent: Mr I. Jarvis, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appealed the respondent’s decision dated 04 September 2017 to refuse a protection and human rights claim.

2. First-tier Tribunal Judge Housego (“the judge”) dismissed the appeal in a decision promulgated on 17 October 2017.

3. The appellant appeals the First-tier Tribunal decision on the following grounds:

1. The judge failed to provide adequate reasons for his adverse credibility findings.
2. The judge failed to place any weight on the fact that the appellant had been attending church on a regular basis.
3. The judge placed undue weight on his own view of the plausibility of the account.

**Legal framework**

4. In *HK v SSHD* [2006] EWCA Civ 1037 Lord Justice Neuberger gave the following guidance about the role of plausibility in assessing the credibility of an asylum claim:

“27. The difficulty of the fact-finding exercise is particularly acute in asylum cases, as has been said on more than one occasion in this court …. The standard of proof to be applied for the purpose of assessing the appellant’s fear of persecution is low. The choice is not normally which of two parties to believe, but whether or not to believe the appellant. Relatively unusually for an English Judge, an Immigration Judge has an almost inquisitorial function, although he has none of the evidence-gathering or other investigatory powers of an inquisitorial Judge. That is a particularly acute problem in cases where the evidence is pretty unsatisfactory in extent, quality and presentation, which is particularly true of asylum cases. That is normally through nobody’s fault: it is the nature of the beast.

28. Further, in many asylum cases, some, even most, of the appellant’s story may seem inherently unlikely but that does not mean that it is untrue. The ingredients of the story, and the story as a whole, have to be considered against the available country evidence and reliable expert evidence, and other familiar factors, such as consistency with what the appellant has said before, and with other factual evidence (where there is any).

29. Inherent probability, which may be helpful in many domestic cases, can be a dangerous, even a wholly inappropriate, factor to rely on in some asylum cases. Much of the evidence will be referable to societies with customs and circumstances which are very different from those of which the members of the fact-finding tribunal have any (even second-hand) experience. Indeed, it is likely that the country which an asylum-seeker has left will be suffering from the sort of problems and dislocations with which the overwhelming majority of residents of this country will be wholly unfamiliar. The point is well made in *Hathaway on Law of Refugee Status* (1991) at page 81:

“In assessing the general human rights information, decision-makers must constantly be on guard to avoid implicitly recharacterizing the nature of the risk based on their own perceptions of reasonability.”

30. Inherent improbability in the context of asylum cases was discussed at some length by Lord Brodie in *Awala –v- Secretary of State* [2005] CSOH 73. At paragraph 22, he pointed out that it was “not proper to reject an applicant’s account *merely* on the basis that it is not credible or not plausible. To say that an applicant’s account is not credible is to state a conclusion” (emphasis added). At paragraph 24, he said that rejection of a story on grounds of implausibility must be done “on reasonably drawn inferences and not simply on conjecture or speculation”. He went on to emphasise, as did Pill LJ in *Ghaisari*, the entitlement of the fact-finder to rely “on his common sense and his ability, as a practical and informed person, to identify what is or is not plausible”. However, he accepted that “there will be cases where actions which may appear implausible if judged by…Scottish standards, might be plausible when considered within the context of the applicant’s social and cultural background”.”

5. In *Y v SSHD* [2006] EWCA Civ 1223 Lord Justice Keene made the following findings:

“25. There seems to me to be very little dispute between the parties as to the legal principles applicable to the approach which an adjudicator, now known as an immigration judge, should adopt towards issues of credibility. The fundamental one is that he should be cautious before finding an account to be inherently incredible, because there is a considerable risk that he will be over influenced by his own views on what is or is not plausible, and those views will have inevitably been influenced by his own background in this country and by the customs and ways of our own society. It is therefore important that he should seek to view an appellant’s account of events, as Mr Singh rightly argues, in the context of conditions in the country from which the appellant comes. The dangers were well described in an article by Sir Thomas Bingham, as he then was, in 1985 in a passage quoted by the IAT in Kasolo v SSHD 13190, the passage being taken from an article in Current Legal Problems. Sir Thomas Bingham said this:

“‘An English judge may have, or think that he has, a shrewd idea of how a Lloyds Broker or a Bristol wholesaler, or a Norfolk farmer, might react in some situation which is canvassed in the course of a case but he may, and I think should, feel very much more uncertain about the reactions of a Nigerian merchant, or an Indian ships’ engineer, or a Yugoslav banker. Or even, to take a more homely example, a Sikh shopkeeper trading in Bradford. No judge worth his salt could possibl[y] assume that men of different nationalities, educations, trades, experience, creeds and temperaments would act as he might think he would have done or even - which may be quite different - in accordance with his concept of what a reasonable man would have done.”

26. None of this, however, means that an adjudicator is required to take at face value an account of facts proffered by an appellant, no matter how contrary to common sense and experience of human behavior the account may be. The decision maker is not expected to suspend his own judgment, nor does Mr Singh contend that he should. In appropriate cases, he is entitled to find that an account of events is so far-fetched and contrary to reason as to be incapable of belief. The point was well put in the Awala case by Lord Brodie at paragraph 24 when he said this:

“… the tribunal of fact need not necessarily accept an applicant’s account simply because it is not contradicted at the relevant hearing. The tribunal of fact is entitled to make reasonable findings based on implausibilities, common sense and rationality, and may reject evidence if it is not consistent with the probabilities affecting the case as a whole”.

He then added a little later:

“… while a decision on credibility must be reached rationally, in doing so the decision maker is entitled to draw on his common sense and his ability, as a practical and informed person, to identify what is or is not plausible”.

27. I agree. A decision maker is entitled to regard an account as incredible by such standards, but he must take care not to do so merely because it would not seem reasonable if it had happened in this country. In essence, he must look through the spectacles provided by the information he has about conditions in the country in question. That is, in effect, what Neuberger LJ was saying in the case of HK and I do not regard Chadwick LJ in the passage referred to as seeking to disagree.”

6. In *KB & AH (credibility-structured approach) Pakistan* [2017] UKUT 491 the Upper Tribunal outlined the following guidance in the headnote:

“1. The 'Credibility Indicators' identified in the Home Office Asylum Policy Instruction, Assessing credibility and refugee status Version 3.0, 6 January 2015 (which can be summarised as comprising sufficiency of detail; internal consistency; external consistency; and plausibility), provide a helpful framework within which to conduct a credibility assessment. They facilitate a more structured approach apt to help judges avoid the temptation to look at the evidence in a one-dimensional way or to focus in an ad hoc way solely on whichever indicator or factor appears foremost or opportune.

2. However, any reference to a structured approach in relation to the subject matter of credibility assessment must carry a number of important (interrelated) caveats, among which are the following:

* the aforementioned indicators are merely indicators, not necessary conditions;
* they are not an exhaustive list;
* assessment of credibility being a highly fact-sensitive affair, their main role is to help make sure, where relevant, that the evidence is considered in a number of well-recognised respects;
* making use of these indicators is not a substitute for the requirement to consider the evidence as a whole or 'in the round';
* it remains that credibility assessment is only part of evidence assessment and, as Lord Dyson reminded decision-makers in *MA (Somalia) v Secretary of State for the Home Department* [[2010] UKSC 49](http://www.bailii.org/uk/cases/UKSC/2010/49.html) at [33], 'the significance of lies will vary from case to case';
* in the UK context, use of such a structured approach must take place within the framework of EU law governing credibility assessment, Article 4 of the Qualification Directive in particular; and,
* also in the context of UK law, decision-makers (including judges) by s. 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 are statutorily obliged to consider certain types of behaviour as damaging to credibility.

3. Consideration of credibility in light of such indicators, if approached subject to the aforementioned caveats, is a valid and useful exercise, based squarely on existing learning.”

**Decision and reasons**

7. Having considered the grounds of appeal, the submissions made by both parties and the evidence on file, I conclude that the First-tier Tribunal decision involved the making of an error on a point of law.

8. The judge set out the background to the case, a summary of the hearing and quoted extensively from the case law over the course of fourteen pages of a seventeen-page decision. The judge’s reasons were set out in two and a half pages at the end of the decision. The judge began this section of the decision as follows [39]:

“The appellant is an economic migrant and not a Christian convert. It is not possible to make further findings of fact, but I will assume that the account of the appellant of his involvement in a political demonstration in 2009, arrest and release on signing an undertaking, his arrest for breach of the fast, and also for drinking alcohol, being detained 3 days and suffering being lashed is correct.”

9. On the face of this statement, the judge accepted a large part of the history of the appellant’s claim without giving any reasons for doing so. These aspects of the appellant’s account were not disputed and were generally consistent with the background evidence relating to Iran. The appellant was not relying on those past problems to found his current claim for protection, but relied on events in 2015 when a friend held house Church meetings at his home.

10. The judge began his findings of fact by considering the evidence relating to the appellant’s attendance at church in the UK. He accepted that the appellant showed some knowledge of the Christian religion, but gave no indication of how this impacted on the decision [40]. He referred to the decision in *Dorodian v SSHD* (01/TH/01537) and noted that a judge might expect some assistance from a person from the church the appellant attended to offer an opinion the appellant’s commitment to Christianity [41-42]. He noted that the appellant had been in the UK for a period of six months and attending Church on a weekly basis since May 2017 (a period of three months) so the appellant was *“not bereft of opportunity”* to obtain supporting evidence from his church as he asserted. It was open to the judge to find that less weight might be placed on the evidence relating to the appellant’s attendance at church in the absence of supporting witnesses. However, that is not to say that the appellant’s knowledge of Christianity and his regular attendance at church could be given no weight at all. The judge stopped there in so far as his assessment of the appellant’s attendance at church in the UK. No clear findings were made from these observations. One can only infer that the judge rejected the appellant’s claim to attend church as a genuine Christian convert from his overall conclusion.

11. The judge went on to consider the credibility of the appellant’s account of events in Iran. The judge outlined a series of points relating to the plausibility of the appellant’s account. The judge consider that it was implausible that the appellant would let his friend M, who he knew well and trusted, use his house for a party without asking about it [43]. He considered it implausible that the appellant would allow the meetings to continue once he found out the nature of the meetings because of the risks involved [44]. The judge stated: *“Yet his reaction when he found this out was not shock or horror, or anger, or fear, but to want to find out more about the faith being carried out in his home.”* [44]. Similarly, he found it implausible that M or other members of the congregation would take the risk of meeting in the house a person who was not a Christian and who might report the matter to the authorities [45-46]. His account did not *“generally accord with the way in which people are generally brought into such congregations. This is done slowly and with great caution, by reason of the risk involved in disclosing that one is part of a house church and has become an apostate.”* [47].

12. This series of findings made essentially the same point i.e. that it was not plausible that the various actors involved would take the risk of holding a meeting given the consequences. These findings were taken without reference to the background evidence, which shows that people clearly do take the risk of holding house church meetings in Iran. The judge failed to take into account the appellant’s claim that he had known M for a long time and that they trusted one another. In finding that the appellant did not react to the discovery in the way the judge thought was plausible [44], he failed to take into account the appellant’s evidence, which he had already summarised at [24]. The appellant said that he was angry with M at first, but then realised that it was a friendly gathering and was interested to know more. He also explained that the congregation trusted M [26]. The plausibility of the account should have been considered in the context of the evidence taken as a whole.

13. The judge went on to consider the appellant’s account of his escape after the authorities raided his home. The judge found that it was implausible that the landlord would have phoned is brother’s house to warn him after the raid: *“The landlord would have horrified that his property had been used by the appellant as a house church, both because it might place him at risk, and very likely because he would object in principle.”*[48]. He went on to reject the appellant’s alternative explanation that the landlord may have been forced to call him to lure him to his parents’ house to be apprehended [14].

14. Some of those observations may have been open to the judge to make in the context of a holistic assessment of the evidence. However, what is missing is a structured approach to the credibility findings. When read as a whole, each of the judge’s core findings relating to the appellant’s account of events in Iran are based on the judge’s view of how he expected each of the various actors to react. There is no assessment of whether the appellant’s evidence was internally consistent or was consistent with the background evidence relating to house church meetings in Iran or the treatment of Christians. To conclude that it is inherently implausible that anyone would take risks would be irrational because the evidence shows that those who wish to practice their faith must take such risks in order to do so. In my assessment, when read as a whole, the findings relating to the plausibility of the account are of the character cautioned against in the series of cases outlined above.

15. No clear findings were made in relation to the appellant’s attendance at church in the UK. Even if the appellant did not have the support of a specific member of the congregation to vouch for his sincerity, the fact that he had been attending church since shortly after his arrival in the UK and had some knowledge of the faith commensurate with his claimed length of interest was at least supportive of his claim. No consideration was given to the fact that the appellant claimed asylum based on his religion on arrival in the UK. Given that he had to adjust to life in the UK and find a church where he could communicate with members of the congregation, the fact that he began to attend church only two months after his arrival was also generally supportive of his claim. Little or no consideration was given to whether any of the evidence before the First-tier Tribunal might support the appellant’s claim.

16. In my assessment, when the series of findings made by the First-tier Tribunal indicate that the judge rejected the claim almost entirely on his own view of the plausibility of various aspects of the appellant’s account without taking a structured approach as part of a holistic assessment of the claim.

17. I conclude that the First-tier Tribunal decision involved the making of an error on a point of law. The decision is set aside. The nature and extent of judicial fact finding which is necessary in order for the decision to be re-made is such that, having regard to the overriding objective, it is appropriate to remit the case to the First-tier Tribunal (see Practice Statement – 25 September 2012). The parties were agreed that this was the appropriate course of action.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The decision is set aside

The appeal is remitted to the First-tier Tribunal for a fresh hearing

Signed Date 11 June 2018



Upper Tribunal Judge Canavan