



IAC-BH-PMP-V1

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

Appeal Number: AA/02340/2015

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke
On 28th September 2015**

**Decision & Reasons Promulgated
On 23rd October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

**YOUSIF RAZVAY
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms B Bhatti of Counsel, instructed by Hasan Solicitors
For the Respondent: Ms A Johnstone, Senior Home Office Presenting Officer

DECISION AND REASONS

1. In a renewed application to the Upper Tribunal for leave to appeal, Deputy Upper Tribunal Judge Kamara gave permission to the appellant to appeal against the decision of Judge of the First-tier Tribunal Pooler in which he dismissed the appeal against the decision of the respondent to refuse asylum, humanitarian and human rights protection to the appellant, an adult citizen of Iran of Kurdish ethnicity.
2. Judge Kamara gave permission on the basis that the judge erred in concluding that the appellant would not be at risk of persecution despite background evidence pointing to the risk of torture to a low profile supporter of a Kurdish political party or of execution to a person caught with a weapon. The judge had found that the

appellant's claim to be caught on the Iranian border with weapons destined for the KDPI was implausible on the basis that the group were not engaged in arms struggle in Iran.

3. At the hearing before me I heard submissions from both representatives about whether or not the decision showed an error on a point of law such that it should be set aside and re-made and then reserved my decision.

Submissions

4. Ms Bhatti drew my attention to a consolidated bundle of documents which were served on the Tribunal on 15th September 2015 by representatives. She confirmed that the main issue was whether or not the judge was entitled to conclude that the appellant's claim to have been involved with his father delivering food, clothing and weapons to KDPI members was incredible because of objective material which showed that the KDPI had stopped military activities during the 1990s. She emphasised that the judge should have taken into consideration other objective material which showed that there was still a risk for KDPI supporters of torture and execution, particularly if caught with a weapon. She referred to the Danish Refugee Council Report which has been appended to the bundle from paragraph 2.1.1 onwards. In particular the statement in paragraph 2.1.2 reports an Iranian scholar saying that, although the KDPI had stopped its military activities in the last decades, it did not mean that they did not have any weapons anymore. She contended that there would be consequences for the appellant simply because of his association with the KDPI but this was a matter which had been ignored by the judge. On this basis the judge's conclusions were flawed.
5. Ms Johnstone relied upon the response in which it is argued that it was open to the judge to find that the appellant's claim was not credible because the KDPI had not been involved in arms struggle or carrying out armed operations for a significant period. If the judge found the appellant not to be credible on that basis then there was no need for him to consider any risk to the appellant as a low profile supporter of a Kurdish political party. She also referred me to the Danish Refugee Council Report, particularly on page 10, which referred only to the *possibility* of the KDPI changing its strategy towards armed struggle. Further, she said, there was no evidence of the appellant being involved in any cells of the party.
6. In conclusion Ms Bhatti emphasised the risk for supporters of the KDPI set out in the objective material.

Conclusions

7. The issue for me to decide is whether or not the judge was entitled to conclude that the appellant was not a credible witness because his claim to have been involved with his father in delivering arms to the KDPI was inconsistent with objective evidence. In that respect I follow the guidance of the Court of Appeal in *R and Others* [2005] EWCA Civ 982 particularly in relation to the making of perverse or irrational findings on matters material to the outcome of the appeal and a failure to resolve conflicts of fact or opinion. For a decision to be "perverse" requires a very high hurdle which only embraces decisions that are irrational or unreasonable in the *Wednesbury* sense when one includes findings of fact that are wholly unsupported by

the evidence. The Appeal Court thought that it could not overturn a judgment at first instance unless it really could not understand the original judge's thought process when he was making material findings. I apply that guidance to my consideration of the decision in this appeal.

8. In this case the judge was evidently aware of both the relevant background material relating to the withdrawal from armed struggle by the KDPI and also the risk for low profile supporters. These matters are specifically referred to in paragraphs 16 to 21, inclusive, of the decision. Paragraph 22 of the decision shows that the judge balanced the objective material taking into consideration that the appellant had failed to adduce evidence to support his claim that, shortly before he left Iran in August 2013, the KDPI would have had groups of armed individuals in the mountainous border area relevant to his claim. The judge was therefore entitled to reject the appellant's claim to have been intercepted, along with his father, whilst carrying food, clothing and weapons to the KDPI.
9. It is misleading to suggest that the judge was in error in failing to take into consideration the background material regarding the risk of torture or execution for a low profile supporter of the Kurdish political party, particularly one caught with a weapon, when the judge was not satisfied that the appellant had been involved in activity to support the party. The judge was satisfied that the appellant's father might have been involved in smuggling but was entitled to dismiss the claim that the father was involved in supporting the KDPI. Thus, I do not conclude that the decision shows an error on a point of law.

Notice of Decision

The decision of the First-tier Tribunal does not show an error on a point of law and shall stand.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 nor was an anonymity order requested before me.

Signed

Date

Deputy Upper Tribunal Judge Garratt