



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

Appeal Number: PA019792015

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke
On 23rd May 2017**

**Decision & Reasons Promulgated
On 7th June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**R S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Mahmood of Counsel instructed by UK & Co Solicitors
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against the decision of Judge Freer of the First-tier Tribunal (the FtT) promulgated on 15th November 2016.

2. The Appellant claims to be an Iranian citizen of Kurdish ethnicity born in September 1997.
3. He entered the United Kingdom illegally, hidden in a lorry on 15th April 2016 and claimed asylum. The basis of his claim is that his father had been arrested in Iran on suspicion of helping the YPG (the People's Protection Unit) which is a Kurdish group fighting against Islamic State in Syria and Iraq. The Appellant claims that his father was arrested and taken away and never seen again. Approximately two years later the Appellant was arrested, detained, ill-treated and asked questions about his father in the YPG. He was then released after money was paid by his mother. He then left Iran with the assistance of an agent.
4. The Appellant's application for asylum was refused on 8th October 2015. His appeal was heard on 4th November 2016.
5. The FtT did not find him credible. It was not accepted that he is Iranian, and it was not accepted that his father had been detained due to YPG support, nor was it accepted that the Appellant had been detained and questioned. The FtT did not find that the Iranian Government had any reason to have any adverse interest in the YPG, and found that the Appellant was an economic migrant and would not be at risk if removed from the United Kingdom.
6. The Appellant was granted permission to appeal to the Upper Tribunal by Upper Tribunal Judge Finch and I set out the grant of permission in part;

There was objective evidence to show that the YPG was the Syrian Kurdish People's Protection Unit and that Iranian Kurds had joined its forces in opposing the Syrian Government. It also made clear that the Iranian Hezbollah are fighting for the Syrian Government. This showed that there was motivation for the Iranian authorities to ask about support for the YPG. The failure to take this objective evidence into account undermines the First-tier Tribunal Judge's findings as to the Appellant's nationality or overall credibility.

The standard of proof applied by the First-tier Judge was in excess of the applicable lower standard of proof and he did not have to provide independent proof of past harm or a risk of future harm.

As a consequence, I am satisfied that First-tier Tribunal Judge Freer's decision and reasons did contain arguable errors of law and that it is appropriate to grant the Appellant permission to appeal.

7. Following the grant of permission to appeal the Respondent lodged a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 contending that the FtT did not materially err in law. The Respondent contended that the FtT considered the background evidence which unequivocally reveals that the YPG operate in Syria. The FtT considered the Appellant's lack of basic knowledge with respect to Iran and was entitled to conclude that he is not Iranian.

8. The FtT decision did not end there, and the FtT went on to consider the case at its highest and made negative credibility findings and was entitled to conclude that the Iranian authorities would have no adverse interest in the Appellant.
9. Directions were issued making provision for there to be a hearing before the Upper Tribunal to decide whether the FtT decision contained an error of law such that it should be set aside.

Submissions

10. Mr Mahmood relied upon the grant of permission to appeal and submitted that the FtT had failed to take into account objective evidence that related to the YPG.
11. There was evidence to indicate that the Appellant's home address was within Iran. With reference to objective evidence Mr Mahmood referred to page 122 of the Appellant's bundle which made reference to Iranian Kurds bolstering anti-IS forces in Iraq. It specifically referred to YPG, and page 126 which referred to Iranian Kurds bolstering anti-IS forces in Syrian Kurdistan and Iraqi Kurdistan. Again there is reference to the YPG.
12. Mr Mahmood submitted that the FtT had erred by finding that the Appellant is not Iranian, and by applying too high a standard of proof at paragraphs 61-64 where there was reference to lack of independent evidence. It was submitted that the FtT decision must be set aside.
13. Mr Bates relied upon the rule 24 response. He accepted that objective evidence indicated that Iranian Kurds do fight for the YPG. It was not accepted that the FtT had made a material error of law, although it was conceded that there may be inadequacy of reasoning at paragraphs 51-53, where the FtT concludes that the Appellant is not Iranian.
14. If that was an error, it was not material because the FtT went on to consider the case at its highest. The FtT gave adequate reasons for concluding that the Appellant has not proved anybody in his family had any connection to the YPG, and the Iranian Government had no reason to take an adverse interest in the YPG, which was an organisation which did not operate within Iran.
15. It was not accepted that the FtT had applied an incorrect standard of proof, as the FtT had set out the correct standard in the decision, and there was no evidence to indicate that too high a standard had been applied.
16. At the conclusion of oral submissions I reserved my decision.

My Conclusion and Reasons

17. In my view the FtT does not provide adequate reasons for concluding at paragraphs 52-54 that the Appellant is not Iranian. Guidance upon

adequacy of reasoning is given in Budhathoki [2014] UKUT 00341 (IAC) the head note of which I set out below;

It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.

18. It is not clear from reading paragraphs 52-54, why the FtT concludes that the Appellant is not Iranian.
19. However I do not find that error to be material because the FtT did go on to consider the Appellant's case at its highest.
20. I could find no objective evidence that was before the FtT, to indicate that the YPG operated in Iran. Objective evidence indicates that the YPG fights against Islamic State, in areas of Syria.
21. There is objective evidence within the Appellant's bundle of documents, at page 124 which indicates that Iranian Kurdish fighters believe they have Tehran's blessing to fight for the Kurds against IS. At paragraph 131 of the Appellant's bundle there is an article which confirms that "Iran has never branded the PYD and YPG as terrorist organisations. On the contrary, it has lauded their struggle against the Islamic State."
22. The FtT was entitled, in my view, at paragraph 67 to make a finding that the YPG is not a relevant resistance group in Iran.
23. The FtT was entitled at paragraph 59 to make a finding that neither the Appellant or his father had ever helped the YPG. The reasons for this conclusion are set out at paragraphs 55-58.
24. At paragraph 55 the FtT found that the YPG is the main force fighting Islamic State in Syria, and the FtT was entitled to find at paragraph 56 there was no reason for the YPG to interest adversely the Iranian authorities.
25. The FtT noted at paragraph 58, that if the Appellant's father had been fighting with the YPG, there would be evidence that he had been absent from the family home for a considerable period of time. No such evidence was forthcoming. There was no adequate evidence that the Appellant's father had supported the YPG by fighting against Islamic State in Syria or Iraq or in any other way.
26. The credibility findings made by the FtT are supported by sustainable reasons, and in my view it was entirely open to the FtT to conclude that neither the Appellant nor anybody in his family had any connection to the YPG, and the Iranian Government had no reason to take an adverse interest in the YPG. The FtT was entitled to find that the Appellant had not

proved that either he or his father had ever been detained as suspected YPG activists.

27. I do not accept that the FtT applied too high a standard of proof. There is reference to the Appellant failing to produce independent proof at paragraphs 61 and 62 that he suffered any physical or mental harm caused by police violence in Iran. At paragraph 65 there is a reference to the Appellant failing to produce independent proof that he was or still is wanted by the Iranian authorities.
28. In my view the FtT was well aware that there is no legal requirement of independent proof, and was entitled when considering credibility, to observe the lack of any independent evidence. Observing that there is no independent evidence does not, without more, indicate that the FtT was requiring independent evidence, and the FtT made it clear, in my view, in paragraphs 16 and 17 that it was well aware of the lower standard of proof that should be applied, and how evidence in an appeal such as this should be considered.
29. There is further reference to the low threshold and low standard of proof at paragraphs 64 and 65 of the FtT decision.
30. The FtT's conclusion that the Appellant is not Iranian lacked adequate reasoning, but that is not a material error, as the FtT considered the Appellant's claim, assuming that he is Iranian, at its highest, taking into account all material evidence, making findings that were open to it on the evidence, and which are supported by adequate reasons. The decision of the FtT stands.

Notice of Decision

The decision of the FtT did not involve the making of a material error of law such that the decision must be set aside. I do not set aside the decision and the appeal is dismissed.

Anonymity

I continue the anonymity direction made by the FtT pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

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. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 30th May 2017

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date: 30th May 2017

Deputy Upper Tribunal Judge M A Hall