



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/05845/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 04 May 2017**

**Promulgated**

**On 09 May 2017**

**Before**

**UPPER TRIBUNAL JUDGE REEDS**

**Between**

**O H**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Gayle, Counsel instructed on behalf of the Appellant

For the Respondent: Mr E Tufan, Senior Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Iran.
2. The Appellant, with permission, appeals against the decision of the First-tier Tribunal, who, in a determination promulgated on 5<sup>th</sup> December 2016 dismissed his claim for protection. The Appellant's immigration history is set out within the determination, namely, that he claimed to have arrived in the United Kingdom on 8<sup>th</sup> October 2015 after travelling from Iran to

Turkey. On 20<sup>th</sup> October 2015 he made an appointment at the Asylum Intake Unit and made a claim for asylum on 23<sup>rd</sup> November 2015. Thereafter he provided a witness statement setting out the factual basis of his claim to be at risk of persecution or serious harm upon return to Iran as a result of his political opinion either held or imputed to him based on links to the party known as the "KDPI". The Appellant was interviewed and his claim was refused in a decision letter of 23<sup>rd</sup> May 2016.

3. The Appellant exercised his right to appeal that decision and the appeal came before the First-tier Tribunal on 28<sup>th</sup> October 2016. The judge had the opportunity of hearing the evidence of the Appellant and for his evidence to be the subject of cross-examination. The judge in the determination found the Appellant's account to be implausible and dismissed his appeal.
4. The Appellant sought permission to appeal that decision on the basis that the First-tier Tribunal Judge failed to provide sufficient or sustainable reasons for the adverse credible findings that were contained within the determination. Permission was granted by the First-tier Tribunal on 17<sup>th</sup> March 2017.
5. At the hearing before the Tribunal Mr Gayle, who represented the Appellant in the First-tier Tribunal, relied upon the grounds that were before the Tribunal. This was essentially a reasons challenge on the basis that was set out in the grounds at paragraphs [2] to [7] of the grounds. In his oral submissions he submitted that the judge set out the credibility findings in two paragraphs namely that at paragraphs [13] and [14]. Dealing with paragraph [13] he submitted that the judge made a finding that the Appellant's evidence was not "entirely consistent" and went on to state "this is because he was undermined during cross-examination." However, the judge erred in law by failing to identify any inconsistencies in the Appellant's evidence during cross-examination. None was set out within the determination and it was asserted that the Appellant had provided a wholly consistent account in relation to the factual elements. It is further submitted that in relation to paragraph [13] the judge also made a finding that there was nothing to suggest that the Appellant would be of interest to the authorities as his family had never come to the authorities' attention (see paragraph [13]). However it was a feature of the Appellant's account that he had family members who were involved in the KDPI including his brother who had been detained, had given an undertaking and then was later killed by the authorities. There had been an account given that the house was raided after his brother's death which resulted in an injury to the Appellant. This part of the factual background had not been considered within the findings of fact at paragraphs [13] and [14] and thus undermined the judge's overall finding that there was nothing to suggest that he would be of interest to the authorities by reason of his family membership.
6. As to the judge's finding at paragraph [13] relating to the arrest of the courier and the judge's observation that it was "it is not clear how he himself would be aware of that in his tender years or that the person who

delivered this unknown letter was even arrested,” was in fact clearly set out in the evidence (in his witness statement before the interview at B28 and also within the asylum interview at questions 140 and 142).

7. As to the finding made at paragraph [14], he submitted that there was no objective material to support the finding that it was implausible that the KDPI would seek to thank the family for supporting the party in the way that the Appellant had claimed. He submitted the background material that had been put in the Appellant’s bundle did demonstrate that the KDPI did produce material although he accepted there was nothing specifically to show in what circumstances the KDPI would provide support for those who were considered to be the families of martyrs.
8. A further issue that arose when considering the basis of the Appellant’s claim was his account of sur place activities. It is clear from the skeleton argument at page 10 that sur place activities were asserted and were also referred to in the written witness statement. The judge set out some of that evidence at paragraph [10] relating to activity on Facebook but there was no consideration of the sur place claim that had been made or any consideration of the background material relevant to that issue. Thus he submitted that the judge had fell into error and that the determination should be set aside.
9. Mr Tufan on behalf of the Respondent agreed that the only findings made by the judge are those set out at paragraphs [13] and [14] and that those findings were brief. He further, quite fairly, stated that the sur place activities do appear to have been raised at the hearing as evidenced by the skeleton argument but that there was no suggestion that that was an issue that was dealt with by the judge within the findings at paragraphs [13] and [14]. He considered that in those circumstances that was a material error of law given the agreed position on the objective material that related to the Iranian authorities’ treatment of those who were members or supported the KDPI. In those circumstances, he invited the Tribunal to set aside the decision and for the appeal to be remitted to the First-tier Tribunal so that all issues could be considered.
10. In the light of that concession made by Mr Tufan, that there was a material error of law in the determination of the First-tier Tribunal, it is the case that the determination cannot stand and must be set aside. I consider that the submissions made by Mr Gayle as set out earlier in this determination are made out in any event, even if that concession was not made. The findings of fact are contained within paragraphs [13] and [14]. As identified by Mr Gayle, the judge recorded the following:

“I found his evidence not to be entirely consistent. This is because he was undermined during the course of cross-examination and there is nothing to suggest he himself will be of interest to the authorities as his family themselves never came to the authorities’ attention.”

There are two issues that arise from that finding. Firstly, it was incumbent upon the judge to set out why the Appellant’s evidence was not “entirely consistent” and also in the circumstances if that was the case, how his

evidence was undermined during the course of cross-examination. At paragraph [9] the judge referred to “summarising his extensive cross-examination” however there are no reasons given for the finding that that evidence that was before the First-tier Tribunal was undermined in the way that was stated. The second error also arises from that finding that there was evidence before the Tribunal and the Appellant’s factual account that members of his family had come to the attention of the authorities in Iran by reason of their membership or support of the KDPI. That being the case, the finding made at paragraph [13] is not sustainable. Furthermore, the further reason given at paragraph [13] for reaching an adverse credibility finding was that the judge found that the Appellant’s account of someone informing H H that the courier had been arrested was not clear as to how the Appellant would have been aware of this incident, at question 140 [and question 142] the Appellant had given an account as to how H H had been informed and how he came to know. Furthermore as Mr Gayle outlined the Appellant had made reference to this before his interview in a witness statement.

11. Whilst at paragraph [14] the judge made a further finding concerning the document that had led to the Appellant leaving Iran, there was no objective material either way to support the claim made that the KDPI would have provided such a document. However, even if that was a finding that was open to the judge, in the light of the errors made at paragraph [13] and also the reasons given earlier relating to the sur place activity, the decision cannot stand and therefore the decision shall be set aside.
12. As to the remaking of the decision, both advocates submitted that the correct course to adopt in a case of this nature was for the appeal to be remitted to the First-tier Tribunal because it would enable the judge to consider the applicant’s evidence and his account; this being a case in which the adverse credibility findings are unsafe and cannot be preserved.
13. In the light of those submissions, I am satisfied that that is the correct course to take and therefore I set aside the decision of the First-tier Tribunal and it will be remitted to the First-tier Tribunal to hear afresh.

**Direction Regarding Anonymity - 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 their 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: 05/05/2017

Upper Tribunal Judge Reeds