



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/06598/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Glasgow

Decision & Reasons

On 24 April 2017

Promulgated

On 31 May 2017

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL FARRELLY

Between

MJ

(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:

Latta and Co, Solicitors.

For the Respondent:

Mr Mullen, Home Office Presenting Officer.

DECISION AND REASONS

The claim for protection

1. The appellant's claim is that he is an Iranian Kurd born in March 1992. He follows the Sunni branch of Islam. He is from a small village outside the city of Sardast. He lived with his parents and sister. She married and moved to Tehran. He worked as a labourer and was not

married. He had around seven year's education. He had no interest in politics.

2. His father was a member of the left-wing Kurdish nationalist party, the Komala. He was part of its military force, the Peshmerga. His father had been absent for a week when villagers brought his body back to the family home and he was buried that day. This was around June 2015.
3. One month later the appellant was approached by the Iranian intelligence service, the Ettela'at. They told him their members had killed his father and they wanted him to be an informant. They revisited and he told them he had no information to give. Initially they were friendly towards him and then started to become threatening. They told him to meet them again in 10 to 12 days time. In November 2015 he moved to north Iran where he had a friend. His mother telephoned him stating she had received a letter from Ettela'at telling him not to return to the village or he would be killed. His mother moved to Teheran to her daughter's. He left Iran at the end of November 2015 and with the help of an agent travelled to Turkey and then Greece, Slovenia, Austria, Germany and France. He stayed just over a week at the last two countries.

The refusal

4. The respondent did not accept the claim was true. It was accepted he was an Iranian Kurd. It was not considered credible he would know so little about his father's death. The claimed behaviour of Ettela'at was not considered credible. The respondent viewed the appellant as someone who was of no interest to the authorities.
5. Reliance was placed upon the country guidance decision of SB (risk on return- illegal exit) Iran CG [2009] UK AIT 00053 in concluding that he would not face any real risk on return for leaving the country illegally. In considering his credibility section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004 was relied upon in that he had travelled through various European countries considered to be safe and had not claimed there.

The First tier Tribunal

6. The grounds of appeal acknowledge that the appellant's credibility was the determinative issue. It was contended that the appellant had been consistent. He was at risk because of his association with the Komala party through his father. Iranian Kurds associated with any dissident groups were at risk from the Iranian authorities. The account was consistent with the background information. There was no need for the appellant to provide corroborative evidence. It was not right to speculate on the motives of Ettela'at or why they acted

as they did. As the threat was from the State sufficiency of protection and internal relocation did not arise.

7. His appeal was heard in Glasgow in October 2016 before First-tier Judge Lea and was dismissed. Ms Todd represented the appellant then as she does now.
8. The judge heard from the appellant and at paragraphs 13 to 15 set out the claim. The judge recorded that the appellant had been on holiday and was on his way home when he received a telephone call about his father being killed. By the time he arrived his father's body had already been brought to the village and buried the same day. From speaking to people he learnt that his father's comrades in the Komala had brought back his body. He said no one was really sure as to what had happened beyond the fact his father had been killed. He refers to his father as having a high rank within the Komala party and that this was why they targeted the appellant. The threatening letter was referred to and it was in the family home but it was too dangerous for anyone to retrieve it in order to support the appellant's claim. He said he did not claim asylum en route because he had no opportunity to do so.
9. The judge then set out the respondent's view which considered the claim was implausible and lacked credibility. His failure to claim in safe countries damaged his credibility.
10. The judge did not accept he was wanted by the Iranian authorities as claimed. He would not face a risk for having left illegally. The judge said he had failed to explain why there was so little information about his father's death given that he was from a small village or why party members did not explain.
11. The judge found his evidence about his mother inconsistent. The appellant had said his mother was old and would not know anything and that his why the authorities did not target her. However, he also said his mother did not want to tell him about the party in case he became involved and suggested she knew more about his father's activities than he did.
12. The judge did not consider it credible that the Ettela'at could have visited him on several occasions without villagers noticing this. Whilst he had described Ettela'at as powerful on his claim he was able to refuse to co-operate on a number of occasions without harm.
13. His evidence about a letter from them was considered to lack credibility. In his asylum interview he said the letter told him to leave or else he would be killed. This was then corrected by his legal representatives to the effect that the letter simply said he would be killed. However, in his oral evidence he said

the letter told him attend at a certain time and place. Then he changed this to it being just a general threat. His evidence suggested the letter was at the family home but it was too risky to go to the house together. The judge considered it implausible that no family member could return to the house, particularly as the appellant did not know whether Ettela'at had been back looking for him.

14. The judge acknowledged there was no need for corroborative evidence but referred to the absence of a death certificate or evidence of any report of his father's death. The country information had referred to the Komala organisation having a television channel and websites. The judge also referred to the appellant's failure to claim protection through the various countries he passed and found his explanation that he had no interpreter and had been beaten up as unlikely.

The Upper Tribunal.

15. Permission to appeal was granted on the basis it was arguable the judge failed to engage with the background material or to give adequate reasons for the findings made. Reference was made to the judge's comment about the appellant being from a small village and questioning why there was no information about his father's death. The grounds contended the size of the village was irrelevant and the country evidence indicated that Ettela'at is responsible for the unlawful killing of Kurdish activists. Similarly, a death certificate would not be forthcoming because the authorities would not want to leave a paper trail. Regarding the letter reference was made to the country evidence confirming that the authorities monitor homes and correspondence. The appellant's evidence was that he did not maintain regular contact with his family because of this and they were afraid to return to the home.
16. Ms Todd relied upon the grounds on which permission was granted. The success of the appeal turned upon the appellant's credibility. She argued that the judge did not engage with the country evidence on the treatment of Kurds and those involved with Kurdish movements.
17. In response, Mr Mullen made the point there was nothing to indicate comment on the country evidence would have led to many different conclusion. The issue was the truth of the claim. He submitted the claim was not credible. The appellant was from small rural area and news about his father's death should have travelled quickly. Instead, on the appellant's account he had no real information as to what had happened. The other points taken by the judge against the appellant had not been challenged. Regarding the absence of a death certificate, the background information did refer to underreporting. In any event, a certificate would have shown the

cause of death and not the circumstances. The appellant claimed there was relevant documentation which he had not brought with him when he left the country.

18. Both representatives agreed that if an error of law was found the matter should be remitted back to the First tier Tribunal for rehearing.
19. The respondent had made a response under rule 24 opposing the appeal. It was contended that the adverse credibility findings made by the judge were based on an accumulation of points. In this regard reference was made to the Court of Appeal decision of Y-v- SSHD [2006] EWCA Civ 1223.
20. I have considered the decision in the round. The question is not whether I would have decided matters differently but whether a material error of law has been demonstrated. All parties agree that the appellant's credibility was determinative of the appeal. The respondent had taken number of points in the refusal letter which the judge took into account. It is correct that the general background on Iran indicates intolerance by the authorities of Kurdish separatist organisations. Ettela'at has committed unlawful killings. It engages in surveillance activities. There is force in Mr Mullen's point that the background information on a country helps put matters in context but it does not follow that an individual claim is true. Ultimately the truth of the claim must be assessed by the judge.
21. The judge makes a number of points. The appellant said his father was engaged with the Komala party and was part of its military force. He later suggests that his father held a significant role. The judge pointed out an inconsistency in the claim in relation to the appellant's mother. On the one hand the appellant had indicated the Ettela'at had not bothered with her because she was elderly and did not know anything. The judge then commented on the appellant's evidence which suggested in fact she knew more about his father's activities than he did and was trying to protect him as he grew up. It is obvious she could be used as a lever against him. Her apparent immunity was a legitimate factor to comment upon.
22. There is an absence of detail from the appellant about what happened to his father. The point about the appellant coming from a small village is that villagers generally have an awareness of everything that is going on locally. On the appellant's account his father was brought back by colleagues in the Komala party. It was legitimate to comment on the lack of detail in the circumstance.

23. It was open to the judge to comment that even if his father was not killed locally some information could have been relayed to villagers at the time of the burial. The refusal letter indicates the Komala party has a TV channel and a website. The judge commented that if the appellant's father were killed while serving for them this could have featured. The judge correctly pointed out that there is no requirement for corroborative evidence in a claim for protection. However, it is legitimate comment on the evidence presented and the absence of evidence which should have been available to support a claim. The same appertains in relation to the absence of a death certificate or the production of the claimed threatening letter.
24. I do not find it established that the judge ignored relevant country information. Rather the judge's approach indicates an awareness of the position of Kurds in Iran and the activities of the Ettela'at in evaluating the truth of the claim.
25. The judge drew an adverse finding from the fact the appellant travelled through several safe countries and did not claim protection. It is clear that the judge weighed up these various factors in evaluating the appellant's credibility. I find no material error of law in the judge's approach.

Decision.

No material error of law has been established in the decision of First-tier Judge Lee. That decision, dismissing the appellant's appeal, shall stand.

Deputy Judge Farrelly

28th May 2017