



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07439/2016

THE IMMIGRATION ACTS

Heard at Liverpool
On 18th August 2017

Decision & Reasons Promulgated
On 19th September 2017

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MR MOHAMMED IBRAHIMIAN NEJAD

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Gaisford of Counsel, instructed by Elder Rahimi Solicitors
For the Respondent: Mr C Bates, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Iran, born on 1st June 1981. He claimed asylum on 13th January 2016 but that was refused in a decision by the respondent of 6th July 2016. The appellant sought to appeal against that decision, which appeal came

before First-tier Tribunal Judge Gurung-Thapa on 1st December 2016. By a determination promulgated on 3rd January 2017 the Judge dismissed the claim in all respects.

2. Challenge was made to that decision and permission to appeal to the Upper Tribunal was granted. Thus the matter comes before me to determine the issues under challenge.
3. It is the case of the appellant that he is Kurdish and when he lived in Iran he worked for and/or supported the Red Cross/Red Crescent.
4. It is acknowledged by both parties before me that those factors by themselves do not create a profile such as to place the appellant at risk.
5. Central to his case, and that which is said to create the profile adverse to him, is his activities and support for the PJAK.
6. It is the case that the appellant in summary that he had worked for the Red Cross for about thirteen years as a first aider. He had not been particularly interested in politics prior to his involvement with the PJAK but was introduced to that party by a colleague and friend Dr Molani.
7. He said at interview that he was not a member of the organisation itself but more of a supporter, more of a helper from outside channels. That help he said was to distribute items, such as leaflets, CDs, food, medication, money and clothing. He would receive the items from a man called Kardo and he would give the parcels to Dr Molani. He would receive the parcels, take them home for a day or two and at times he would receive them at his workplace.
8. Given the long involvement which the appellant had with the government, the fact that the PJAK was actively involved against the government, the judge did not accept as being credible that the appellant would receive or take the risk of receiving such parcels in his workplace. It was the argument advanced on behalf of the appellant that his Red Cross activities provided a good cover for what he was doing.
9. The appellant then indicated that Dr Molani had moved elsewhere in Iran and essentially for two years the appellant was by himself.
10. As the Judge indicated, in paragraph 30 of the determination, the appellant failed to explain to whom he delivered the parcels for those two years when he was by himself. This was of particular relevance because it was the case of the appellant that he had involved a further colleague, a person called Roaf in the enterprise, although what part Roaf played in the matter was not clearly stated. The appellant said that Roaf was identified by the authorities and that it was he who then told the authorities about the appellant, such that the authorities came to his home looking for him some four to five times. The Judge found that to be a fabrication in the

absence of any clear indication as to what the appellant or indeed Roaf were doing in that two year period.

11. The Judge also looked at the wider aspect of the claimed involvement. The appellant in the interview had indicated that as a Kurd he was happy or willing to fight for the Kurds but not fighting, as in killing others with guns, but through politics. As the Judge noted in paragraph 14 of the determination, there were a number of organisations struggling for Kurdish rights, not all of them being willing to exercise and use violence. The PJAK was one such body that was in conflict with the government and with others. Seemingly there was a time when there was a ceasefire but that has stopped because of the support that the PJAK is giving to Syrians. The Judge concluded that somebody who wanted to achieve political ends through peaceful means would not have chosen that particular party.
12. Furthermore in the interview the appellant seemed to know very little about the party itself, giving an incorrect date as to when it was founded. Although he gave the correct name of the founder, seemingly he was not accurate in the answer that he gave as to who was the current leader. At question 72 of the interview he had said that Abdul Rahman Haji Ahmadi and Avebndar Nosro were in partnership as the leaders. It seemed that, although Abdul Rahman Haji Ahmadi was the leader, Evindar Renas was just a coordination member. When asked about the emblem of the party, that question was evaded and instead there was an answer given about the aims of the party. It is said that he did not correctly identify what PJAK actually stood for. The point, made in the decision letter of the respondent, was that since leaving Iran he has made little attempt to involve himself politically with the PJAK or any other Kurdish party.
13. All in all the Judge concluded that the appellant knew very little about the party and had failed to give very much detail about his involvement and why indeed he had become involved in the first place.
14. Mr Gaisford, who represents the appellant, submits that if the Judge wanted clarification as to what the appellant was doing in the two years by himself, she ought to have asked the appellant or at least given the appellant the opportunity of dealing with that matter.
15. The fact remains, however, that the appellant was legally represented at the hearing and the respondent's decision, against which the appeal was made, was very specific in its challenges to the motivation and involvement of the appellant. The respondent challenged the reasons for his joining and challenged the receipt of the parcels and highlighted that the appellant had indicated that PJAK stood for "party soul of Kurdistan Group" when it stood in fact for "party for free life in Kurdistan". Indeed paragraph 24 of the decision was as follows:-

"In view of the above considerations, it is noted that you have not demonstrated your motivation behind your involvement or indeed

demonstrated that you actually were involved with the PJAK and therefore this aspect of your claim is not accepted” .

16. It was therefore clearly upon the appellant to show that that criticism was not appropriate.
17. Taking such matters in isolation, it is clear that the reasoning of the Judge was properly open to be made in all the circumstances.
18. However challenge is made to the overall fairness of the procedures. First of all the Judge is disinclined to accept that the appellant is Kurdish because the interview was conducted in Farsi. In fairness to the appellant it was indicated at the screening interview that he spoke both Kurdish Sorani and Farsi. The explanation generally was offered that he spoke Farsi as that was his nationality, rather than his cultural identity. It was said, with some merit, that there was no apparent reason why the Judge should be disinclined to accept that he was Kurdish and that that was a matter that was largely unreasoned.
19. Equally, so far as the membership of the Red Cross is concerned a number of photographs were presented. I have those in colour, they show the appellant dressed in the distinctive red and white jackets with the red crescent of the Red Cross. It is said on his behalf there was no real reason why the Judge should not accept those photographs upon the face. That having been said ,however, the Judge did look in a little bit more detail at that membership. Certain documents were produced, one said to be an identity card for relief and rescue workers of the province of west Azerbaijan. This was apparently issued on 15th March 2012 and describes the appellant as a relief worker and bears the photograph. The other document is of the Red Crescent Society of Iran, valid as of the 216/12/15 and seems to have a slightly different name to the appellant's name. The appellant said that that was a typing error. Seemingly these documents were retrieved from his family by a friend, the details had been kept on a memory stick held by the appellant's wife. In that context the Judge considered that it was unlikely, if the authorities had indeed been to the house on a number of occasions, that they would not have seized the memory stick. The point is made against that in that there is no reason why they would have discovered such a small item upon a search. Mr Gaisford seeks to argue, as do the grounds of appeal, that the approach of the Judge as to the membership of the Red Cross was largely unreasoned. It is said that the Judge's uncritical and unreasoned rejection of the Kurdish ethnicity and of the Red Crescent documentation and membership indicates an attitude that was generally set to reject all that was said on behalf of the appellant, rather than demonstrating a willingness to look at the evidence in the round. In the circumstances Mr Gaisford submits that the whole approach to credibility is flawed. The fact that the Judge actually in the determination is prepared in the alternative to accept Kurdish ethnicity and/or membership of the Red Crescent does not absolve the Judge of that criticism.

20. It seems to me that the essential weakness in the appellant's case is a lack of clarification as to what he actually did for the party. He says that he worked for the party for three years, the first year delivering parcels to Dr Molani. There was no indication as to what he did or with whom he worked in the following two years. He purports to have recruited a colleague, but there is no indication as to what that colleague did or how they worked together or any detail to explain the role and function that he had. My attention has not been drawn to any statement which the appellant is said to have made, nor is any criticism made of the Judge that such a statement was not considered. The appellant's lack of knowledge of basic matters surrounding the party merely add to the vagueness and lack of definition as to what he was doing. The burden is upon the appellant, albeit to a lower standard, to adduce evidence such as to show that he would be at risk. I find it entirely open to the Judge to conclude for the reasons as set out that that burden has not been discharged.
21. Even were the appellant to be accepted as having been a Kurd and accepted as having been working for the Red Cross, neither of those matters, as was conceded, create any additional risk profile and are merely contextual in their nature. The very heart of the claim was an absence of any explanation as to what precisely he was doing and why.
22. In those circumstances I find, notwithstanding the criticisms that may be made of the Judge on the wider context, that the findings were sustainable as made. In those circumstances I do not find there to be a material error of law.
23. The appeal to the Upper Tribunal is dismissed. The decision of the First-tier Tribunal shall stand, namely that the appeal for asylum, international protect and human rights is dismissed.

No anonymity direction is made.

Signed

Date

Upper Tribunal Judge King TD