



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09315/2016

THE IMMIGRATION ACTS

Heard at Glasgow
on 2 October 2017

Decision & Reasons Promulgated
on 10 October 2017

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL DEANS

Between

K M
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr C McGinley, Solicitor, Gray & Co
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision by Judge of the First-tier Tribunal Kempton dismissing an appeal on protection and human rights grounds.
2. Permission to appeal was granted, in particular, because of seemingly inconsistent findings in the decision. It was further contended in the grounds that the judge applied too high a standard of proof and did not deal adequately with the risk on return, having found the appellant was a draft evader.
3. The appellant is an Iranian Kurd and a Sunni Muslim. He claims to have formed an attachment with a non-Kurdish Iranian girl, "S", whose faith was Shia and whose father was an Imam. His mother disapproved of the relationship because of the difference in faith and ethnicity so the appellant

stopped seeing the girl. He then discovered that the girl was pregnant by a friend of his, "M", whose father worked for the Etelaat. The girl's family blamed the appellant for the pregnancy and, as the appellant had no one to protect him, he fled from Iran. He feared the Imam would have him executed for unlawful sexual intercourse. The Imam disliked the appellant's family because the appellant's father had supported the KDPI, as did the appellant himself. The appellant's father had been shot and wounded by the Etelaat and left disabled as a result. At around the time he left Iran the appellant was called up for military service.

4. The Judge of the First-tier Tribunal made findings of fact at paragraphs 35-41. At paragraph 40, in considering the appellant's relationship with the girl, the judge recorded: "It is possible that his account of this relationship was true and that the events he spoke of did occur leaving the appellant exposed as the fall guy of the tryst between [S] and [M]. If [S] were in fact pregnant, which seems unlikely, unless [M] forced himself upon her, one could see how [S] might have been forced to confess there was a relationship with the appellant, having been put under pressure by [M] to lie about his involvement. However, all this is speculation as the appellant really knows very little about the matter. The appellant's position is that [M]'s father was in a powerful position in the village but this comes latterly from his mother as he knows nothing of the matter direct. Clearly the appellant and [M] would not have moved in the same social circles and so the appellant might not know much about that other boy and his family."
5. At paragraph 41, the judge records: "The appellant's account is vague on many levels and yet it has remained consistent in its account of this relationship having been turned against him."
6. Then, at paragraph 43 the judge expresses further findings in the following terms: "I suspect that the catalyst for his departure from Iran, was being called up for military service. It may well be that his father is disabled as a result of long past KDPI activities and that his mother works in a bakery. However, the relationship with a Shia girl, who is the daughter of the local Imam seems highly unlikely. I cannot accept that the appellant would be so naïve as to even imagine that such a relationship could ever be possible, especially if he believed the Imam to be involved with the Etelaat, the enemy of his father's ideological past with the KDPI. The whole scenario is simply not believable at all."
7. In the space of a few paragraphs the judge moves from a position where the appellant's account of his relationship with [S] and its aftermath is possibly true and has remained consistent to one where it is "simply not believable at all". In addition, in expressing her underlying thoughts it would seem that the judge has laid herself open to the same criticism she makes of the appellant -

that of “speculation”. The judge’s findings are unclear and are not supported by adequate reasoning. Because of this the findings cannot stand.

8. Mr Matthews mentioned the issue of draft evasion in his submission before me. It appears that the judge was not addressed on this at the hearing, although she referred to it in relation to the risk on return. Mr Matthews cautioned against conflating the issues surrounding illegal exit from Iran with those arising from draft evasion. He acknowledged that it was difficult to be satisfied that the judge dealt with risk at the point of return from an informed point of view.
9. I am satisfied that the Judge of the First-tier Tribunal erred in law by not making clear findings supported by adequate reasoning. Accordingly her decision is set aside. As proper findings of fact are still to be made, the appeal is remitted to the First-tier Tribunal to be reheard by a different judge with no findings by Judge Kempton preserved.

Conclusions

10. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
11. The decision is set aside.
12. The appeal is remitted to the First-tier Tribunal for the decision to be re-made at a hearing before a different judge with no findings from the earlier decision preserved.

Anonymity

13. The First-tier Tribunal did not make an anonymity direction. As the asylum appeal is to be reheard I will make such a direction to preserve the positions of the parties until the appeal is decided. Unless or until a tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant or any member of his family. This direction applies to the appellant and to the respondent. Failure to comply with this direction may lead to contempt of court proceedings.

Deputy Judge of the Upper Tribunal Deans

9 October 2017