

**Upper Tribunal
(Immigration and Asylum
Chamber)
Appeal Number:
PA/10661/2016**



THE IMMIGRATION ACTS

**Heard at Field House
On 12 October 2017**

**Decision & Reasons
Promulgated
On 17 October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

SALAM RASHIDI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Basharat Ali instructed by Aman Solicitors Advocates
(London) Ltd
For the Respondent: Ms K Pal, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iran born on 12 December 1987. He arrived in the United Kingdom and claimed asylum on 20 March 2016. The basis of his claim is that on 7 May 2015 he attended a demonstration in Mahabat in protest against Ettela'at because a Kurdish girl had committed suicide following an attempted sexual assault by members of Ettela'at. During this demonstration the Appellant asserted that he set fire to an Iranian flag. Approximately a month later, whilst he was at his maternal uncle's house, Ettela'at attended his mother's home stating they wished to question him and had an arrest warrant. His mother subsequently telephoned the Appellant and told him not to come home. The Appellant then fled the country, fearing if he stayed in Iran that he would be executed for demonstrating and for burning the Iranian flag.

2. His asylum claim was refused in a decision dated 16 September 2016. The Appellant appealed against this decision and his appeal came before Judge of the First-tier Tribunal Miller for hearing on 4 April 2017. In a Decision and Reasons promulgated on 21 April 2017 the judge dismissed the appeal. He found there were a number of aspects which caused him concern. He found implausibilities in the Appellant's account and made adverse credibility findings.
3. An application for permission to appeal to the Upper Tribunal was made in time. The grounds in support of the application asserted:-
 - (a) that the decision of the First-tier Tribunal was unreasonable and/or irrational in respect of its reasoning, all of which could be found at [37] of the decision;
 - (b) that in respect of the finding at 37(ii) it was unreasonable of the judge to conclude because the Appellant had no prior political involvement it was implausible that he would take part in a demonstration; and
 - (c) that at 37(iii) it was irrational for the judge to conclude that the Appellant would have covered his face had he taken part in burning the Iranian flag, because the Appellant's evidence was that he had not planned to burn the flag and it was done in the heat of the moment and that his evidence was he decided to burn the flag only when it was brought down from where it was hanging.

It was submitted that the judge had provided inadequate reasons for his decision and that his decision was thus unsustainable.

4. In a decision dated 17 August 2017 permission to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Canavan in the following terms:-

"It is at least arguable that the judge might have given inadequate reasons for rejecting the credibility of the Appellant's account without considering whether there were any matters that supported the Appellant's claim. It is arguable that he might have placed too much emphasis on his own view of the plausibility of the Appellant's account without placing it in the context of the background evidence relating to Iran: see HK v SSHD [2006] EWCA Civ 1037 and Y v SSHD [2006] EWCA Civ 1223. The judge also made negative findings on matters that were found to be plausible by the Respondent and did not appear to be in dispute [37(ii) decision and 22 refusal letter]. The grounds merit further consideration at a hearing."

5. A Rule 24 response was filed by the Respondent on 5 September 2017 which asserted, in essence, that the judge made findings that were open to him on the facts as presented and had supported those findings with adequate reasons.

Hearing

6. At the hearing before me Mr Ali relied on the grounds of appeal as drafted and the terms of the grant of permission of Upper Tribunal Judge Canavan. He also drew my attention to the background evidence in support of the appeal as contained in the Appellant's bundle, in particular the Amnesty International Report at page 7; the Home Office Country Information and Guidance document in respect of Kurds dated August 2015 at 2.2.4, 2.4 and 4.1.3. He also referred to page 35 of the bundle which refers to the largest wave of arrests by the Revolutionary Guards. This is a document dated 19 November 2015, and he submitted that this was the context in which a proper consideration of the case should have been carried out.
7. In her submissions Ms Pal took me through the Respondent's refusal letter and the fact that whilst at [19] of that decision the Secretary of State accepted that the Appellant's account was consistent with external sources, one also had to look at [34] where the Secretary of State had said that the benefit of the doubt would not be given to the fact that the Appellant attended a demonstration on 7 May 2015. The Respondent's refusal letter however, at [22] states as follows:-

"You claim that during the demonstration you, along with 4 to 5 others, burnt an Iranian flag (AIR Q76-78). You believe that this is the reason why Ettela'at came to arrest you (AIR Q94). You claim that you knew that the consequences of burning the Iranian flag is a political offence and the punishment can be as severe as hanging (AIR Q94). You claim that although you knew the risks you participated in the burning of the flag because you felt so angered by the assault on this aforementioned Kurdish girl (AIR Q95). It is considered that this part of your account is plausible and reasonably explained."

8. Ms Pal submitted that it is clear from the judge's findings of fact at [37] of his decision that he had regard to the core of the Appellant's claim, i.e. attendance at the demonstration and the burning of the Iranian flag. The judge did not accept that the Appellant attended the demonstration and found that it was not credible the Appellant would take such action without disguising himself or masking his face, given that he was aware that members of the intelligence service do infiltrate demonstrations. She submitted that the grounds of appeal were no more than a disagreement with the judge's findings at [37] which were not irrational or perverse and that that the judge had given adequate reasons for the findings that he made.
9. In response Mr Ali submitted that the Respondent's refusal letter was equivocal and that [19] read with [22] is a clear acceptance of the Appellant's account. He submitted that this was not undermined by the subsequent referral at [31] to [34] of the decision letter. In respect of the judge's findings at [37](ii) and (iii) he submitted that it does not follow that people who attend demonstrations disguise themselves. This was not an adequate reason for failing to accept the Appellant's evidence on this point and did not constitute an adequate reason, given that there were hundreds of people at the demonstration and this was speculation by the

judge devoid of evidence. Mr Ali submitted that when the Appellant's case is looked at in the context of the background evidence which supports the fact that a demonstration took place in Mahabat on 7 May 2015 as a consequence of an alleged sexual assault on a young Kurdish woman by Ettela'at, it is clear that the Appellant's case is plausible and that the judge had erred materially in law.

Notice of Decision

10. I find there are material errors of law in the decision of First-tier Tribunal Judge Miller, essentially for the reasons set out in the grounds of appeal and identified by Upper Tribunal Judge Canavan in the grant of permission.
11. The background evidence clearly supports the Appellant's claim as to the circumstances that caused him to flee Iran. Whilst he is not unsurprisingly in a position to corroborate his specific action in respect of burning the Iranian flag, the fact of the demonstration and the reason for it are clearly set out in the background evidence. Moreover, the Home Office in their Country Information Guidance document of August 2015 accept that pro-Kurdish activities are unlawful and that even activities perceived to be pro-Kurdish can lead to the serious risk of torture.
12. I find when the judge's conclusions are considered as a whole they do not, in my considered view, engage sufficiently with the substance of the Appellant's claim in light of the background supporting evidence. In particular they focus on what are more marginal issues, i.e. an error as to the date of departure, bearing in mind that there is a different calendar, at least as between Iran and the UK, and the Appellant's journey to the United Kingdom, rather than the underlying substance of the claim. In this sense the decision could be seen as somewhat perfunctory and devoid of the level of anxious scrutiny that one would expect in consideration of an asylum appeal.
13. In light of my decision I remit the appeal to the First-tier Tribunal for a hearing *de novo* before a judge other than First-tier Tribunal Judge Miller.
14. No anonymity direction is made.

Signed Rebecca Chapman

Date 16 October 2017

Deputy Upper Tribunal Judge Chapman

