



**Upper Tribunal
(Immigration and Asylum Chamber)**
PA/12404/2016

Appeal Number:

THE IMMIGRATION ACTS

**Heard at: City Tower,
Birmingham
On: 10th August 2017**

**Decision and Reasons Promulgated
On: 22nd August 2017**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**SA
(anonymity direction made)**

Appellant

And

The Secretary of State for the Home Department

Respondent

For the Appellant: Mr Sidhu, Harbans Singh & Co
For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Iran born in 1989. He appeals with permission¹ the decision of the First-tier Tribunal (Judge C. Burns) dated 16th December 2016 to dismiss his appeal on protection grounds.

¹ Permission was granted on the 10th January 2017 by First-tier Tribunal Judge Gillespie

Anonymity Order

2. This case involves a claim for international protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“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 his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Background and Decision of the First-tier Tribunal

3. The Appellant claimed to have a well-founded fear of persecution in Iran for reasons of his imputed political opinion. It is his case that his brother was a member of the Komala party who was killed by the government. A cousin who was also involved had enlisted the Appellant's help in distributing propaganda. When that cousin was arrested, and his family home searched, the Appellant fled to Iraq. All of these events are said to have taken place between 2002 and 2005. The Appellant remained in Sulaymaniyah, Iraq, until coming to the United Kingdom in 2016. Since the Appellant's arrival here he has been actively posting material on the internet that is critical of the Iranian regime. He fears that if returned to Iran today this material will expose him to a risk of arrest. He further fears that there is an outstanding warrant for his arrest dating from 2005.
4. This claim was considered by the Secretary of State for the Home Department and rejected by way of letter dated 1st November 2016. The Secretary of State did not find the account to be credible. It was found to be vague, and undermined by the failure of the Appellant to claim asylum in a safe country *en route* to the United Kingdom.
5. The First-tier Tribunal heard live evidence from the Appellant. He testified that he had wanted to help Komala because the authorities in Iran had killed his brother and he felt strongly that there should be an independent Kurdistan. He had not wanted to join because he did not want to carry a gun. At paragraph 30 the determination records the Appellant as having said that Kurds in Iraq were not interested in helping Kurds in Iran. He had started a Facebook account about a month before the hearing. He now wanted to join Komala.

6. The Tribunal found that the Appellant would face no risk of persecution arising from his Facebook page. Its contents had not been translated and in any event it was in a different name. It found that he had not produced all of the evidence available to him. He had not produced copies of the correspondence nor details of the contact that he said that he had with Komala representatives. He had not produced the arrest warrant, or if it was not available he had not explained why. The limited knowledge displayed by the Appellant was not consistent with the background material about Komala. This included evidence that Komala will provide letters of support for persons they perceive to be at risk due to association with the party. Overall, he failed to discharge the burden of proof, even to a lower standard, and the appeal was dismissed.

The Appeal to the Upper Tribunal

7. The grounds of appeal are that the First-tier Tribunal erred in law in the following material respects:
 - i) In failing to take the country background material into account when considering the plausibility of the claim; *in particular*
 - a) In drawing adverse inference from the Appellant's failure to produce the arrest warrant the Tribunal has failed to take into account the country background material indicating that arrest warrants are "not handed over" in Iran;
 - b) In drawing adverse inference from the absence of supporting evidence from the Komala the Tribunal failed to take into account the fact that this is a banned organisation, and that all of the Appellant's associates from the group are now dead;
 - ii) Misunderstanding/misconstruing the evidence; in particular in respect of the relationship between Kurds in Iran and Kurds in Iraq
 - iii) In general, applying too high a standard of proof.
8. The Secretary of State for the Home Department opposed the appeal on all grounds.

Errors of Law

9. At a hearing on the 12th May 2017 the parties made submission as to whether the grounds of appeal were made out. The Respondent was that day represented by Senior Presenting Officer Mr Mills. Following that hearing I issued the following written decision.

Ground (i)(a)

10. The central plank of the appeal is that the Tribunal acted unreasonably in making the following finding [at 54]:

“He has not provided a copy of the arrest warrant he referred to at page 22 or if it is not available he has not explained why”.

This finding is one of the three reasons given for not finding the Appellant to be a credible witness.

11. ‘Page 22’ would appear to be a reference to the first page of the statement that the Appellant made in response to the refusal letter. This asserts that the Appellant faces a risk on arrival where screening will reveal that he has been out of Iran for a long time, that he left illegally and that “there is a warrant for me”. No warrant was produced in evidence.
12. What then was the error of law, if any, in placing weight on this lacuna in the evidence?
13. Mr Sidhu submits that the Tribunal erred in failing to weigh in to its reasoning the evidence on the service of warrants in the Country of Origin Information Report, published on the 26th September 2013. This cites a report published by the International Committee of the Red Cross in 2006 to the effect that where the accused is not available to receive the warrant himself, it will not be served on family members, unless they know where the accused can be found, and undertake to serve him themselves. Since it would appear unlikely that the Appellant’s parents would have agreed to this course of action, there was no reason to suppose that they would have been given any arrest warrant. This was the objective material before the Tribunal, and Mr Sidhu says it was manifestly unfair to ignore it.
14. Mr Mills pointed out that the COIR does not say that warrants are never served. There are circumstances in which they will be handed

over, and since the Appellant was asserting that one had been issued, it was up to him to explain where it was.

15. I am satisfied, having regard to the extracts of the COIR, that this was material evidence that should have been weighed in the balance. The effect of it was that arrest warrants are not routinely provided to family members. This should have been considered before adverse inferences were drawn from the failure to produce the document in these proceedings.
16. I am further satisfied that there was another, more obvious error arising here. That is that the Tribunal appears to have taken a point against the Appellant without giving him a chance to respond. The Respondent did not raise this as an issue in the refusal letter, in cross-examination or in submissions. It was therefore unfair for the Tribunal to have placed it at the centre of its credibility findings without putting the Appellant on notice that it was a matter of concern.

Ground (i)(b)

17. The second of three reasons given for doubting the Appellant's credibility related to the lack of evidence from the Komala party. The Tribunal had regard to evidence in the COIR that Komala will provide letters of support for party members and known sympathisers in the context of asylum proceedings. The Appellant had asserted that he had contacted Komala to ask for such support but had been told that he could not get confirmation because, in effect, his involvement could not be verified: "he couldn't have a letter because all the people he worked with were killed". Mr Sidhu submits that it was unfair to take the absence of such evidence against the Appellant since Komala is by its nature an underground organisation. The Tribunal should have considered these circumstances.
18. I am not satisfied that Mr Sidhu's complaint is made out. The background evidence clearly indicates that Komala has the capacity to issue letters of support, and will do so where an individual's connection with the organisation can be verified. The point made at paragraph 54 of the determination does not run contrary to that. Here the Tribunal simply observes that the Appellant has failed to produce "*copies of the correspondence or details of the contact* he said he had with the representative of the Komala party" (my emphasis). The Appellant did not therefore state that the underground nature of the party made the procurement of such evidence impossible. He says he was told that his involvement could not be verified because the people he had worked with have all died. If that information was passed to him for instance by email, then that email should have been produced. If it was by telephone, the details could have been recounted in a witness statement.

Ground (ii)

19. At paragraph 58 the determination notes the objective evidence that in 1983 Komala relocated its leadership to Iraqi Kurdistan. It concludes from this: “this is relevant because it does not support the Appellant’s account in oral evidence that those in Iraq were not sympathetic to the cause of Iranian Kurds”.
20. The grounds complain that this was a misunderstanding, and gross over- simplification, of the Appellant’s evidence. I accept that this ground is made out. Paragraph 30 records the Appellant’s evidence on this matter as follows:

“He said that in the Kurdish part of Iraq there were a lot of their own political parties and he did not try and persuade them to follow Komala as it was obvious that they follow their own agenda and would not help Kurds in Iran”.

21. This statement was, it seems to me, wholly consistent with the country background material. The Komala are not a party that pursue a policy of a united Kurdistan. At 9.1.1 of the COIR the aims of both wings of Komala are described as “replacing the theocratic central government [of Iran] with a secular, federal and democratic republic that provides autonomy for Iran’s ethnic minorities”. There is therefore no conceivable reason why an Iraqi Kurd would want to join Komala, and little incentive offer them material support. The fact that Iraqi Kurds (and indeed the Iraqi central government at the time of the war with Iran) permitted Komala to relocate to the north of Iraq does not impact at all on the Appellant’s evidence on this point. I am satisfied that the Tribunal has here misunderstood the evidence.

Ground (iii)

22. I do not propose to address this ground in any detail since neither party dealt with it in oral submissions. There is no clear indication on the face of the determination that the Tribunal applied the wrong standard of proof. Indeed the determination contains the correct direction to the lower standard at paragraph 11. This ground is not made out.

Decision on the First-tier Tribunal Determination

23. Although two of the four grounds were found to be without merit I

was satisfied, having heard the submissions of the parties, that the decision of the First-tier Tribunal must, to a limited extent, be set aside. That is because I cannot be satisfied that the decision would have been the same absent the errors in respect of the warrant and the relationship between the Iranian and Iraqi Kurds. Although other reasons were given in this determination, these matters do appear to have played a central role in the Tribunal's decision making process.

24. The First-tier Tribunal has made findings about the Appellant's alleged activities on Facebook. It rejected the claim that he would face a risk as a result of any online activity. This finding is unchallenged and undisturbed.

The Evidence

25. The Appellant's evidence is set out in his asylum interview dated 20th October 2016, two witness statement dated 8th November 2016 and a further short statement dated 1st August 2017.

26. The consistent evidence to emerge from those documents is as follows:

- The Appellant grew up in a village near Bukan, in the Azerbaijan region of Iran. [*This small town is in the strip of Azerbaijan running parallel to the Turkish border that is principally populated by Kurds*]
- He lived with his parents and elder brother and at that time, had no involvement in politics
- His brother was often away from home for extended periods. The Appellant assumed that he was visiting friends
- One day in the Spring of 2002, when the Appellant was 13 years old, the security services arrested the Appellant's brother.
- The Appellant was told that he had been arrested by the authorities as a result of his activities with Komala, the Kurdish wing of the Iranian Communist Party. About one month after he was detained the Appellant learned that his brother had been "martyred", that is to say he was executed by the Iranian authorities. The family were not given his body, but they held a memorial service for him. The Appellant recalls the sadness in the house and a lot of people he did not know coming to pay their respects

- Each year the family would mark the anniversary of his brother's death with a memorial service. It was on the third of these anniversaries, in the Spring of 2005, that the Appellant was approached by his cousin 'S'. He explained to him why his brother had been involved in Komala, and revealed that he too was a member. The Appellant was keen to help because of what had happened to his brother. He did not know much about the organisations aims, just that they were struggling for the rights of the Kurdish people. S spoke with him at length about the crimes that the Iranian government have committed against the Kurds, and how they deprive Kurds of basic services and privileges. In his interview the Appellant was asked to give an example of how Kurds are treated in Iran. He said that a friend had been arrested and imprisoned for three years, just for having a photograph of Nasir Rezazi [*leftwing Kurdish folksinger*] in his shop. He also spoke about how the Kurdish language is suppressed for instance through a ban on Kurdish media
- 'S' recruited the Appellant to help him. On four occasions the Appellant started putting leaflets through doors. He knows that they promoted Komala (they bore its logo) but since he was illiterate at the time can say little about what they said. He did this in his village and in Bukan, always at night. The appellant stored the leaflets he had not yet delivered in a shelter in a nearby walnut orchard
- The Appellant was able to tell the officer at his asylum interview that Komala had split, and which faction he supported. He identified their aim as democracy for Kurds, and said that they are influenced by Maoism. He said that its headquarters in Kurdistan were in Sulaymaniyah. He said that he had not wanted to formally 'join' the organisation as this would mean taking up arms, which he did not want to do
- On the 3rd September 2005 the Appellant's aunt and uncle came to the family home. They were crying and telling the Appellant's parents that 'S' had been arrested. The Appellant's father, who knew that the Appellant had been helping him, was concerned that 'S' might give information under torture. He was afraid for the Appellant so he sent him to Mariwan to stay with a relative
- About 15 days after 'S' was arrested the authorities came to the Appellant's home and searched it. They

asked his parents where he was and told them that they wanted to speak with him. They were not given an arrest warrant [Q148 interview] The Appellant's family heard that a few other people around Bukan had been arrested as part of the same investigation

- The Appellant's father contacted him and told him to leave. He travelled to Iraq. He went to Sulaymaniyah where he got work, first in a restaurant and then as a block-layer
- The Appellant's family had no further problems because of him since he left Iran
- He did not have formal permission to remain in Iraq. He tried to get a 'support paper' but could not get one because you need to have a person from Kurdistan to support you, and he did not know anyone. He would sometimes be able to get a paper authorising stay for 6 months if someone with connections helped him. This meant it was difficult to obtain any accommodation. He would usually sleep on the building site that he was working on.
- There was one friend whom he could stay with when he was not in work/had nowhere to stay. In 2015 this friend was stabbed and killed. The Appellant does not know why. There are two theories. One is that he was involved with a girl, the other that it was because he was involved in politics. The Appellant describes his state of mind after his friend's murder as "panicked" and "completely collapsed". He could not face living in building sites in Sulaymaniyah any more. He decided to leave. He took a small bus back to Iran, to his relative's house in Mariwan. Asked at interview to clarify why he did this the Appellant said that even if he died in Iran it would be better than life in Sulaymaniyah. His father contacted an agent. He stayed in Mariwan two nights, and then went to Oromiyeh [*Kurdish town on Iranian/Turkish border*]. He spent one night there before crossing into Turkey and onwards over land through Europe
- The Appellant states that he has, since his arrival in the UK, resumed contact with Komala and wants to help the struggle because of his martyred relatives. He did not get involved in Iraq because he had no status and no protection there and the Iranian security services could easily identify people and get to them there. Etaat have a large presence in the city. He was concerned that

if he got involved there could be problems, if not for him, then for his family in Iran. Also he did not want to receive military training, which would have been expected there.

27. In his live evidence before me the Appellant was able to talk in a confident and straightforward manner about all of the above. By the date of the resumed hearing he had managed to obtain a letter from the Komala in Sulaymaniyah (summarised below). He explained that he is living in a shared flat in the UK with someone who is a member of the KDP. This man has friends on Facebook from other Kurdish parties and he was able to supply the Appellant with a contact who works with Komala in Sulaymaniyah, a man named Ata. The Appellant called Ata and gave him details about his brother and cousin. Ata told him he would conduct some checks and get back to him. When he did Ata informed the Appellant that he would be able to provide him with help. The Appellant asked him to write a letter and he did.
28. The Appellant confirmed that he has maintained regular contact with his parents. He last spoke with them two days before the hearing. They have always denied having received any other visits or communications from the Iranian authorities. This may be because there have been no other visits; it may be because his parents do not want to worry him.
29. The documentary evidence consists of three items. First, there is DHL envelope showing the sender to be a named individual who has posted the letter to the Appellant from Malik Mahmood Main Road in Sulaymaniyah. Second, a letter written primarily in Farsi, with some of the text in English. Third, there is a letter written in English. At the hearing the court interpreter was able to tell me that the text in the two letters was the same, but for an error in the translation on the letterhead. The English version (produced in the original) says the 'Komala Party of Kurdistan' on it. The interpreter said that the Farsi text should more properly have been translated as the 'Komala Toilers Party of Kurdistan'. That aside the translation appeared to be accurate. The Appellant explained that the English language version came with the Farsi one in the envelope. He believes it to have been sent by the aforementioned Ata. The text reads:

"He first joined the Komala in the spring of 2005. As a supporter and subordinate of Komala, he has efficiently carried out his party duties like distributing and transporting Komala publications. Four months into starting his duties, the Iranian intelligence (Itlaat) identified him. Before being apprehended by them, he was forced to flee Iran. We give [the Appellant] our full support and confirm the fact that he cannot return to Iran as his life will be in danger. We earnestly ask you to help him for the purpose of granting

him the right to seek asylum”.

Findings

30. Having read the interview record, the detailed witness statements and having had an opportunity to hear the Appellant’s oral evidence I found that his evidence was internally consistent. This is a matter that weighs in the Appellant’s favour in my assessment of his credibility as a witness.
31. I accept Mr Sidhu’s submission that the Appellant’s evidence did not appear to be exaggerated or inflated. He bases his claim on events that occurred a long time ago; he states that there have been no other (known) visits from the security services since 2005; he does not claim that any action has been taken against him in the courts, or towards his parents. The Appellant admits that he returned to Iran in 2015 and that he did not face any difficulties (albeit that he only spent three days there). This is a matter that weighs in the Appellant’s favour in my assessment of his credibility as a witness.
32. I have considered the account in the context of the country background information. I have had regard to the Respondent’s Country Information and Guidance note entitled *Iran: Kurds and Kurdish political groups* (Version 2.0, published July 2016) [the CIG]. I note that Kurds who become involved in opposition groups are targeted for severe repression by the state, up to and including execution [2.3.1-2.3.5]. Kurds make up a disproportionate number of those facing execution in Iran, and those executed for political reasons are often accused of involvement in drug smuggling to make it appear that it is a criminal sanction. In the context of this information the Appellant’s claim is plausible, and that is a matter that weighs in his favour in my assessment of his credibility as a witness.
33. Having had regard to the CIG I further note that it lends support to the Appellant’s account in specific areas. Section 5 confirms the Appellant’s evidence about discontent in Kurdish areas (including West Azerbaijan) arising from human rights abuses and the suppression of Kurdish identity. At 9.1.1 the fact that there was a particular military offensive in 2005 is recorded. Section 9 generally confirms that Komala has split and that one section, the ‘Toilers’ of Kurdistan is based in the IKR. At [5.2.5] his claim that Etelaat operate in Sulaymaniyah is confirmed:

‘An NGO working with asylum seekers and refugees in Iraq stated that the Iranian intelligence agents are present in KRI, and they have good relations with some of the Iraqi Kurdish political parties in KRI. Formerly, the Iranian intelligence service assassinated Iranians living in KRI but since 2009 this has no longer taken place.’ [...] Sardar Mohammad and

Asos Hardi (Awene Newspaper) pointed to the strong presence of the Iranian intelligence in KRI and their ability to monitor Iranian nationals and their activities in the area. The source added that many Iranians residing in KRI have received threats from the Iranian intelligence service or have had their telephones tapped.

That elements of the Appellant's account are consistent with the country background material is a matter that weighs in his favour in my assessment of his credibility.

34. The Respondent submits that the Appellant's evidence has been vague, in particular about the Komala and why he supports them. I accept that the Appellant has been unable to articulate what in particular Komala can offer over and above that offered by other Kurdish opposition groups. When I asked him to clarify this matter in hearing his answer was straightforward and plausible; he supports this group because it was the group that his martyred brother fought for. I find that in the context of his claim his evidence has been sufficiently detailed. This is a matter that lends some weight to his case.
35. I have attached some weight to the letter from Komala. I note that it was posted from Sulaymaniyah but I also recognise the Respondent's point that such documents are easily fabricated. Overall I agree with Mrs Aboni that this document must be assessed in the round alongside the remaining evidence, per *Tanveer Ahmed*.
36. The only matter that I have found weighs against the Appellant in my assessment of his credibility is his evidence that in 2015 he chose to return to Iran. I bear in mind that this would tend to indicate that he did not have a subjective fear as claimed.
37. Having considered all of these matters in the round I find that the Appellant has discharged the burden of proof in respect of his historical account. I accept that it is reasonably likely that he fled his home town in 2005 after he was implicated in Komala activities following his cousin's arrest. I accept that he lived in Sulamaniyah for ten years, surviving by working on building sites. I accept that as someone with no sponsor he would not have been able to gain formal status in the IKR. I accept that the Appellant felt compelled to leave the IKR in 2015 partly out of desperation at his situation, and partly because he panicked after his friend was murdered. Whilst return to Iran at that time would ordinarily serve as an indication that the Appellant held no subjective fear, having heard his live evidence I accept that he felt "collapsed" and that he no longer cared what happened to him. I accept that he crossed the border near Mariwan and managed to avoid any contact with the authorities. He travelled straight to Omomiyeh and out of Iran.
38. I now turn to assess objective risk. Mrs Aboni pointed to the

following salient features of the case. By the Appellant's own admission he was never a member of Komala, nor can the Iranian authorities have any evidence indicating that he might be. That must be assumed from their apparent lack of interest in him and his family since the early summer of 2005. He would be returned to Iran as a failed asylum seeker with no "particular problems". I have given careful consideration to those submissions. I have had regard to the findings in the most recent country guidance case on Iran, SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC). At paragraph 23 the Upper Tribunal says this:

"In our view the evidence does not establish that a failed asylum seeker who had left Iran illegally would be subjected on return to a period of detention or questioning such that there is a real risk of Article 3 ill-treatment. The evidence in our view shows no more than that they will be questioned, and that if there are any particular concerns arising from their previous activities either in Iran or in the United Kingdom or whichever country they are returned from, then there would be a risk of further questioning, detention and potential ill-treatment. In this regard it is relevant to return to Dr Kakhki's evidence in re-examination where he said that the treatment they would receive would depend on their individual case. If they cooperated and accepted that they left illegally and claimed asylum abroad then there would be no reason for ill-treatment, and questioning would be for a fairly brief period. That seems to us to sum up the position well, and as a consequence we conclude that a person with no history other than that of being a failed asylum seeker who had exited illegally and who could be expected to tell the truth when questioned would not face a real risk of ill-treatment during the period of questioning at the airport".

39. The question is then whether any "particular concerns" would arise during the Appellant's on arrival interview such that would give rise to a risk of further questioning, detention and potential ill-treatment. The answer, on the facts that I have found, must incontrovertibly be yes. The features immediately apparent to the interviewing officer would be that this is a Kurd from Western Azerbaijan who left the country shortly after the aborted Komala uprising in 2005² and who has not lived in Iran since. He left the country illegally and would be returning on a laissez-passer that would identify him as a failed asylum seeker. At that point I consider it reasonably likely that the interviewing officer would conduct some background checks. These would reveal his connection to Komala, via both his brother and his cousin. Further questioning would reveal that the Appellant spent ten years in Sulaymaniyah, the very town in the IKR where Komala is based. I find it to be reasonably likely that these factors alone would result in further questioning, detention and ill-treatment. The fact that the Appellant continues to be a supporter of

² CIG at 2.1.5

Komala would only increase that risk. The burden of proof is discharged.

Decisions and Directions

40. The decision of the First-tier Tribunal contains an error of law such that the decision must be set aside to the extent identified above.
41. The decision is remade as follows:
“The appeal is allowed on protection grounds.
The appeal is allowed on human rights grounds”.
42. There is a direction for anonymity.

Upper Tribunal Judge Bruce
21st August 2017