



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/03681/2017

THE IMMIGRATION ACTS

**Heard at Glasgow
On 17 August 2018**

**Decision & Reasons
Promulgated
On 4 December 2018**

Before

**MR C M G OCKELTON, VICE PRESIDENT
and
UPPER TRIBUNAL JUDGE CONWAY**

Between

**UMED [K]
(No anonymity order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Aslam, McGlashan MacKay, Solicitors

For the Respondent: Ms O'Brien, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is Kurdish, a citizen of Iran born in 1983. He appeals against a decision of Judge of the First Tier Tribunal James made following a hearing at Glasgow on 22 August 2017. The judge allowed the appeal on

Article 8 grounds (to which there is no challenge) but dismissed his asylum claim.

2. The basis of his claim is that he is at risk of persecution if returned due to his political opinion as a supporter and member of KDPI in Iran and also his *sur place* activities in the UK.
3. The respondent refused the application in a decision made on 3 April 2017. It was noted that a judge at a previous appeal hearing in 2007 had found that the appellant had failed to establish that he had been a supporter or member of the party in Iran. Whilst it was accepted that he had joined the party in the UK he was not truly a supporter and his membership would not be known to the Iranian authorities. Noting that for the current application the appellant produced various court documents and witnesses to support his claim to be a member of the KDPI both in the UK and Iran and that he would be at risk on return, the respondent, nonetheless, refused the application not accepting that a court summons or order had been made in his absence or that he was wanted by the Iranian authorities. It was also not accepted that he would be at risk on return as a Kurd or as a failed asylum seeker.
4. He appealed.

First tier hearing

5. Following the First tier Tribunal hearing at which the appellant and four witnesses attended, as indicated, Judge James dismissed the asylum appeal.
6. The judge noted at paragraph [29]: *“The respondent was not represented at the asylum appeal hearing and therefore the witnesses were not subject to cross-examination and the matter was dealt with by way of submissions only.”*
7. The judge went on at [30(j), (k), (l), (m) and (n)] to reject for numerous reasons the evidence of the witnesses. At (p) she added: *“Not one of the letters of the witnesses has a declaration of truth attached, some are undated and some are unsigned. I thus give them less weight.”* She continued at (q): *“In summary, I found the evidence of the witnesses to be unreliable, contradictory, uninformed, generally not based on direct experience and heavily reliant on the self-serving statements of the appellant himself as relayed to them. I thus did not find the witnesses’ evidence to be credible.”*
8. The judge concluded (at [37]) that she did not believe *“the entirety of his account.”*

Error of law hearing

9. The appellant sought permission to appeal which was granted on 21 November 2017.
10. At the error of law hearing before us Ms O'Brien did not demur from the submission that the judge erred by making adverse credibility findings in respect of witnesses who attended the hearing but who were not called because the judge indicated their statements and letters would be taken as read.
11. We agree.
12. The situation before the judge was this: the four witnesses were present for the hearing. The appellant's representative wished the witnesses to formally adopt their statements. However, the judge indicated she was content to adopt them as read and none of the witnesses required to present themselves to give evidence or answer questions.
13. The problem is that the judge adopted a contradictory approach by confirming she would take the statements as read and thereafter giving these statements less weight due to the statements being undated and unsigned when the witnesses were in attendance ready to give evidence and ready to adopt their statements.
14. Further, the judge identified many issues at [30(j)-(n)] which in her view undermined the reliance that could be placed on the various witness statements and letters. However, she did not raise any concerns with the appellant's representative and she failed to give the witnesses an opportunity to comment on her concerns.
15. These failings amounted to procedural unfairness such as to constitute a material error of law with the result that the asylum appeal must be heard again.
16. The decision of the First-tier Tribunal in that regard is set aside. The nature of the case is such that it is appropriate under section 12 of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement paragraph 7.2 to remit to the First-tier Tribunal for an entirely fresh hearing. No findings stand. The member(s) of the First-tier Tribunal chosen to consider the case are not to include Judge James.

No anonymity order has been requested or made.

Signed

Date

Upper Tribunal Judge Conway

30 November 2018