



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/04845/2017

THE IMMIGRATION ACTS

Heard at Bradford  
On 25<sup>th</sup> June 2018

Decision & Reasons Promulgated  
On 2<sup>nd</sup> July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

M.H.G.  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Khan, Counsel

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

Anonymity

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

An anonymity direction is made. As a protection claim, it is appropriate that I do so.

DECISION AND REASONS

1. The Appellant, a citizen of Iran born 15<sup>th</sup> March 1996, appeals with permission against the decision of a First-tier Tribunal (Judge Hindson) dismissing his appeal against the Respondent's refusal to grant him asylum/humanitarian protection.

2. In summary the Appellant's claim to protection is that he is of Kurdish ethnicity and is a member of the Islah and Dawa Movement. This places him at risk with the Iranian authorities. His claim is that he arranged and organised meetings on behalf of the movement and encouraged others to join.
3. The incident, which prompted him to leave Iran, is a claim that he organised such a meeting, with friends, which was to take place on 26<sup>th</sup> August 2016 at Kolan Mosque. His friends did not arrive at the mosque, and he was unable to contact them by phone. He went to a nearby coffee shop and while there noticed six or seven military-type vehicles arrive at the mosque. He realised then that there was to be a raid on the mosque and that he would be at risk. He left the area and travelled back to his home village. Once there a neighbour alerted him to say that officers had attended at his home looking for him. He therefore left his home by taxi travelling a distance of 135 kilometres to Mahabad. Once there an uncle met him and arranged for a Kurdish smuggler to get him out of the country.
4. The Respondent, after consideration of the claim, accepted that the Appellant is an Iranian national of Kurdish ethnicity, but discounted the remainder of his account as incredible.
5. The Appellant's appeal came before FtJ Hindson. In addition to hearing evidence from the Appellant, Judge Hindson had before him an expert's report which had been submitted on the Appellant's behalf. The judge acknowledged the expertise of the report's author and said he was able to place reliance upon the report. Nevertheless, he found the Appellant's account of the incident at the mosque to be fabricated. Since this was this incident which the Appellant claims as the driving force for him needing to seek international protection, the judge dismissed the appeal.

### **Onward Appeal**

6. Permission to appeal was granted by DJ Peart. The permission grant deals succinctly with the grounds seeking permission and therefore I set the body of it out in full.
  - "2. Judge Hindson (the judge) dismissed the appellant's appeal against the respondent's refusal to grant him asylum, humanitarian protection and on human rights grounds because he found that the appellant was not a credible witness with regard to events in his own country and that he would not be at risk on return.
  3. The grounds claim that the judge erred in the assessment of the appellant's credibility and failed to give adequate reasons before rejecting his account.
  4. There was an expert report prepared by Roya Kashefi. She provided an account of the history of the Islah and Dawa group which was consistent with the appellant's evidence. The judge made an adverse credibility finding regarding what he considered was an implausible account of the

raid on the mosque but did not engage with what Ms Kashefi had to say in that regard. See [3.5] of her report.

5. I find the judge's analysis arguably inadequate. Bearing in mind that Ms Kashefi said at [3.5] that although the appellant's account of his arrest sounded excessive and exaggerated, such a show of strength during arrest was not unusual, the judge was arguably obliged to engage with the same. All he says at [27] is that whilst he could see some limited merit in the appellant's argument that it was a show of strength, he considered it not reasonably likely that the appellant had given a truthful account of those events, without subjecting the appellant's account to any or any adequate analysis."

7. Thus the matter comes before me to decide in the first instance, whether the decision of FtTJ Hindson discloses such error of law, that it must be set aside and re-made.

### **Error of Law Hearing**

8. At the outset of submissions, Mr Diwnycz on behalf of the Respondent said there was no Rule 24 response. With his customary fairness, he indicated that having read the FtTJ's decision and seen the grant of permission, he had no further submissions to make, other than to say that if I was satisfied that the decision contained a material error then the appropriate course would be to remit the matter to the FtT for a fresh hearing. In the light of these observations, I found that I did not need to call on Ms Khan to respond.

### **Consideration**

9. I am satisfied that the decision of FtTJ Hindson contains material error as set out in the grounds and grant of permission. I am satisfied that there has been a failure to properly engage with what the acknowledged expert had to say with regard to the raid on the Kolan Mosque. Since this raid forms the cornerstone of the Appellant's claim, and is a matter which affects his overall credibility, then it was incumbent upon the judge to fully engage with both the expert's evidence and that of the Appellant in this regard.

10. I find that there is no alternative but to set the FtT's decision aside in its entirety with nothing preserved. The matter will have to be heard afresh.

11. Because of the amount of judicial fact-finding necessary to re-make the decision, it is right that this matter be remitted to the FtT for that Tribunal to hear the evidence and make the decision afresh.

### **Notice of Decision**

The decision of the FtT is set aside for material error.

The matter is remitted to that Tribunal for a fresh hearing before a judge other than Judge Hindson.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

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 both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

C E Roberts

Date

28 June 2018

Deputy Upper Tribunal Judge Roberts