



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05722/2017

THE IMMIGRATION ACTS

Heard at Glasgow
On 9 March 2018

Decision & Reasons Promulgated
On 14 March 2018

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

RABAR RAZALE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Dingwall, of Latta & Co, Solicitors

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

DETERMINATION AND REASONS

1. The appellant identifies himself as a citizen of Iran, born on 13 May 1983. He sought asylum in the UK on 22 February 2017.
2. In her decision dated 2 June 2017 the respondent did not accept that the appellant is Iranian or had been involved with the KDPI, and held that he would be at no risk from the authorities in either Iran or Iraq (page 5 of 7).
3. First-tier Tribunal Judge J C Grant-Hutchison dismissed the appellant's appeal for reasons explained in her decision promulgated on 26 July 2017.
4. The appellant applied to the FtT for permission to appeal, on these grounds:

It is submitted that the IJ has taken into account irrelevant information when making the assessment in relation to the appellant's failure to produce documentary evidence at paragraph 12.

At paragraph 16 it is stated by the IJ that his account is inconsistent however when the evidence is looked at there is no true discrepancy and accordingly the FtT's finding is not supported by the evidence (*R v Secretary of State for Scotland* 1999 SC (HL) 17 at 42A – B per Lord Clyde).

At paragraph 20 the IJ uses speculation when making a finding that his account is convenient. There is no explanation and sufficient reasons provided to back this assertion up.

5. In his decision dated 18 October 2017 FtT Judge Dineen set out at ¶2 – 8 general tests for identifying arguable errors of law. At ¶9 he held that the grounds went no further than disagreement and did not pass those tests.
6. Nevertheless, the appellant sought permission from the UT, advancing the same grounds.
7. On 12 December 2017 UT Judge Bruce granted permission, but not apparently because she was impressed by the force of any of the grounds:

Whilst the grounds are relatively weak I grant permission ... because it is not immediately obvious from the decision whether the FTT resolved the central question of fact: what is the appellant's nationality? The tribunal was prepared to accept that the appellant's father is the martyr referred to by the KDPI in their letter at [14]: it is arguable that this was *prima facie* evidence that he, at least, was an Iranian Kurd. The materiality of that matter is illustrated by the finding at [24] "there is no reason why the appellant cannot return to Erbil": if he is not a national of Iraq, there might be.

8. Ms Dingwall argued each of the three grounds, and also adopted the line suggested by the grant of permission: - The judge was bound to make a finding on nationality. A finding of Iranian nationality should have followed from the finding at [14] referred to in the grant of permission. The letter should have been found to support not only the appellant's claimed nationality but his claim to be at risk, connected to his late father. The matter would also be relevant to questioning he might face if returned to Iran.
9. In reply to the respondent, Ms Dingwall submitted that even if there was an explicit finding that the appellant is not Iranian, that was flawed by inconsistency with the finding at [14].
10. I reserved my decision.
11. The initial refusal of permission is unsurprising. The grounds are only three vague expressions of selective disagreement on the facts. They foreshadow no line of argument whereby the decision, read fairly and as a whole, might be set aside for error on a point of law.
12. The decision at [14] does not accept that the appellant's father was a "martyr" to the KDPI. It is a finding in the alternative, beginning, "Even if I accept that the appellant's father is Hama Amin Rezai ... and that he died for the KDPI cause" and going on to explain why that would not ground a claim.

13. It was not for the FtT to divine the appellant's nationality. It was for the appellant to establish his case.
14. The judge found that the appellant had not proved he is Iranian. Even if [12] and [26] are not sufficiently explicit, the decision as a whole is plain.
15. The grounds, the grant of permission and the submissions for the appellant together fall short of showing that the decision of the FtT should be set aside for error on any point of law. That decision shall stand.
16. No anonymity direction has been requested or made.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

9 March 2018
Upper Tribunal Judge Macleman