



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09217/2017

THE IMMIGRATION ACTS

Heard at Newport
On 14th August 2018

Decision and Reasons Promulgated
On 03rd September 2018

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

B M K
(Anonymity Direction Made)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr D Mill Home Office Presenting Officer
or the Respondent: Mr Mahmoud instructed by NLS Solicitors

DECISION AND REASONS

1. The application for permission to appeal was made by the Secretary of State but nonetheless I shall refer to the parties as they were described before the First Tier Tribunal that is Mr BMK as the appellant and the Secretary of State as the respondent.
2. The Secretary of State appealed against the decision of First Tier Tribunal Judge Eames promulgated on 13th November 2017 allowing the appeal.

3. The appellant, a citizen of Iran born in 1996, claimed asylum based on his fear of return because he had been a supporter of KDPI. He met a member of the party, C, who introduced him to the party via a video and to other party members. He then participated in distributing newspapers, CDs and pictures. He was illiterate and did not know what the literature he distributed said. After the third occasion, when scheduled to meet, his contact C did not appear, and his family told him that his father and uncle had been arrested by Ettela'at. They were released by the authorities, he was told, on the basis they arranged for the appellant to hand himself in. A week later his father arranged for his removal from the country by an agent.

Application for Permission to Appeal

4. The grounds advanced the following:
 - The appellant's account which was accepted was based entirely on the appellant's version of events. The judge had been overly generous such as in his approach to the processes in Dunkerque. If the appellant were a genuine refugee, he would have made his claim at Dunkerque and it was not the responsibility of the respondent/Border Force to make his claim for him.
 - If the appellant had been illiterate how would he have a Facebook account? The solicitors told him to access Facebook and thus would have been pointless.
 - At best the appellant was a supporter not a member of the KDPI and thus his involvement was unlikely. When looking at claimed activism the judge had made very generous findings.
 - There was no reason to believe his account and nothing to suggest the authorities had an interest in the appellant. The judge's findings at 63(b) and (c) did not make sense.
 - The appellant was not represented, and the judge favoured the appellant and did not give the appeal anxious scrutiny.
5. Permission to appeal was granted by Ftt Judge Ransley who found the following grounds arguable
 - (i) the positive credibility findings were over generous and failed to address his failure to claim asylum in Dunkerque
 - (ii) failed to take into account the Facebook account when assessing illiteracy
 - (iii) failed to give adequate reasons for accepting the claim

The Hearing

6. At the hearing before me Mr Mills submitted that this was a standard claim of an Iranian distributing anti regime leaflets with the added element that he had posted anti-regime material on Facebook. The point regarding Dunkerque was that the appellant had failed to claim asylum in France and it was not believable that he could merely hand in a piece of paper to demonstrate his identity.

7. Mr Mahmoud submitted that the decision was detailed, took into account the oral evidence when assessing the overall position. The appellant's friend had clearly opened the account for him. The judge addressed the relevant criticisms of the respondent step by step in the determination.

Conclusions

8. There is no requirement for corroboration in asylum appeals. The judge had the benefit of the appellant's attendance before him to give live evidence and the appellant was cross examined. The respondent had the opportunity to pose questions to the appellant and explore weaknesses in his case. On that basis the judge was in a position and able to assess credibility, as he was obliged to do. To assert that the judge was 'overly generous' is in effect a disagreement with the conclusions of the judge who gave sound reasons for his findings and which are cogent and sustainable.
9. The judge was aware of the respondent's perceived weaknesses of the appellant's claim and the judge set out the criticisms by the respondent of the appellant's case [23 (a) - (j)] and engaged with those criticisms.
10. The judge did not find the appellant's account inconsistent and gave reasons. The judge carefully recorded the oral evidence of the appellant. As the appellant stated he could not answer for his contact C as to why he would have trusted the appellant to tell him about the party, in his own area there was a lack of factories (as born out by the country guidance), he had been removed from school because his mother had died and the education available in Kurdistan was not in the mother tongue. There were limited factories (i.e. employment) in Kurdistan. The education and employment factors were in effect part of the repressive regime. His friend had opened the Facebook account and helped him find the images he had distributed. His friend helped him with Facebook for this purpose and his solicitor had told him to find the images. His knowledge of KDPI was poor because he was with them for a short while and was a supporter not a member.
11. The judge was aware of the low standard of proof applicable [57] and directed himself appropriately. He took into account that the screening interview was merely a brief initial interview and it was open to him, not to hold against the appellant something he may have not recounted at that interview. The judge also recognised no obvious trauma but that the appellant had experienced 'loss of place and family'. As such it was open to the judge to 'waive' some of the discrepancies. The judge also accepted that the appellant was uneducated and that his inability to read or write would hamper his memory. The judge was entitled to accept the appellant's explanation which he did. The judge explained that he did not have enough information on the culture in Kurdistan, or about C individually, to find that the appellant would not have trusted C within a short space of time. The judge also found, and rationally so, that the prospective opening of one factory in Kurdistan as cited by the respondent in the reasons for refusal letter to be

'... far short of cogent evidence that Kurdistan is not economically oppressed by the Iranian state, or that things are changing, factories are appearing, and the oppression of the Kurds is diminishing. There is ample country evidence, including the Home Office's own, to corroborate the appellant's overall perception that the situation is poor for Kurds'. [61 (c)].

Properly analysed at [66 (d)] there was no discrepancy in the dates, Mordad was often translated as the fourth month and the judge himself misheard the dates and they could easily be mistaken, especially if someone was illiterate. The judge also found that overall the material was likely to have included that which the appellant stated. The judge indeed found that 'when he showed photographs, what looked like posters he referred to as leaflets'. The judge found it likely that a mere supporter, which the appellant stated he was, and not a member, explained the lack of knowledge of full history and dates of the party, particularly in view of the motivation to help involved an element of friendship.

12. The Secretary challenged the judge's finding of his illiteracy on the basis that he used Facebook. This was not a challenge made in the refusal decision of the Secretary of State and neither representative could alert me to such a submission by the Secretary of State at the First-tier tribunal hearing. This is a matter raised in the later grounds for permission to appeal and not a matter of challenge for the judge to deal with. Even if he had, the evidence given was that *the friend* opened the account at the behest of the solicitors to find the images that had been distributed. Even so it is not impossible to operate, with help, such an account even if one is illiterate. That challenge has no force.
13. The judge also noted that

'... all his accounts about the disappearance/absence of C have in common the core point that C did not turn up – he failed to meet up with the others after distributing materials. That is his account's key feature, consistent throughout the narrative'. [66(g)].
14. Further the judge found for sustainable reasons that the account of how the appellant learned of the arrest was consistent for the reasons explained at [66 (h)].
15. There were two challenges in the grounds, regarding the information given at Dunkerque. First, that his account of merely hand over a piece of paper was 'implausible' and secondly that he failed to claim asylum in France and Section 8 should have applied. As the judge reasoned at [61] there was no evidence of procedures in France, there was indication that there was an attempted interview but there was a language barrier and thus it was credible that a piece of paper had been handed over. The judge was cognisant of Section 8 but accepted that this did not overall undermine his credibility stating, *'moreover his failure to claim asylum at that point cannot be held substantially against him'*. The judge looked at the evidence in the round and that is the correct approach further to **IT Cameroon** [2008] EWCA civ 878 which confirmed at paragraph [15]

'... that section 8 should not be interpreted as affecting the normal standard of proof in an asylum/human rights appeal. There is nothing in the wording of the Act that requires (or indeed permits) such a result. The effect of section 8 is simply to ensure that certain factors relating to personal credibility are taken into account when that standard of proof is applied. The weight and significance of those factors will vary according to the context and the precise circumstances of the behaviour'.

16. Overall the judge accepted the claim finding at [62] 'it follows that overall the points raised against him [by] the respondent as to credibility do not materially damage his credibility. They do not have a major bearing on the truthfulness of the core of his story, which overall I accept'. Having accepted the appellant's account there is no indication that [63] (b) and (c) on reading the decision overall 'do not make sense'.
17. The judge gave sound reasons for his decision and as explained in **Shizad (sufficiency of reasons: set aside)** [2013] UKUT 00085 (1)
'Although 'there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge'.
18. The grounds for permission have not been made out and I find no material error of law in the decision of the First-tier Tribunal judge which will stand.

Signed *Helen Rimington*

Date 15th August 2018

Upper Tribunal Judge Rimington