



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

Appeal Number: PA/14201/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 6<sup>th</sup> of February 2018**

**Decision & Reasons  
Promulgated  
On 27 February 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT**

**Between**

**SAMAN ALI ZADA  
(Anonymity order not made)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms E King of Counsel

For the Respondent: Mr C Avery, Home Office Presenting Officer

**DECISION AND REASONS**

**The Appellant**

1. The Appellant is a citizen of Iran born on 21<sup>st</sup> of March 1998. He appeals against the decision of Judge of the First-tier Tribunal Kinnell sitting at Hatton Cross on 2<sup>nd</sup> of August 2017 to dismiss the Appellant's appeal against a decision of the Respondent dated 9<sup>th</sup> of December 2016. That

decision was to refuse the Appellant's application for international protection.

2. The Appellant arrived in the United Kingdom in April 2016 in a clandestine manner and claimed asylum on 15<sup>th</sup> of June 2016. He had travelled through a number of countries on his way to the United Kingdom and was fingerprinted in Greece and Germany.

### **The Appellant's Case**

3. The Appellant's asylum claim was that he was wanted by the Iranian authorities because he had distributed leaflets in his home area on behalf of a political movement, the Kurdish Democratic Party of Iran (KDPI), whom he supports. Whilst in Iran the Appellant decided to hand out leaflets because he realised the Iranian government abused Kurdish people who were treated as second-class citizens. The Appellant did not read what was written in the leaflets, he asked others to explain the contents. The Appellant had made enquiries about becoming a member of the KDPI in Iran but was told it would take time and he had to be patient. Since arriving in the United Kingdom, he had used Facebook to distribute various videos to his friends.
4. The Appellant and his friends distributed leaflets for five to six months without anybody stopping them. One day, however, the Etelaat, the Iranian secret police, came looking for the Appellant who was warned by his father of this adverse interest. The family house was raided the same day as his father called him alternatively the Appellant did not know exactly when it was raided. The Appellant was working on the land at the time the Etelaat were looking for him and thus was not arrested.
5. Later on, whilst he was in Turkey, having fled Iran, the Appellant discovered that his friends had been arrested by the Etelaat. The agent the Appellant was travelling with in Turkey spoke to the Appellant's uncle on the Appellant's behalf and discovered, from villagers that the Appellant's father and his two friends had been arrested. The Appellant still had leaflets in his possession and when the Etelaat went to his house they discovered those leaflets. The Etelaat took the Appellant's father because of their adverse interest in the Appellant. The Etelaat were still looking for the Appellant. The Appellant did not claim asylum in either Greece or Germany as his route was controlled by the agent with whom he was travelling. The Appellant attended a demonstration in the United Kingdom.

### **The Decision at First Instance**

6. The Judge found that the Appellant had answered questions about the KDPI correctly at interview and there was no obvious contradiction or inconsistency in the Appellant's account of his sympathy for that organisation. At [39] the Judge accepted that the Appellant may well

have been involved in the distribution of flyers or leaflets by posting them at times when he could not be detected in public places. What the Judge did not accept was that this activity was known to the authorities in Iran or that the Appellant was wanted because of that activity. The evidence about the circumstances in which the Appellant came to know of the search for him by the Etelaat was superficial and illogical. The information was thirdhand hearsay. It was admissible but carried negligible weight.

7. The Judge did not accept the Appellant's evidence (given at the hearing) that the Appellant's father did not tell the Appellant what villagers had said about the Etelaat searching for him. The Appellant would have asked for more information if he had been faced with the sort of immediate danger he claimed to be in. It was more than likely that if the authorities wanted to arrest the Appellant (and presumably others) the arrests would have been co-ordinated and it would not have been difficult to find the Appellant since he was working on the family's agricultural land. It was not probable that the Appellant would have been given sufficient time after the claimed arrest of his two confederates to make good his escape to the mountains.
8. The decisive point for the Judge was described by him at [42]. When asked "did they search your house?" The Appellant replied he did not know whereas he said in evidence at the hearing that he knew while he was in Turkey from enquiries that the agent had made that his father had been taken and that when Etelaat went to his house they discovered the leaflets. If the Appellant knew that to be the case when he was in Turkey en route to the United Kingdom there was no reason why the Appellant should have said in interview he did not know whether a search had taken place.
9. Although the Appellant had some sympathy for the general aims of the KDPI and may for a short period have distributed and posted leaflets or flyers the Judge did not accept that that was discovered or that the Appellant was wanted by the authorities. The Appellant's contact with the KDPI in the United Kingdom was likely to be a response to the criticism made in the refusal letter that if the Appellant had any real commitment to that organisation he would have made contact with it in the United Kingdom rather earlier than he did, given that he had arrived in the United Kingdom in April 2016. The Appellant's low-key activity would not have come to the attention of the authorities in Iran and the material on the Appellant's Facebook page was recycled material from elsewhere and unlikely to cause him any difficulty upon return. It would have been reckless for the Appellant to post anything too controversial if it was the case that the Appellant's father was already being harassed by the Iranian authorities. The Judge dismissed the appeal.

## **The Onward Appeal**

10. The Appellant appealed against this decision in grounds settled by counsel who had appeared for the Appellant at first instance and appeared before me. The grounds made four points. The first ground was that the Judge had failed to provide adequate reasons for his findings about the plausibility of the evidence. This in turn broke down into two separate complaints. The first of the two complaints related to the Judge's concern that the Appellant would have asked more about the Etelaat searching for him if he was faced with immediate danger, his two friends had been detained and Etelaat sought him as well. The Judge did not explain what further information the Appellant could have obtained from the villagers. The second complaint was that no adequate reasons were given to support the contention that it was improbable the Appellant could have evaded arrest. There were many cases seen by the Tribunal of people fleeing Iran to claim asylum.
11. The 2<sup>nd</sup> ground argued that the Judge had failed to have regard to the Appellant's age. He had just turned 18 when he made his claim for asylum but was under the age of 18 when the events he described had occurred.
12. The 3<sup>rd</sup> ground argued there had been a failure to have regard to material evidence. In stating that the Appellant had contradicted himself when asked whether his home had been raided the Judge had failed to have regard to a later answer the Appellant gave in interview which clarified the matter.
13. The 4<sup>th</sup> ground criticised the Judge's classification of part of the evidence as thirdhand hearsay. Hearsay was admissible. If the Appellant's departure from Iran was in reaction to the information given by the villagers, were the Appellant and his father justified in treating that information as a credible threat? There was a real risk that the evidence given by the villagers was true. If the Judge did not believe that the Appellant had received a phone call from his father relating what the villagers had said then that was not hearsay evidence but direct evidence from the Appellant. It should then have been assessed in the round with the rest of the Appellant's evidence.
14. Given that the Judge had found that much of the Appellant's account was true, his support of the KDPI and the distribution of leaflets, very careful reasoning needed to have been given to justify rejecting the Appellant's claim to be wanted by Etelaat. The benefit of the doubt ought to have been applied to the Appellant.
15. The application for permission to appeal came on the papers before First-tier Tribunal Judge Cruthers on 1<sup>st</sup> of November 2017. Granting permission to appeal Judge Cruthers noted that the nub of the matter concerned [40] to [43] of the determination where the Judge set out his reasons for not accepting that the Appellant's activities had come to the attention of Etelaat. The grounds were arguable but the Appellant should not take the

grant of permission as any indication that the appeal would ultimately be successful. The Respondent did not reply to the grant of permission.

### **The Hearing Before Me**

16. Following the grant of permission, the matter came before me to determine whether there was a material error of law in the First-tier determination such that it fell to be set aside. If not, the decision would stand. Counsel for the Appellant relied on her grounds of appeal. The 3<sup>rd</sup> of the grounds was the most serious it was argued. This related to whether the Appellant had contradicted himself about whether his house had been searched by the Etelaat.
17. At question 111 of the substantive asylum interview the Appellant had been asked “how did [your father] know that Etelaat were chasing you? The Appellant’s reply was that his father had told him that Etelaat were asking for the Appellant by name and they were searching to find the Appellant. The next question, 112, was whether the Etelaat searched the Appellant’s house. The Appellant’s reply to that was “I don’t know. I’m sure they have been. If not at that time, then after. My father said I’m sure they will go to the home to find you”
18. Later on, at question 125 after saying that he, the Appellant, had spoken to his family whilst in Turkey he was asked “when you spoke to them, had the Etelaat been to your house?” The Appellant’s reply was that his uncle had made a call to the village to find out the news. The uncle had heard from the village that Etelaat had taken the leaflets because the Appellant was not there and they had taken the Appellant’s father and there was no news of him. Three questions later at question 128 the contradiction between the answers at 112 and 125 were put to the Appellant. The Appellant had said he did not know if the Etelaat had searched his house but now was saying that they did raid the house and found leaflets. The Appellant’s explanation was “I meant when I was at the farm and my father called me and said he was at the mosque and he heard from people that my friends were arrested and he also heard my name was mentioned. I refer to that moment that I wasn’t sure. But after two days in Urmiyah [in Turkey] my uncle called the village to get an update.”
19. In oral submissions counsel argued that this exchange demonstrated the Appellant had given a consistent account. He had been asked what happened when Etelaat were searching for him. The Judge was mistaken when he seemed to think that the Appellant had said he did not know about the search. In coming to that conclusion, the Judge had not taken into account the later more developed explanation given in the interview. The Judge had not said that the Appellant changed his account through the interview, he had said that the Appellant had changed his account from the interview to the hearing but the Appellant’s argument was that he had not changed his account at the hearing.

20. Counsel acknowledged that the answer at question 128 was not very clearly set out but when he was at the farm the Appellant got a call from his father at the mosque. He did not know whether Etelaat had come to the house on that first day but he did know they subsequently went to his house. The Appellant's knowledge had progressed as events unfolded.
21. Turning to the 4<sup>th</sup> ground, the Judge had made an error of law at [40] when he described the Appellant's evidence as thirdhand hearsay. The rules in the Immigration and Asylum Chamber were more relaxed than in civil and criminal proceedings. If the Appellant's statement was to be treated as hearsay that meant the truth of the statements of the villagers was being called into question for example was it a cruel joke played by the villagers or did the Appellant mis-hear what he was being told. Given that the Appellant had acted on what the villagers had said it presupposed that the Appellant and his father had a genuine belief in that information.
22. At [40] the Judge had gone on to say that he did not accept the Appellant's evidence at the hearing that the Appellant's father did not tell the Appellant what the villagers had said about Etelaat searching for him. Counsel argued that was a different point and it was difficult to see what the Judge was referring to there. The Appellant had given evidence that the villagers had told his father that Etelaat were searching for him. It was not clear what information the Judge thought should have been passed on to the Appellant beyond the statement that the Etelaat were searching for the Appellant and had arrested the Appellant's friends. The Judge had not said what he expected the villagers would tell the Appellant. The reasoning and conclusions reached were not sufficient for the Appellant to understand why his evidence had been rejected.
23. The Judge's comment at [41] that the arrests would have been coordinated was a plausibility point that had Etelaat wanted to arrest the Appellant they would have done so in a co-ordinated fashion to prevent escape. Was it so implausible that they had not in the end managed to do that? The Appellant was not at home, he was out in the fields. On what basis could the Judge properly conclude that the Etelaat would have been able to find the Appellant?
24. The 2<sup>nd</sup> ground (failure to have regard to the Appellant's age) was a relatively simple point. The Judge had not recorded in the determination that the Appellant was a minor when he left Iran and so his understanding of events had to be considered. That tied in with what the Appellant should or should not have asked his father about what the villagers had said. The Appellant was 16 at that time.
25. In reply the Presenting Officer dealt first of all with the claimed contradiction over whether the Appellant had or had not said that his house had been searched. The Judge was entitled to take an adverse

view that when the Appellant was first asked in interview about the search his answer was "I don't know". The Appellant's response was wholly unsatisfactory. The weight to be given to the claimed circumstances in which the Appellant came to know about the search for him by Etelaat was a matter for the Judge. The more the information from the villagers was repeated the more likely there was a chance of misunderstanding. It may have been an assumption of the Appellant's father that Etelaat were looking for the Appellant one simply did not know. That tied in with what the Judge went on to say at [40] and underlined the weakness of the Appellant's evidence. One had to look at that paragraph as a whole and not try to dissect it. It was clear what the Judge was trying to say. The Judge had the benefit of hearing the Appellant give oral evidence particularly about what the villagers were supposed to have said. The Judge's conclusions were open to him on the evidence.

26. The point taken by the Appellant against [41] (the coordination of the arrests) was a mere disagreement. The Judge's conclusions there were open to him. The Etelaat had a fearsome reputation and it was implausible that they would bungle the search in the way the Appellant had described. The Appellant had not been a young child at the age that these things had happened, he was 16. It was not such a fundamental issue as to undermine the Judge's findings. The determination should be upheld.
27. In conclusion counsel returned to the point about the treatment of hearsay evidence. It was a question of interpretation and one had to go back to basics, did the Appellant have an objective fear, was it well-founded? If the Judge had meant that he needed to set that out. The Appellant's father was told that Etelaat were looking for the Appellant. One could not be sure they were looking for anyone else. It was not clear what approach the Judge was taking. The impression from the determination was that the Appellant had changed his evidence from the interview to the hearing but that was not what happened. The Judge had accepted some of the Appellant's evidence and therefore it was important to clarify whether the Appellant was at risk on those facts.

## **Findings**

28. This is a reasons' based challenge. The Judge accepted part of the Appellant's case, that he sympathised with the KDPI and that he had distributed leaflets for them. What he did not accept was that those activities had come to the attention of the Iranian authorities or that the Appellant would be at risk upon return because of that or any sur place activities. (There was no appeal in relation to the sur place activities). The Appellant had to show that that part of his claim which was not accepted was if found credible sufficient to engage a claim for international protection. The Appellant was not at risk on the basis of those matters that the Judge did accept he still had to show that the

authorities were aware of him and had a corresponding adverse interest in him.

29. The Judge rejected the Appellant's evidence that the Appellant had managed to avoid being arrested by the Etelaat because he was out in the fields on the day that the Etelaat came looking for him in the Appellant's village. The Judge did not accept that as at all plausible. That was very much a matter for the Judge on the basis of the evidence before him. If the Etelaat were looking for the Appellant they would presumably have gone to the Appellant's home or, the Judge's point, they would have coordinated their search for the Appellant to include the outlying areas. That they did not do so led to the Judge to conclude there had been no attempt to look for the Appellant on that occasion. That was adequately reasoned and the Appellant's objections to that point are a mere disagreement with the Judge's conclusions.
30. If the Etelaat were looking for the Appellant the next question was whether they had searched the Appellant's house. When that was put to the Appellant his reply was that he did not know but if not at that time then after. Later on in the interview the Appellant was asked to clarify this. The context was that on the one hand the Appellant had said he did not know if the Etelaat had searched his house only that they must have done (thus an assumption made by the Appellant) but later he became more definite and said they had raided the house and found leaflets. The Appellant said he was not sure if the Etelaat had searched the house on the day he was contacted by his father when he the Appellant was out in the fields. But after the Appellant had been for two days in Urmiyah in Turkey his uncle had called the village to get an update.
31. Much of the Appellant's case turned on the assessment of the evidence of this telephone conversation and whether it had taken place at all. It was a matter for the Judge to assess the evidence before him. A fair reading of the interview does not support the argument put forward by the Appellant that the answers in interview were clear and did not contain contradictions. The Appellant did not know on the day that the Etelaat was first looking for him (when he was contacted by his father) whether they had or had not searched his house. The information about searching the house came sometime later by which time the Appellant was already in Turkey. It came through a chain of individuals via the Appellant's uncle. There was no good reason why the Appellant was unable to answer the question put to him at question 112.
32. The Appellant's answers in interview were not sufficiently clear cut for the Judge to be able to make a finding that the Appellant had been consistent throughout. That was the important point. This was a core element of the Appellant's claim, that the Etelaat had searched his house and found incriminating leaflets. Unfortunately for the Appellant he was unable to put that evidence forward in a coherent and consistent manner as to when the search had taken place. It then became a matter for the Judge



to decide what weight was to be given to that evidence. If the Appellant could not be consistent about the search it was open to the Judge to find no such search had ever taken place.

33. The Judge referred to information allegedly given by villagers as thirdhand hearsay. On the Appellant's case villagers had apparently told the Appellant's uncle who had told an agent who had told the Appellant that the Etelaat had raided the house, taken leaflets and arrested the Appellant's father. Since this information was given whilst the Appellant was in Turkey having already left Iran, it could not have been the cause of the Appellant's departure from Iran. The Judge's concern about this evidence was that it should have taken so long before it was passed on to the Appellant. The Appellant had quoted his father in interview as saying that the Etelaat would definitely go to the house and the father advised the Appellant to leave the country. That was before the conversation which the Judge characterised as thirdhand hearsay.
34. I do not read the determination as meaning that the Judge was imposing a legal test on the evidence at that point rather he was ascribing little or no weight to the Appellant's claim that information of that sort had made its way through to the Appellant whilst the Appellant was in Turkey. It was implausible that if that was the situation the Appellant would not have found out about it earlier (by asking his father obvious questions such as have they been to the house, what happened if/when they did?). This was the point made by the Judge in the last sentence of [40]. The issue was whether the Appellant had been told anything of that sort rather than what the motive of the villagers might be.
35. The Judge did not accept that any such information was given to the Appellant in Iran or in Turkey. The circuitous way the information was said to have been given to the Appellant via so many intermediaries merely served to undermine its reliability. The Appellant had overcomplicated his account, referring to the intermediaries, perhaps in an attempt to deal with the point picked up by the Judge that a more straightforward way of getting information was for the Appellant to ask the questions himself. The Appellant suggested that while in Turkey he could not ask any questions himself, the plausibility of that was a matter for the Judge who evidently felt that the Appellant had not asked questions (in Iran or in Turkey) because there were no questions to ask as the account was false.
36. The final point raised by the Appellant is that insufficient attention was paid to the Appellant's age when assessing the credibility of the claim. The Appellant was 19 at the date of hearing and was describing events which he said had occurred after his 17<sup>th</sup> birthday. He was not therefore a young child as the Presenting Officer correctly submitted to me. The core part of the Appellant's claim was his evidence about what he was told whilst in Turkey. At that time, he was only a few months short of his 18<sup>th</sup> birthday. He could therefore reasonably be expected to have a good

recollection of what had taken place. That the Judge did not believe the Appellant's account (including the alleged telephone conversation) does not of itself indicate an error of law. The Appellant was of an age and understanding to be aware of the truth or falsity of his claims.

37. The grounds of onward appeal in this case amount to no more than a disagreement with the cogent findings of the Judge which were open to the Judge on the evidence before him. The grounds do not disclose any material error of law on the Judge's part and I dismiss the Appellant's onward appeal. There is no Article 8 claim in this case.

38. I make no anonymity order as there is no public policy reason for so doing.

**Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal

Appellant's appeal dismissed

Signed this 21st of February 2018

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Judge Woodcraft  
Deputy Upper Tribunal Judge

**TO THE RESPONDENT**  
**FEE AWARD**

No fee was payable and I have dismissed the appeal and therefore there can be no fee award.

Signed this 21st of February 2018

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Judge Woodcraft  
Deputy Upper Tribunal Judge

