



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00110/2019

THE IMMIGRATION ACTS

Heard at Birmingham CJC
On 3rd September 2019

Decision & Reasons Promulgated
On 12th September 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR R S
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Islam (Solicitor)

For the Respondent: Mr D Mills (Senior HOPO)

DECISION AND REASONS

1. This was an appeal against the determination of First-tier Tribunal Judge Boylan-Kemp MBE, promulgated on 2nd May 2019, following a hearing at Birmingham on 11th March 2019. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Iran, and was born on 1st January 1987. He appealed against the decision of the Respondent dated 7th December 2018, refusing his claim for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that he has been smuggling illegal goods, including alcohol, with his father in 2010 on the Iraq/Iran border, and continued to do so with a man known as "Hallo". He also transported political material relating to the KDP for Hallo on two occasions. He managed to do this successfully on the first occasion but failed on the second occasion as he was alerted that Etilaat were looking for him and he was shot at by men in two vehicles, but he managed to escape to Iraq.

The Judge's Findings

4. The judge had regard to the evidence before him, which consisted photographs and videos of the Appellant involved in the work he claimed to undertake (paragraph 17). The judge held that they did show the Appellant taking part in illegal activities (paragraph 18). Nevertheless, the judge took the view that limited weight should be accorded to this evidence. In the end, even though there was this evidence, the judge held that the main question was whether the authorities were aware of the Appellant's illegal activities, and was not persuaded that this was so (see paragraphs 21 to 22).
5. The appeal was dismissed.

Grounds of Application

6. The grounds of application state that the judge had assessed credibility in a rather convoluted manner when holding (at paragraph 20) that,

"I also find that the identified apparent inconsistencies in the Appellant's claim that he had transported some political material for Hallo are also insufficient to significantly undermine his claim on this matter per se, but that in light of the adverse credibility findings and issues identified with the other aspects of his account I am not satisfied to the lower standard of proof as to the credibility of this aspect of his claim either" (paragraph 20).
7. On 4th July 2019 permission to appeal was granted on the basis that it was arguably irrational for the judge in sequence to find that the apparent inconsistencies did not undermine the Appellant's claim in a particular respect only to find for other reasons that the claim was undermined. Either the apparent inconsistencies undermined the Appellant's claim that he had transported political material or they did not.

8. On 16th July 2019 a Rule 24 response was entered by the Respondent where it was stated that permission should only be granted on the basis that the judge who decided the appeal gave insufficient weight to a particular aspect of the case.

Submissions

9. At the hearing before me on 3rd September 2019 Mr Islam, appearing on behalf of the Appellant, submitted that there were three essential errors. First, the judge had found the photographic evidence to be credible. This being so, it did not make sense for the judge to say that limited weight should be attached to it because of the manner in which it had been acquired. Second, that the reference to “identified apparent inconsistencies in the Appellant’s claim” being such as to insufficiently undermine his claim, with the added statement by the judge that, nevertheless, other aspects of the account was not credible, did not make sense (at paragraph 20). Third, the judge had concluded that if the Appellant had been politically engaged by posting materials on his Facebook account, “he could delete or deactivate his social media account if he so wished and that in any event the authorities would be unlikely to question him upon his return as they hold no interest in him” (paragraph 27).
10. For his part, Mr Mills submitted that there was no contradiction in what the judge had stated at paragraph 20, because in explaining herself in the manner that she had, what the judge was doing was to come to a view after looking at each aspect of the claim beforehand. This was a conclusion in the round. Secondly, as far as the photographs were concerned, the presence of the Appellant on the Iraq/Iran border in the mountains, against the backdrop of some donkeys, did not necessarily mean that he was transporting political materials. Thirdly, as far as the Facebook account was concerned, the judge’s view was that the Appellant was not a genuine political activist, and that “he has posted this information purely in an effort to bolster his asylum claim as the entries provided in the evidence are all recent and postdate his asylum claim” (paragraph 26).
11. In reply, Mr Islam submitted that it was wrong on the basis of **HJ (Iran)** for the judge to require somebody to give up his political activities by deleting or deactivating their social media account.

No Error of Law

12. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007). My reasons are as follows.
13. First, whilst I accept that the judge has expressed herself rather inelegantly at paragraph 20, I do not consider this to be a material error of law. I come to this conclusion notwithstanding the justifiable doubts that Mr Islam has raised in relation to the judge describing as “identified apparent inconsistencies” in the manner in which the photographs were produced. These justified doubts arise for two reasons. First, the judge produced photographs which were challenged by the Home Office

Presenting Officer, of his mounting activities. The judge took the view that “they do show the Appellant taking part in what could be, but also what may not be, illegal activities in Iran. I find the fact that they have no time or date or place of reference to them to limit the weight that can be placed upon them” (paragraph 18). However, the judge did then also go on to say (at paragraph 19) that, “I accept that the photographs may depict the Appellant engaging in illegal behaviours in Iran ...” There is a clear ambiguity in the assessment of this photographic evidence. It cannot be undermined by the manner in which it was acquired because if the judge accepts that “they do show the Appellant taking part” in what could be illegal activities, then that is the finding that the judge should make. However, having said that, the judge was entitled to come to the view that “limited weight can be placed upon them due to the lack of time and place references ...” (paragraph 19).

14. Second, notwithstanding the ambiguities referred to above in the manner of the judge’s assessment, the judge was not wrong in refusing the appeal on the basis that, even allowing for the fact that the Appellant may well have been a smuggler involved in transporting some political material on two occasions, this “does not automatically equate to a risk upon his return to Iran as it will depend on whether or not the authorities are aware or could become aware of his actions” (paragraph 21). In this respect, the judge was not satisfied that the authorities were aware of his actions. Nor, was the judge satisfied that the authorities could be aware. It is in this regard, that the judge also rejected as plausible the Appellant’s political activities, taking the view that “this information is purely in an effort to bolster his asylum claim” (paragraph 26). All in all, therefore, although there are errors in the determination in the manner that the language is expressed, they do not amount to a material error of law, such that the determination stands to be set aside. I do not set the determination aside.

Notice of Decision

15. The decision of the First-tier Tribunal does not involve the making of an error of law. The decision shall stand.
16. An anonymity direction is made.

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 their 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

Date

Deputy Upper Tribunal Judge Juss

10th September 2019