



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

Appeal Number: PA/01477/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 9 July 2019**

**Decision & Reasons Promulgated
On 22 July 2019**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**I A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In Person

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge Buchanan promulgated on 13 July 2018 dismissing his appeal against the decision of the Secretary of State made on 19 January 2018 to refuse his asylum claim and to return him to Iran.
2. The appellant's case is that he is a Kurd by origin, and comes from a village near Sardasht in Iran. On 16 July 2017 while he was working with his father, a group of armed men came to speak to them and then the appellant was told by his father to show the men to Alwatan village which he did. He then went home and three hours later his father came back

explained that the men had attacked the military base in Alwatan and that he had heard from the headman in the village that the men had given the appellant's name as someone who had helped them and for that reason the appellant was at risk and arrangements were then made for him to flee and the appellant travelled first via Turkey, then to the United Kingdom where he claimed asylum.

3. The appellant was interviewed and the Secretary of State rejected his application. The Secretary of State accepted that the appellant is Kurdish but did not accept that he was Iranian. He did not accept the appellant's account of what had happened in July 2017 and did not accept that the authorities could have come after him only three hours after the attack on the military base.
4. On appeal to the First-tier Tribunal, the appellant gave evidence before the judge who also heard submissions from representatives for both parties.
5. The judge did not believe the appellant for a number of reasons which are set out at paragraphs [23] to [25] of his decision. The judge concluded that the appellant would not be at risk on return to Iran because he did not believe his account and did not accept that he would be at risk on return simply by being a failed asylum seeker as an Iranian man who did not have a passport. The judge also concluded that he was not entitled to humanitarian protection and that his return would not be in breach of the Human Rights Act.
6. The appellant's solicitors challenged that decision in the grounds of appeal which run to some 41 paragraphs. Broadly they attempt to make a forensic attack on the judge's findings as to credibility. There are a number of reasons advanced for that.
7. First, the judge erred in making an adverse finding that the timescale of the events occurring was concerning specifically how it was that the appellant was able to arrange \$9,000 to be paid to an agent and then for the appellant to leave Iran without documents and that the appellant had not been asked about this and could not explain that.
8. Second, in finding it implausible that there was only three hours between the appellant leaving the armed men some distance away from the military base and reaching the village yet a substantial amount of information had been able to be gained by that point by the appellant's father, the judge failing to take into account what the appellant had said in his witness statement and in reply to questions 117 and 118 in his asylum interview.
9. Third, that the judge had erred in failing to take into account that the men had attacked a military base and thus what he had characterised as being implausible was not; and it was thus as it was more likely that an interrogation would be carried out immediately and that the appellant's

account of how his name would be given or would become known should have been taken into account.

10. Fourth, that it would not have taken the authorities long to reach the area and that the judge had erred in not noting that the military base and the village were not that far apart and it was not implausible that the sounds of shooting could have carried over that distance.
11. Fifth, that the judge had erred in failing to take into account how the timeline was explained by the appellant as being credible and that the judge had failed to notice the individual who spoke to the appellant's father would be aware who he is.
12. Permission to appeal was refused by First-tier Tribunal Judge Dineen on 15 August 2018 and his reasons are set out primarily at paragraphs [4] to [6] of his decision:

“4. At [8] the appellant complains that the judge made findings about matters as to which the appellant was not questioned. There is no merit in the submission. The proceedings are adversarial. It is for the appellant to satisfy the Tribunal as to his case it is not for the Tribunal to identify possible weaknesses in it and invite the appellant to remedy them.

5. At [13] to [15] the appellant submits by reference to replies to questions 117 and 118 of the asylum interview that the judge at 23.4 misstated the point in time from which the period of three hours should be measured and describes this as going to the core of the claim. However, the reply to question 119 in the interview is consistent with the decision at 23.4, the ground relied on is misleading without merit.

6. In any event when it is complained that the decision fails to take account of evidence presented at the hearing it must be shown by reference to a skeleton argument placed before the judge at the hearing or by a statement by a person present at the hearing, that such material was presented at the hearing itself not only at the later stage of the asylum interview. This has not been done.”

13. The appellant's solicitors (Braith & Co) then renewed the application to the Upper Tribunal. The application was put before Deputy Upper Tribunal Judge Chalkley who on 19 November stated that permission to appeal was granted. However, in his reasons he stated:

“I have read the determination of First-tier Tribunal Judge Buchanan in the light of the appellant's renewed application to the Upper Tribunal and I find that I am in agreement with First-tier Tribunal Judge Dineen. The application fails to identify any properly arguable error of law on the part of the First Tribunal Judge or raise any other issue justifying the grant of permission.”

14. Understandably, in the light of the apparent contradiction, the appellant made queries through his new representatives, Morden Solicitors as to what had in fact been decided. This was then followed by directions being

issued by Judge Dawson staying the hearing on 25 April to allow Judge Chalkley to revise his decision and/or correct it if so minded. Judge Chalkley did not amend his decision and so the matter came before me today.

15. Having explained the situation to the appellant who was unrepresented he agreed to proceed with the hearing. He had initially sought an adjournment to obtain further representatives, but later, after I had explained what had happened, he agreed to proceed.
16. An interpreter was provided and I heard submissions from the appellant as well as Ms Everett on behalf of the Secretary of State. Ms Everett relied primarily on the decision of Judge Dineen submitting that it was clear that there was no error of law in this case.
17. I asked the appellant to clarify the timeline of the events on 16 July 2017. He said to me that he had taken the men to a point where he indicated the Alwatan village. From that point it would have taken them about half an hour to an hour to get there, that he then returned home which took him about an hour and three hours after that, his father arrived and explained to him all the information that he had related in his asylum claim that is that the people had been caught, interrogated and that his name had been given and that thus he was at risk.
18. I now turn to the grounds of appeal. Dealing with the first point which is set out at paragraphs [2] to [9] of the grounds I consider that this is without merit. It was open to the judge to find it of concern that in such a short period of time arrangements could be made by the paternal uncle to employ an agent and pay some US\$9,000. I am not satisfied that it was unfair or unlawful for the judge to take an inference adverse in that case given that this is a point raised in the refusal letter. It was for the appellant with the assistance of his solicitors to address that point as Judge Dineen has pointed out in refusing permission.
19. It is important to note that what the judge said at paragraph 23.1 is not that it was just getting an agent it was to getting of an agent and the paying of \$9,000 and for the appellant's arrangement to leave Iran without travel documents and it was a fair comment for the judge to say it is a remarkably short period in which to put the sophisticated arrangements into place and find someone to undertake those services and to raise and pay with that amount of money.
20. Turning to the sequence of events on 16 July 2017, the judge noted at paragraphs 23.4 and 23.5 that it was not believable that all of the information and events could have happened and then been relayed by the headman of the village to the appellant's father within the space of three hours. It is said in the grounds that this is contrary to what is said in response to questions 117, 118.

21. I do not consider that properly construing what is written that the judge did misunderstand the timeline in this case. More to the point it is evident from what the appellant said in response to question 127 which was so within three hours of the attack taking place the surviving men who had all been interrogated and gave your name as someone who helped them answer yes. He was also asked how they would know his name question 128 it was put to him that his explanation did not explain how they would know his name.
22. In the circumstances the judge was entitled to reach the adverse conclusions about this. It is simply not the case that the judge did not take into account the evidence. It is furthermore speculative to say that the judge has failed to consider that the men who attacked the military base make it more likely that an interrogation would be carried out immediately. It is also speculative to suggest that they would come to the appellant's village and it is more likely the authorities would interrogate him immediately to find out where they had come from and how they made their way to the base.
23. Similarly, what is averred at [23] that there are only eight families in the village is simply making further submissions. It does not show that the judge made an error in his approach to the evidence and in essence the grounds as pleaded are nothing more than an attempt to reargue the appeal rather than identifying any error or mistake of fact made by the judge. Further, it is of note that the judge's assessment of credibility is subdivided at paragraph 23 into seven items which he considered in the round and a number of them at 23.3 and 23.7 are not in effect challenged.
24. Accordingly, for these reasons and the reasons given in refusing permission by Judge Dineen I conclude that the judge's approach to the issue of credibility was not infected by any error of law and that his reasons for making findings on credibility adverse to the appellant are adequate and sustainable.
25. Accordingly, I conclude that the decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Notice of decision

1. The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it

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 15 July 2019

A handwritten signature in black ink, appearing to read 'James Rintoul'. The signature is written in a cursive style with a large initial 'J' and 'R'.

Upper Tribunal Judge Rintoul