Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07018/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 17 May 2019	**On 30th May 2019**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

MR RASOUL MOHAMMED ZADA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr T Hodson, Counsel, instructed by Elder Rahimi Solicitors,
London
For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant, a national of Iran, has permission to challenge the decision of Judge Beg of the First-tier Tribunal (FtT) dismissing his appeal against the decision made by the respondent on 17 May 2018 refusing his claim for international protection.

2. The appellant's grounds of appeal aver that the judge erred in:

(1) wrongly identifying a discrepancy in the appellant's account of his history of leafleting for the PJAK;

(2) failing to provide adequate reasoning for counting against the appellant his claim that he kept his Iranian identity card with him when he went to distribute leaflets on the last occasion;

(3) unjustifiably finding it implausible that the appellant would have been able to outrun a Pasdaran soldier; and

(4) wrongly rejected as implausible that the appellant would have been hidden by a family of strangers when he had told them he was being chased by the Pasdaran.

3. I heard submissions from both representatives for which I express my gratitude.

4. I consider that the grounds are made out. Dealing first with ground (1), the only internal inconsistency identified by the judge in the appellant's account concerned his history of leafleting. At paragraph 39 the judge stated:

> "39. I find that the appellant was unable to give any detailed evidence about where Sorani obtained the leaflets from. He was unable to read the leaflets. In cross-examination he admitted that the only person who knew about his involvement with PJAK was Sorani. I find that there were discrepancies in the evidence with regard to when the appellant distributed leaflets. In his first witness statement at paragraph 6, he stated that he started distributing leaflets from August 2015. At paragraph 8 he stated that he left Iran on 5 November 2015. At question 65 of the substantive asylum interview, he stated that he distributed leaflets three times. Between questions 66 and 71 the appellant stated that he distributed leaflets over a three month period. I find that that would mean that if he started in August 2015 he distributed leaflets on the final occasion in December 2015. However, the appellant had already left Iran by November 2015. I find that the discrepancies cast doubt upon his overall credibility."

5. However, as the grounds make clear, this represented (at least as analysed by the judge) a simple mistake of arithmetic on the part of the judge. If the appellant began distributing leaflets in August 2015, then three months from that date would have been the end of October. That was consistent, not inconsistent, with the appellant's account that he left Iran on 5 November 2015. Mr Kotas submitted that the judge's assessment must have been based on paragraph 65 of the respondent's refusal letter where the point relied on was that the appellant had said he had distributed leaflets on three occasions, with a one month then a three month period in between the first and second occasions. However, this is nowhere made clear by the judge and in any event, as Mr Hodson pointed out, the respondent expressly concluded in paragraph 65 that "this inconsistency will not be held against you" as he was a minor at the time of the interview. Hence the judge's statement at paragraph 10 that the

respondent considered this inconsistency to cast doubt on his claim was incorrect.

6. As regards ground (2), it does not entirely capture the ambit of the judge's reasons for finding it not plausible that the appellant would have kept his ID card with him. At paragraphs 41 and 42 the judge said:

> "41. In evidence the appellant said that he always kept his identity card with him. I do not find it credible that the appellant would put himself at risk by keeping his identity card with him. I find that even given the appellant's inexperience and illiteracy, he would have known that his identity card would identify him if he was ever stopped or questioned by the authorities. I find that the appellant's evidence cast considerable doubt upon his claim.
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> 42. In his new witness statement at paragraph 22 he states that he was carrying his identity card because everyone in Iran is required to carry their identity card. He goes on to state that he now knows that this is a very significant part of his account and that he should have told the interviewing officer in the asylum interview about it as well as his previous solicitor. I find that the appellant's failure to do so casts doubt upon his credibility. I find that the appellant has fabricated his claim that he was carrying his identity card at night with illegal leaflets in a bag; he has attempted to find an explanation to explain how the authorities know about his links to PJAK."

7. It is clear that in paragraph 42 the judge considered the appellant's explanation for why he had carried the card. It remains, however, that the judge's assessment does not engage anywhere with the likelihood that the Pasdaran would be able to ascertain the identity of persons in the area whether or not they carried an ID card or gave true particulars. In that context, the judge should have recognised that there were at the very least factors pointing to plausibility as much as to plausibility.

8. In relation to ground (3), the judge's reasoning appears to me to be a classic example of an implausibility finding not founded on any identifiable objective fact. Its premise appears to be that a young man running away to escape being shot could not outrun a soldier, carrying a rifle. I take judicial notice of the fact that not all soldiers run fast and not all young men run slow.

9. Ground (4) accurately identifies a further difficulty with a decision which places undue relevance on plausibility issues. It focuses on what the judge said at paragraph 44:

> "44. I find that the appellant's claim of how the family whose house he went into hid him in their garage is wholly implausible. I do not find that a family of strangers would help the appellant when he told them that he was being chased by the Pasdaran. The family would have known that if the appellant was seen coming into their home, they themselves would be of adverse interest to the authorities. I find that the appellant has fabricated his claim that

> he is wanted by the authorities. I do not find that the appellant distributed leaflets for PJAK."

10. Here too it is hard to see that, in finding that it was implausible that the appellant would have been hidden by a family in the area where he was chased, the judge took into account that the area was a Kurdish village. The appellant's evidence did not suggest that the soldiers saw which house he had gone into. Again I take judicial notice that Kurdish villagers have been known to harbour their own.

11. Viewed in the round, the judge's assessment is not one that measures up to the respondent's own guidance on credibility assessment utilising well-established indicators. The only internal inconsistency relied on by the judge was not even relied upon by the respondent. The judge did not in terms rely on any insufficiency of detail. The preponderance of the judge's reasons for finding the appellant not credible related to lack of plausibility and, read as a whole, they relied unduly on this indicator. As analysed above there was a lack of any established objective comparison by reference to which the appellant's action could be said to lack plausibility.

12. For the above reasons I set aside the decision of the FtT judge for material error of law. Save for one matter, none of the judge's findings of fact can be preserved. The exception concerns nationality. The judge gave careful consideration to the evidence relating to the appellant's nationality, including the Sprakab report. The respondent in the first place did not adopt an express view on nationality – simply saying it was "unknown". Upon receipt of the judge's decision the respondent did not submit a Rule 24 response taking issue with the judge's finding that the appellant was a national of Iran. Mr Kotas conceded that in light of that failure the respondent could not now raise nationality as an issue. Accordingly the next FtT judge should proceed to determine the appeal on the basis that the appellant is a national of Iran.

13. To conclude:

- The decision of the FtT judge is set aside for material error of law.
- The case is remitted to the FtT (not before Judge Beg).
- The hearing will be a de novo consideration save that the judge's finding that the appellant is a national of Iran is to be preserved.

Signed Date: 25 May 2019

H H Storey

Dr H H Storey
Judge of the Upper Tribunal