Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07233/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 11 December 2018	**On 15 February 2019**

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

RKH
(Anonymity Order Made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Hodson, Elder Rahimi, Solicitors
For the Respondent: Mr Kandola, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iran born in 1991. He appealed against a decision of the respondent made on 27 May 2018 to refuse him asylum.

2. The basis of his claim is that he is a Sunni Muslim of Kurdish ethnicity. His father was a supporter of the KDPI and was killed by the authorities when the appellant was very young. The appellant's own involvement with the KDPI came about as a result of his friendship with a man called Davoud.

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Despite initial unwillingness because of what had happened to his father long before, he agreed to meet up with Davoud in July 2015 to distribute leaflets for the KDPI. As they were doing so in the evening, Davoud was captured by the authorities. The appellant managed to run to a friend's house. Soon after arrangements were made for him to leave Iran.

3. The respondent did not accept that the appellant was involved with the KDPI or that he faced adverse attention from the Iranian authorities.

4. He appealed.

First tier hearing

5. Following a hearing at Hatton Cross on 9 July 2018 Judge of the First-Tier Tribunal Manyarara dismissed the appeal.

6. Her findings are at paragraph [33]ff. First, it was "*not credible that despite taking such a firm position about not wanting to be involved with an organisation that he attributes his father's death to, the appellant would have involved himself in propaganda activities*" [33].

7. Second, he had not maintained a consistent account about the nature of his association with the KDPI. At screening interview he said he was a "*member*", but at interview said he was a "*supporter*" [34-35].

8. Third, his account of being apprehended by the soldiers while distributing leaflets lacked credibility. He said at interview it had, at the time, been dark, but information relied on by the respondent established it would not have been dark.

9. He sought permission to appeal which was granted on 2 November 2018.

Error of law hearing

10. At the error of law hearing before me Mr Kandola agreed with Mr Hodson for the reasons raised in the application that the decision showed error of law such that the case must be heard again.

11. I also agreed.

12. The judge dismissed the appeal on the basis of three adverse credibility findings. On the first, what led to the appellant deciding to become involved in the KDPI, her finding at [33], namely, that "*upon meeting a friend known as Davoud, he took the decision to be involved in advertising KDPI propaganda,*" was inadequate. The appellant indicated at interview and in his statement that he had known Davoud since childhood and as such Davoud had often spoken to him about the Kurdish cause and issues; there was no single chance meeting as opposed to a natural process. At no point in making this (or any other adverse credibility finding) did the

judge refer to the contents of the appellant's statement. She failed to grapple with the specific account set out therein as to how he moved from a position when he was younger of following the advice of his family not to be involved in the KDPI to one in which he was finally persuaded by Davoud to assist at least in distributing leaflets.

13. As for the second adverse finding (whether he was a member or supporter of KDPI) in finding that he was a member, the judge relied wholly on a single entry in the Screening Interview Record (SCR) [4.1] in which the appellant was asked to explain briefly his reasons why he cannot return to Iran. The purported answer is crammed into the box provided on the form with several insertions and crossings out. The grammar and sense is uncertain in places. The word "*active*" has been inserted before "*member.*" It is inappropriate to treat the SCR without more as equivalent to the contents of the Asylum Interview Record. The difference between the use of the word "*member*" as opposed to "*supporter*" may be a matter of nuance and choice by an interpreter in giving the sense of what an appellant is saying in terms of being active for and/or involved with a political party. The judge took none of this into account. Nor did she take into account the guidance provided on the degree of reliance that can properly be placed on details of a SCR provided in ***YL (Rely on SEF) China*** [2004] UKIAT 145 (at [19]) to which the judge's attention was drawn. In that regard the judge failed to engage with the evidence on the circumstances of the SCR both before and after it was held; on the former that he had been forced to change his original solicitor and had not been through the SCR with his subsequent representative, on the latter that he had given a detailed account of the difficult journey he had undergone just prior to the conduct of the SCR.

14. Third, the appellant never claimed to have set his clock by the time when he and Davoud met. In his statement he said it was "*after 8pm*". In his AIR he said it was "*around 8.30pm in the evening*" [Q95] when he and Davoud started distributing leaflets. The Presenting Officer at the First tier hearing provided a chart which indicated that sunset in the area was around 8.50pm. In his statement he said they had been engaged in leafleting for "*about 15 minutes*" when the soldiers arrived. By that account it must have been "*evening*" as the appellant stated.

15. Further, the judge was wrong to find that the appellant had relied on the sun having set to explain how this enabled him, at [38], "*to remain discreet and escape.*" He never suggested this in his written accounts. His explanation was that it was his ability to run back into the maze of small side streets behind the bazaar which allowed him to escape.

16. In addition, the appellant did not claim that he had, at [38] "*managed to outrun the jeep*" despite being "*in the vicinity*" when Davoud was arrested. He never claimed to be pursued by "*the jeep*" (referred to as a pickup in his statement). Further, when Davoud was stopped by the soldiers (who had got out of the pickup) the appellant's claim is that he

was at the other end of the bridge and able from there to double back into the streets at that end.

17. The judge materially erred by failing adequately to engage with and analyse the evidence. As a result her decision shows inadequate reasoning.

18. By consent the decision was set aside to be remade. It was agreed that the case be remitted to the First-Tier Tribunal for a de novo hearing. This is because entirely new findings are required on all material matters.

Decision

19. The decision of the First-Tier Tribunal is set aside. The nature of the case is such that it is appropriate under section 12(2) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2 to remit to the First-Tier Tribunal for an entirely fresh hearing. No findings stand. The member(s) of the First-Tier Tribunal chosen to consider the case are not to include Judge Manyarara.

20. An anonymity order is made. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. Failure to comply with this order could lead to contempt of court proceedings.

Signed Date 14 January 2019
Upper Tribunal Judge Conway