Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10490/2018

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
on 22nd February 2019	**On 18th March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DEANS

Between

MR BAHMAN MAWLANI
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr B Price, Latta & Co, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision by Judge of the First-tier Tribunal Agnew dismissing an appeal on protection and human rights grounds.

2. The appellant is a national of Iran of Kurdish ethnicity. His claim for protection is based upon the following. In order to supplement the income of his family farm he became involved in smuggling goods across the border from Iraq to Iran. He was asked by a friend, Hama, to bring in packages for the Kurdistan Free Life Party (PJAK). He did this 6-7 times over two years. He did not know what was in

the packages as they were sealed. The appellant was not a member of PJAK and had no interest in politics.

3. In early August 2017 the appellant was telephoned by his father to inform him that Etela'at had raided the family home. Hama had been arrested and had informed the authorities that the appellant was transporting PJAK leaflets across the border. The appellant did not return home and his family made arrangements for him to leave Iran illegally. The appellant arrived in the UK on 12th March 2018. Since arriving in the UK he has been involved in a demonstration outside the Iranian Embassy.

4. The Judge of the First-tier Tribunal did not believe the appellant's evidence. The appellant sought to challenge her adverse findings in the application for permission to appeal. Permission to appeal was granted principally on the basis that it was arguable that the credibility findings made by the judge were not soundly based.

Submissions

5. At the hearing before me Mr Price indicated that he relied upon all the grounds in the application for permission to appeal. He submitted that the judge had listed all the negative factors affecting the appellant's credibility and none of the positive factors. There were errors in the negative factors on which the judge had relied. At paragraph 19 of the judge's decision she stated that it was extremely unlikely that Etela'at would have left the appellant's family home and allowed the appellant's father to warn him by telephone not to return and then to go to the appellant on the same day with the means for escaping from the country. Mr Price contended that the judge saw Etela'at as competent and efficient. Etela'at was ruthless but how competent was it?

6. Mr Price referred to paragraph 22 of the decision, where the judge quoted from a Home Office report of July 2016. This was about how the family would be treated of a person who was caught with a KDPI flyer. The report stated that the family would be harassed until the wanted person showed up. Sometimes a family member would be detained and interrogated and if the person escaped the authorities would interrogate the family and sometimes a family member would be detained and tortured. Mr Price submitted that the judge had ignored the word "sometimes" where it appeared in this account. Not all family members would be detained straightaway but the judge had read this as if Etela'at would always detain and harass family members.

7. Mr Price then turned to the judge's treatment of the appellant's claim to have been engaged in smuggling. The judge did not consider this at all and made no assessment of the risk to the appellant from this activity.

8. Mr Price then addressed the judge's treatment of the appellant's *sur place* claim. The judge accepted that the appellant had attended a protest in London and had been photographed holding a Kurdish flag. The judge said this was an opportunistic act and the appellant would not be identified by the Iranian authorities. The judge did not follow BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36. It did not matter if the act was opportunistic and the appellant attended only once – this would not prevent him being identified as an activist.

9. Mr Price submitted that on the proper application of BA the appeal should be allowed outright. It was emphasised, however, that the appellant relied on all the grounds in the application, especially those relating to the credibility findings.

10. Mr Matthews began by pointing out that the judge had taken into account a positive factor affecting the appellant's credibility. This was that the appellant had no real interest in politics but was sympathetic to the Kurdish cause. The appellant had been asked to help his friend Hama. It was a much greater risk than ordinary smuggling for the appellant to handle political material. Why would the appellant have put his family at risk by doing this? It was said that the appellant should not be expected to speculate on what Etela'at might do. The appeal was heard by an experienced judge, who was entitled to find that Etela'at was not so incompetent as it was said to be in this case. The judge referred to background evidence on the risk to the appellant's family. The appellant was not entitled to "cherry pick" the background evidence. The judge was making the point that the appellant had done nothing to contact his family since leaving Iran. A person involved with PJAK would be treated no differently from a person involved with KDPI. The appellant had not taken any interest in the fate of his family.

11. Mr Matthews continued by referring to paragraph 25 of the decision, where the judge commented on the appellant's ability to provide the international dialling code for Iran. The judge rejected the appellant's explanation for how he knew the code, namely that he had heard other people say it when dialling Iran. In any event this showed that the appellant had friends who were in contact with people in Iran and the appellant could have attempted through them to obtain news of his family. Mr Matthews contended that paragraph 4 of the application for permission to appeal did not accurately represent the judge's position on this point.

12. The next point Mr Matthews addressed was about the length of the appellant's journey to the UK. In a statement made on 15th June 2018 for his Preliminary Information Questionnaire the appellant added 3 months to his previous account of his journey to

the UK. At paragraph 28 the judge pointed to the gap of 3 months in the appellant's account of his journey given at his screening interview on 13th March 2018 and in his amendments to the screening interview submitted on 5th July 2018. The judge pointed out that the appellant attempted to fill this gap by adding a 3 month period to his journey in the statement with his Preliminary Information Questionnaire, referred to by the judge as Preliminary Information Form. Even if the judge made an error in relation to this, Mr Matthews submitted it was not material to her decision.

13. In relation to the appellant's smuggling, Mr Matthews submitted that the alleged risk to the appellant arose from smuggling political material, not smuggling goods. It was pointed out that if the appellant's evidence on smuggling material for PJAK was found not to be credible, there was no other basis in the appellant's evidence through which the authorities would have become aware of his involvement in smuggling.

14. Turning to the appellant's involvement in a demonstration in the UK, Mr Matthews submitted that the appellant had been a demonstrator, not an organiser. His role was that of an "infrequent demonstrator", in terms of paragraph 66 of BA. There was no real risk of him being identified by the Iranian authorities and the Judge of the First-tier Tribunal had treated the issue correctly.

15. In response Mr Price referred to the background evidence on how the authorities treated families of Kurdish separatists. The appellant had described harassment of his family, which was consistent with the background evidence. According to this it was only sometimes that family members would be detained. The judge had erred in her approach to the background evidence. Mr Price referred to the grant of permission to appeal, in which it was pointed out that only reduced weight should be placed on the record of a screening interview, particularly where the matter in question did not relate to a core part of the appellant's claim. There was no finding by the judge on the appellant's evidence of having been a smuggler. Mr Price referred to background evidence on the risk to smugglers. The judge did not consider the future risk to the appellant from these activities.

16. I asked Mr Price about an earlier submission he had made, where he had said the judge had taken into account all the negative factors affecting the appellant's credibility but not the positive ones. Mr Matthews had referred to what he described as a positive factor which the judge took into account. This was that the appellant had no real interest in politics but was sympathetic to the Kurdish cause. I asked Mr Price to tell me what the other positive factors were which should have been taken into account. Mr Price responded that these were, first, that the appellant's evidence was consistent

with the background evidence, in terms of paragraph 339L of the Immigration Rules, and secondly, if I understood Mr Price correctly, the general credibility of the appellant's account as a whole.

Discussion

17. I will begin my consideration with the supposed risk to the appellant from the demonstration the appellant attended in the UK. Here I broadly agree with Mr Matthews that overall the judge considered this matter properly in accordance with the country guideline case of BA. As the judge points out at paragraphs 38-41, at this demonstration the appellant was not an organiser, mobiliser or leader but a member of the crowd. He had his photograph taken holding a flag. The demonstration received newspaper coverage. According to the judge's earlier findings, the appellant was not known to the authorities in Iran as a committed opponent or someone with a significant political profile. While the authorities in the Embassy did sometimes monitor demonstrations and the appellant had been in a prominent position holding a flag at the front of the crowd, the authorities could not monitor all returnees who had been involved in demonstrations. Any risk to the appellant from his involvement in the demonstration did not meet the standard of a real risk. I would add that the judge may have placed too much emphasis on the appellant's motive for participating in the demonstration but nevertheless her conclusion is adequately supported.

18. I will turn next to the judge's assessment of the risk to the appellant as a smuggler. Here it is important to note that according to the appellant's evidence his involvement in smuggling came to the attention of the authorities only because he was carrying PJAK materials. The judge found that the appellant's evidence in this regard was not credible. There was no other alleged risk to the appellant at present arising from his involvement in smuggling. The background evidence to which I was referred to Mr Price, and which was referred to by the Judge of the First-tier Tribunal at paragraph 12 of her decision, showed that each year dozens of smugglers are shot by border guards while attempting to cross the frontier. Those who are caught face imprisonment varying from 6 months to 5 years. The appellant's evidence was though that the authorities had no knowledge of his involvement in smuggling apart from the his claim that after his friend in PJAK was detained he told the authorities of the appellant's involvement in carrying leaflets for PJAK. If this part of the appellant's evidence was disbelieved, then the authorities had no knowledge of any smuggling in which the appellant may or may not have been involved. This was not a matter on which the judge was required to make a finding. It was not material to the outcome of the appeal.

19. In his closing submission Mr Price suggested that there would be a risk to the appellant from involvement in smuggling if he returned to Iran. The basis for this submission was not clear. The judge's finding was that the authorities did not know the appellant was involved in smuggling, even supposing that he was. If there was a hint in Mr Price's submission that the appellant would take up smuggling after his return, this is of course not a matter on which the appellant could found his current claim for protection.

20. The next issue is the judge's reference to background evidence on how the authorities may treat members of the family of a Kurdish activist who has escaped. It is important to consider the context in which the judge commented on this. The context was that of the appellant's evidence that since leaving Iran he had made no attempt to contact his family either directly or indirectly. At paragraph 24 the judge wrote that even if the appellant did not want to telephone his family directly in case their calls were being monitored, it was not plausible or credible that the appellant would not have attempted to contact his family even through others to discover their fate and reassure them as to his own. The point the judge was making from the background evidence was not whether family members are always detained in these circumstances or just sometimes detained but that the appellant had shown none of the natural concern for his family which might be expected. According to the judge the appellant then further damaged his credibility by his knowledge of the international dialling code for Iran even though he claimed he had never used it. These were matters to which the judge was entitled to have regard and the judge's findings and reasoning in relation to them disclose no error of law.

21. There was further contention over the judge's approach to the circumstances of how the appellant became aware the authorities were looking for him. The judge took the view that it was "extremely unlikely" that Etela'at would have allowed the appellant's father to warn him not to return home and to allow him to go to his son to provide him with the means of escaping from the country. Mr Price submitted that although Etala'at have a reputation for being ruthless this did not mean they were rational or competent. The judge questioned at paragraph 20 whether Etela'at would have informed the family why they were looking for the appellant. This is an observation the judge was entitled to make. The judge also questioned whether Etela'at would have left the family to notify the appellant of what they had been told. The judge may have been venturing onto less firm ground at this point. However, in the succeeding paragraph the judge wrote that even "if this was what happened" the appellant had made no attempt to contact his family to see what consequences they might have suffered. The judge did not write, as Mr Price seemed to imply, that the appellant's family members would have been detained or

tortured, only that this could have happened. The judge did not misapprehend the country information on this point. Furthermore, the judge's observations about how Etela'at might be expected to have behaved when they came to detain the appellant were not free-standing but, as set out at paragraph 21, fitted into her larger concern about the lack of any attempt by the appeal to contact his family.

22. Concern was also raised about the judge's comments at paragraphs 15 and 16 about why the appellant would have exposed himself and his family to a considerable risk by helping PJAK. According to the application for permission to appeal the judge did not take into account the appellant's explanation that he was helping a friend and a neighbour and that although he had no particular interest in politics he had sympathy for the Kurdish cause. It was pointed out that the judge observed that the person the appellant was helping "was not a very close or trusted friend". For my part I find it difficult to see any part of the appellant's explanation which the judge failed to consider adequately. The judge did not accept that the appellant had explained sufficiently why he was prepared to take a risk to himself which might lead to detention and ill-treatment and even his execution, as well as a risk to his family. This was a view the judge was entitled to take.

23. The final issue for me to consider is the judge's treatment of the appellant's evidence about his journey to the UK. This is challenged at paragraph 5 of the application for permission to appeal, where it is stated: "At paragraphs 25-29, the Judge states that the Appellant has been inconsistent regarding his journey to the United Kingdom. In particular, at paragraph 28 the Judge states that the Appellant has filled a gap in his original account outlined in the Screening Interview in his "PIF statement". However, as the Judge notes, the PIF statement was dated 15th June 2018 and the gap appears as a result of amendments made on 5th July 2018. It is submitted as therefore impossible for a document dated 15th June 2018 to be an attempt to fill a gap in an account given on 5th July 2018, and therefore the Judge has erred in her consideration of the same."

24. I do not agree with the course of events as described at paragraph 5 of the application, quoted above. At paragraph 25 of her decision the judge points out that at his screening interview on 13th March 2018 the appellant said he left Iran on 5th August and described a journey to the UK lasting just under 16 weeks. At paragraph 27 the judge pointed out that the appellant said he left Iran on 5th August but he arrived in the UK on the 12th March. The appellant therefore had to account for a journey time of 7 months, not 15-16 weeks.

25. At paragraph 28 the judge referred to a Preliminary Information Form statement dated 15th June 2018 (the form in question is entitled Preliminary Information Questionnaire). It is in this statement that the appellant inserted a further 3 month sojourn in the house of an agent into the account of his journey, thus accounting for most of the missing period arising from his screening interview.

26. The appellant then on 5th July 2018 supplied the Home Office with amendments to his answers at the screening interview on 13th March 2018. These amendments, at Annexe E of the Home Office bundle, make no mention of the additional 3 month sojourn in the house of an agent referred to by the appellant in his statement of 15th June 2018, as pointed out by the judge at paragraph 26.

27. At paragraph 29 the judge records that at the hearing the appellant was asked how long his journey took. He was asked when he left Iran and when he arrived in the UK. The appellant said he was under the control of a people smuggler for 3 months. He then said that he was under the control of the smuggler until the day before he reached the UK. The judge very properly drew attention to the unsatisfactory nature of the responses given by the appellant at the hearing when asked about these matters. Not surprisingly the judge finds this damaging to his credibility.

28. The judge was fully entitled to found upon an inconsistency over journey time arising from the screening interview of 18th March and the statement of 18th June. When the appellant made the amendments of 5th July to his screening interview, the additional 3 month sojourn in the statement of 18th June was left entirely out of account. The discrepancies over the journey time were put to the appellant at the hearing before the First-tier Tribunal and he was unable to give a coherent and credible explanation. Far from making an error of law, the judge dealt with this matter fairly and fully. She even pointed out she made a mistake at the hearing by referring to a journey of 8 months rather than 7 months. She clearly did not consider that this minor slip affected the significant inconsistency in the appellant's answers.

29. Further points have been made to the effect that journey time does not go to the core of the appellant's claim and that limited reliance should be placed upon what is said at a screening interview. The discrepancy over journey time was not a minor matter, however, but a significant part of the appellant's evidence of his experiences. Furthermore, although the discrepancy may have originated at the screening interview, the appellant failed to explain it in his amendments of 5th July to his answers at the screening interview. At the hearing before the First-tier Tribunal he was asked to explain the inconsistency over his journey as

described in his statement of 18th June but he completely failed to give a credible and coherent explanation. The judge was entitled to regard this as damaging to the appellant's credibility.

30. The final point to which I shall refer is Mr Price's contention that the consistency of the appellant's account with the background evidence was in his favour. Even was there such consistency, however, the judge was entitled to treat this as outweighed by discrepancies in the evidence and it would not have been necessary to make explicit reference to this. It is apparent, however, that the judge had concerns about the plausibility of the appellant's account when weighed against the background evidence. This is shown by the judge questioning why the appellant would have taken the risk of smuggling PJAK material and why he would not have made any attempt, even indirectly, to inquire after his family.

31. I have considered in some detail the arguments made on behalf of the appellant to expose flaws in the findings made by the judge. Far from exposing such flaws, however, when scrutinised carefully these arguments reveal the strength of the judge's reasoning. The appellant has failed to show any error of law.

Conclusions

32. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

33. The decision dismissing the appeal shall stand.

Anonymity

No anonymity direction was made by the First-tier Tribunal. I have not been asked to make such a direction and see no reason of substance for doing so.

Fee award

No fee is paid or is payable so no fee award is made.

M E Deans
14th March 2019
Deputy Upper Tribunal Judge