Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number:** PA/10565/2016

THE IMMIGRATION ACTS

Heard at Glasgow
On 18 April 2019

Decision & Reasons Promulgated
On 30 April 2019

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

B K

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Katani & Co, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant identifies himself as a citizen of Iran and as a Kurd. His date of birth is variously recorded in the papers on file as 1 or 3 March 1992. He says that he arrived in the UK on 9 March 2016. He sought asylum on 23 March 2016.

2. The respondent refused the appellant's claim by a letter dated 16 September 2016. The respondent did not accept that the appellant is Iranian, that he left Iran illegally, or that he or his father had any connection to the Komala party.

3. FtT Judge Grace dismissed the appellant's appeal by a determination promulgated on 27 December 2017, on an adverse view of his credibility, apart from finding at [20] that he is from Iran.

4. The appellant's grounds of appeal to the UIT are set out in his application filed on 19 February 2018. In summary, they are as follows:

> 1. Failure to consider country information.
>
> The FtT's position was that it was not credible the appellant would be of interest to the Iranian authorities. That was not supported, or not adequately supported, by country information (the respondent's Country Information and Guidance, Iran: Kurds and Kurdish parties at 2.3.5 and section 11, produced by the appellant in the FtT) which confirmed that family members of those suspected of supporting Kurdish parties could be of interest and could be detained with serious repercussions.
>
> 2. Failure to give any, or sufficient, reasons.
>
> The FtT erred at [23 – 25] by failing to give weight to corrections made after interview, or by failing to give adequate reasons. Simply because the appellant signed the interview is not determinative that the record is accurate, otherwise there would be no need to give an appellant an opportunity to outline any errors once the record is read over to him. Further, and appellant is unlikely to be aware of any errors or omissions as he will be under the apprehension that his answers have been correctly translated and recorded.
>
> 3. Findings not supported, or adequately supported, by the evidence and / or falling into speculation.
>
> The findings at [32] … are not supported by the evidence … there was no evidence … that neighbours would phone the appellant directly.

5. Mr Winter submitted along the lines of the grounds. The main further points which I noted were these:

   (i) The judge in finding that the appellant would not be targeted as a family member overlooked the background evidence of that possibility. The finding that the incident did not happen at all was based on a false premise.

   (ii) The oversight was not rendered irrelevant by the adverse credibility findings, because it played a part in those findings.

   (iii) The inconsistency about whether his father put the blame on him was the only inconsistency found by the judge. Her other findings were all on plausibility.

   (iv) The correction to the interview was tendered very promptly, and not only after receipt of a refusal letter.

   (v) Grounds 1 and 2 together showed material error.

   (vi) Ground 3 might be of lesser force, but the grounds together required a remit to the FtT.

6. Mr Govan in his submissions drew attention to the specific passages from the interview on 12 September 2016 which are relevant to ground 2.

7. At Q/A 44, the appellant set out his claim that the *Etelaat* raided the shop where he worked with his father on a day when the appellant was not present. They seized material belonging to the Komala party, detained the appellant's father and two workers and tortured them. A neighbour telephoned the appellant's uncle, who telephoned him. Part of the information relayed to the appellant was that:

> … during the torture my father confessed that all the material belonged to his son and that is why the workers were released as innocent … my uncle told me that … I have been accused that I am the one to distribute the material for the party.

8. At Q/A 64, the appellant was asked why his father would blame him for having the materials. Having asked for the question to be repeated, he replied:

> Because I was very young and had just got married. Also, my dad knew it was a dangerous thing.

9. Asked to explain that, the reply recorded at Q/A 65 is:

> Why my father didn't blame me? (No why he did?) They did not belong to me all the materials belonged to my dad. Because I had a vehicle and the shop the authorities would not believe I was not involved, and they are very harsh when it comes to this kind of accusation.

10. At Q/A 66 – 68 the appellant said that his father confessed under torture that the materials were his, not the appellant's, that his father would not have given him up even if he had a link, and that he had not known that his father supported Komala.

11. In a letter from his solicitors dated 14 September 2016 the appellant seeks to identify errors in recording his answers. He says that the passage at Q/A 44 should read:

> … my father confessed that all the material belonged to my father and that is why the workers were released …

12. Mr Govan submitted that:

    (i) The judge carefully analysed the sequence of questions and answers, and was entitled to find that the appellant was caught out in a major inconsistency.

    (ii) The judge's further analysis was that within the terms of the claim, even as amended by the appellant, the authorities "had their man" and had no reason to pursue the appellant. That was specifically reasoned on the case before her, and was not undermined by the evidence founded upon in ground 1.

    (iii) The judge's more general finding was that the incident did not take place at all. Ground 1 showed no error in that.

    (iv) The finding challenged by ground 3 might be "slightly speculative", but the point was minor and not material.

13. In reply to the submissions for the respondent, Mr Winter drew attention to the CIG:

> 2.3.4 … even a person speaking out about Kurdish rights can be seen as a general threat. If the … regime catches a perceived sympathiser carrying out an activity perceived to be against the government, the consequences for him and his family can be … arbitrary arrest, detention and possible ill-treatment … *[see section 11]*
>
> 2.3.5 Family members of persons associated with a Kurdish political group are also harassed and detained … *[see section 11]*

14. Section 11, "Treatment of Kurdish political activists and family members", cites examples. It is suggested that family members may be arrested, but freed on bail after a while. Instances are given where family members are detained or punished in order to pressurise a wanted person to appear, or to divulge his whereabouts. However, the gist appears to be that family members are not targeted exclusively for those purposes, but more generally.

15. Mr Winter further submitted:

    (i) The correction to the interview was consistent with the replies recorded at Q/A 66 – 68.

    (ii) The low threshold for suspicion of Kurds and the likely extreme reaction of the authorities is further reinforced by *HB* (Kurds) Iran CG [2018] UKUT 00430.

16. I reserved my decision.

17. The potential for risk to extend to family members of Kurdish political activists is a major theme of the background evidence and of country guidance. It is well known to judges.

18. The appellant placed before the FtT 3 inventories of productions, plus further separate items. The item founded upon in ground 1 is one of 13 in a "bundle" running to 257 pages, followed by a "key passage index" running from pages 258 – 294. That is a deplorable surfeit of material. The key passage index itself is far too long and contains many matters irrelevant to this appeal. It includes but does not highlight section 2.3.5 of the CIG, and it does not include section 11.

19. I find on the file a skeleton argument provided for the appellant to the FtT. It is vague, and makes no reference to the passages founded upon in ground 1.

20. It has not been suggested that those passages were referred to in the oral submissions for the appellant as requiring specific evaluation.

21. The judge cannot reasonably be criticised for not selecting these passages for comment.

22. Ground 2 correctly states that signature of the interview record is not determinative, but the judge did not think that it was.

23. It is also correct that an appellant may not be aware of an error until a transcript is translated back to him on a later occasion, but that has

nothing to do with this case, where the discrepancy was an open issue at the interview.

24. At [22] the judge finds that 3 further statements at interview - (a) the warning to the workers to notify the authorities if they heard news about the appellant, (b) the raid on the appellant's house, and (c) the accusation that he was the distributor of subversive materials - were all consistent with his initial version not the later (and hence against the explanation of an error in recording his answer). No flaw has been suggested in that analysis.

25. At [23] the judge finds the answer at Q/A 64 weak and evasive. Again, no error has been suggested.

26. At [24] the judge finds that only when pressed did the appellant change his story, and at [25] that the purported amendment was "an attempt to distance himself from his earlier evidence that he subsequently found to be inconsistent with his later account".

27. The force of tendering an early correction is very much lessened when the inconsistency was one of the main topics of the interview, not a surprise waiting to be revealed.

28. The appellant has not shown that judge failed to give reasons, or adequate reasons, for her finding about the "correction".

29. The judge at [26] found that if the authorities were quick to release the workers in the shop where materials were found, that indicated the confession was believed and there was no interest in innocent parties. That is a reasonable view of the internal logic of the claim, which is not shown to be flawed by the generality of the evidence founded upon in ground 1. The judge makes similar points at [27] and [28].

30. At [29], the judge finds it incredible that on the limited information available the appellant's uncle could or would within an hour and a half arrange for the appellant, his wife and his child to go into hiding and to flee, and curious that the appellant's uncle would feel no need to hide. Such points are further developed at [30]. No criticisms have been made.

31. At [31] the judge makes the point challenged in ground 3. It is not a strong point, but it is within the realm of reason rather than speculation.

32. At [32 – 33] the judge sums up that even applying the lower standard of proof, the implausibilities and inconsistencies are such that the appellant has not established that there was any such raid as claimed. The grounds do not show that conclusion should be set aside for having involved the making of any error on a point of law. They resolve into no more than insistence, and selective disagreement on the facts. The decision of the First-tier Tribunal shall stand.

33. The FtT made an anonymity direction. There does not appear to be any real need for one, but as the matter was not addressed in the UT, anonymity is maintained herein.

24 April 2019
UT Judge Macleman