



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

Appeal No: PA/13891/2018

THE IMMIGRATION ACTS

Heard at Glasgow
on 2 August 2019

Decision and Reasons Promulgated
on 13 August 2019

Before

UT JUDGE MACLEMAN

Between

H

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr A Sirel, of JustRight Scotland, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant identifies himself as a Kurdish citizen of Iran, born on 8 July 2001. He says that he was involved with the KDPI, placing him at risk from the Iranian authorities on political and ethnic grounds. He also provided the respondent with evidence of intellectual impairment from an occupational psychologist. The respondent accepted that he is Kurdish but not that he is Iranian, was involved with the KDPI, or was of interest to the authorities. He was granted leave “within the rules”, based on the psychologist’s report and his best interests, for 30 months until 21 March 2021. He appealed to the FtT against refusal of his asylum claim. The FtT

found that he is Iranian, but that his claim was not credible, and he was not at risk on return. He now appeals to the UT.

2. This determination is to be read with the full details of the above contained in:
 - (i) The respondent's decision and reasons dated 17 September 2018.
 - (ii) The appellant's grounds of appeal to the First-tier Tribunal.
 - (iii) The decision of FtT Judge Mackenzie, promulgated on 25 March 2019.
 - (iv) The appellant's grounds of appeal to the UT, stated in the application for permission to appeal filed with the UT on 13 May 2019: A, "Vulnerability, expert medical evidence and witness evidence"; B, "Credibility, consideration of expert country evidence"; and C, "Country guidance".
 - (v) The grant of permission by the UT, dated 18 June 2019.
 - (vi) The respondent's response under rule 24, dated 28 June 2019.
 - (vii) The appellant's reply, dated 19 July 2019.
3. Mr Sirel relied on the submissions made to the FtT, the grounds of appeal to the UT, and the reply. He asked the UT to find (i) that the appellant was a vulnerable witness, (ii) that his case met the requirements of country guidance, so as to qualify for protection, and (iii) that the appeal to the UT should be allowed, and the decision of the FtT reversed, or alternatively remitted to the FtT. The further points which I noted from his submissions, largely following the grounds, were these:

On ground A:

- (i) The psychologist assessed the appellant as having extremely low intellectual functioning, in the lowest 1% of the population; memory in the lowest 1%; and independent living score less than 0.1%.
- (ii) The judge at [15, 16, 31 & 41] noted and accepted those findings. They were also accepted by the respondent, and therefore the oral examination of the psychologist, who had attended, was limited.
- (iii) The judge took account of a letter from a social worker (p.83 appellant's FtT bundle) but it was dated 9 May 2018, prior to the psychologist's report, which was dated 7 August 2018. At [42] the judge focused on the letter and at [44] rejected the submission for the appellant on the level of his ability to function. That ran counter to the report. It gave disproportionate weight to the letter. It should have been given no weight. The judge was bound to accept the conclusion in the report. She reached an irrational conclusion.
- (iv) Unfairness resulted from the psychologist's evidence not being taken orally in full.

Taking ground C next:

- (v) Even if the appellant's account of events in Iran was rejected, his identity as an Iranian Kurd, and the vulnerability established by the

psychologist's report, showed that he was liable to be taken advantage of, and so at risk from the authorities, applying country guidance.

On ground B:

- (vi) The judge gave no reason at [35] for finding the explanation in the expert report about payment for leaflets not credible and no reason at [37] for finding the report not to advance the appellant's case.
4. Mr Govan relied upon the rule 24 response, and submitted that the grounds amounted only to disagreement. I noted these points:
- (i) Irrationality was a high target. There was a range of evidence about the level of the appellant's disability, which the judge had to resolve.
 - (ii) It was particularly difficult to reconcile the assessment that the appellant was in the bottom 0.01% for independent living with his own account at interview and elsewhere in his evidence of his activities, including departure from Iran and travel to the UK.
 - (iii) The judge considered all the evidence about the appellant's functioning, and treated him as a vulnerable witness, making multiple references to his difficulties.
 - (iv) The findings on the appellant's account were largely on implausibility, not on inconsistencies which might derive from his intellectual problems.
 - (v) The psychologist did not suggest that the appellant would be in difficulty giving a truthful account of himself, or answering straightforward questions.
 - (vi) Nothing in the country guidance suggested that intellectual impairment, and being Kurdish, presented a risk, if there was nothing more to give rise to suspicion, such as a link to illegal political parties.
 - (vii) There was no procedural unfairness in the brevity of the examination of the psychologist.
 - (viii) Ground A was well short of showing irrationality.
 - (ix) The country expert report was almost entirely recital of background evidence. It said very little about the circumstances of the appellant. What it did say was at [88] and [90], two short passages in a lengthy document, and essentially speculative, an observation properly open to the judge at [35]. The judge's comment at [37] had to be read in that context.
 - (x) The decision of the FtT should stand.
5. I indicated in course of submissions that the hint at procedural unfairness in ground A disclosed no error, and that ground C failed to show anything in the country guidance to support the appellant, absent favourable credibility findings. Beyond that, I reserved my decision.

6. The appellant was treated throughout as a vulnerable witness; his difficulties are to the fore of the judge's assessment; and she accepted that his functioning is impaired, and he receives a high level of support.
7. It is difficult to see where ground A might take the appellant. His asylum case did not turn on precisely where he is to be placed on the intellectual scale.
8. The appellant does not show that if the judge thought his intellectual abilities to be even lower than she did, that might have improved the credibility of his claim. The reverse might have been the case.
9. The appellant does not show that anything might have been gained from a lengthier examination-in-chief of the psychologist. For all that has been said, that would not have amounted to more than reading her report aloud, and it is plain that the judge paid thorough attention to the report.
10. On the appellant's intellectual functioning, the evidence presented a conundrum. It is difficult to reconcile an assessment of someone as falling within the bottom 0.1% for living independently with the history he gave; with his giving evidence without any obvious difficulty, [9 & 33]; and with showing some practical skills, despite his problems. The judge at [44] reached an assessment well within her scope, giving clear and sensible reasons. It goes much too far to say that the report obliged her to conclude otherwise. Further, as I have said, it is not shown that this was the crux of the case. A different assessment, within the available range, would not have changed the outcome.
11. On ground B, at first sight the last sentence of [37], "I do not find that anything in the expert report ... alters my assessment of the core of the appellant's account", comes perilously close to the structural error of reaching a conclusion before looking at all the evidence, and of asking only whether an expert report changes it; in other words, putting the cart before the horse. However, that is not what the ground aims at, but at absence of reasons. There was substance in the answer by Mr Govan, namely that the report is almost entirely on general background, hardly at all on the appellant, and [35] of the decision is accurate and sensible on the little that is specific. Ground B shows no inadequacy of reasoning.
12. The appellant's two final points were that the psychologist's report should have been taken as the last word on his level of cognitive functioning, and that amounted to a conclusive risk factor in terms of country guidance. He would need to succeed on both. His case has been pressed as keenly as it could be, in the FtT and in the UT, but he has not shown that the FtT's resolution of either of those issues involved the making of an error of law.
13. The decision of the First-tier Tribunal shall stand.
14. The FtT made an anonymity direction, which is maintained.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

7 August 2019
UT Judge Macleman