Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: PA/02107/2019 (P)

THE IMMIGRATION ACTS

Decision under Rule 34
On 11th June 2020

Decisions & Reasons sent out on
On 18th June 2020

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

SK
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Optimus Law
For the Respondent: Home Office Presenting Officers Unit

DETERMINATION AND REASONS (P)

1. An anonymity direction was not made by the First-tier Tribunal ("F*t*T"), and although no application is made, as this a protection claim it is appropriate that a direction is made. Unless and until a Tribunal or Court directs otherwise, SK is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This

direction applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

2. On 29th April 2020 I issued directions to the parties setting out my provisional view that in this case it would be appropriate to determine whether the making of the First-tier Tribunal's decision involved the making of an error of law, and if so, whether that decision should be set aside, on the papers. I set out directions giving the appellant an opportunity to submit further submissions in writing to support the assertion that the decision of the First-tier Tribunal is vitiated by an error of law. The directions also provided an opportunity for the respondent to respond in writing, and, for the appellant to file and serve any further reply.

3. In response to the directions issued by me, the appellant's representatives have provided written submissions dated 12th May 2020 settled by Mr Tony Muman. The respondent provided a written skeleton argument in response, dated 19th May 2020.

4. Neither the appellant nor the respondent has expressed any view as to whether the Tribunal should make its decision without a hearing and neither party identifies any procedural unfairness that arises in the event that a decision is made without a hearing. I am satisfied that it is in accordance with the overriding objective and the interests of justice for there to be a timely determination of the question whether there is an error of law in the decision of the FtT, and that it is entirely appropriate for the error of law decision to be determined on the papers, to secure the proper administration of justice. For the avoidance of doubt, in reaching my decision I have taken into account the matters set out in the appellant's grounds of appeal and the written representations made by the parties in response to the directions. I am grateful to the parties for their positive engagement with the directions issued.

5. The appellant, a national of Iran, appealed the respondent's decision of 6th February 2019 to refuse to grant him asylum and humanitarian protection. His appeal was dismissed for reasons set out in the decision of Judge N M K Lawrence promulgated on 29th August 2019.

6. The background to the claim for international protection is summarised at paragraph [8] of the decision of the FtT. The appellant fears that he would be at risk upon return because of his relationship with a girl, who I shall refer to as S, because of his perceived association with the KDPI and because of his *sur place* activities in the UK.

7. Judge Lawrence accepted the appellant is an Iranian national. Beyond that, the judge found that the core elements of the appellant's case do not stand up to scrutiny even to the lower standard. The judge found the appellant was never politically active in Iran and found the appellant has no profile in Iran. The judge noted that in the 'Preliminary Information Questionnaire' the appellant had claimed that his girlfriend's brother is an Ettelaat agent, but now claims that he had never said that to his previous representatives. The judge considered the appellant's *sur place* activities in the UK and whether the *sur place* activities expose the appellant to a risk upon return. The judge noted, at [29], that the appellant has participated in demonstrations and has posted photographs on the internet. The judge states "*... It appears they have been reviewed but cannot be shown to have been viewed by the authorities in Iran".* The judge found the appellant does not have a significant profile in Iran and that being a Kurd in itself, would not lead to adverse attention on return. The judge found there is unlikely to be any adverse interest in the appellant after he has left the airport. The judge concluded the appellant has not demonstrated he is likely to be of adverse interest upon his return to Iran. The judge found that the appellant has not established to the lower standard that there are other factors which taken together with the appellants Kurdish ethnicity, create a real risk of persecution or ill-treatment contrary to Article 3.

8. The appellant advanced six grounds of appeal, and permission to appeal was granted by FtT Judge Holmes on 28th October 2019. In doing so, he noted that it is arguable that the judge misdirected himself as to the correct approach to the evidence of the appellant's *sur place* activities in the light of the current country guidance, and although the other grounds have less merit, they are nevertheless arguable. The focus of the appellant's written submissions is threefold. First, the judge erred in his assessment of the risk upon return as a result of the appellant's *sur place* activities. Second, the judge erred in his assessment of the claim advanced by the appellant and third, the judge applied the wrong standard of proof in reaching his decision.

9. The respondent accepts the judge erred in his approach to the appellant's *sur place* activity and how the appellant is likely to be treated at the airport on return. The respondent also accepts it is also unclear whether the judge regarded the appellant's *sur place* activities to be opportunistic or the result of a genuine conviction. The respondent however submits it was open to the judge to make an adverse credibility finding against the applicant and to reject the core account of the events that lead to the appellant's departure from Iran.

10. Having considered the decision of the judge for myself and the concessions made by the respondent, rightly in my view, I am satisfied that the decision of the FtT is vitiated by a material error of law and must be set aside. It is therefore unnecessary for me to deal with the remaining grounds of appeal at any length.

11. I have some sympathy with the respondent's submission that it was open to the Judge to reject the core account of the events that led to the appellant's departure from Iran. There appear to have been a number of inconsistencies in the evidence of the appellant and aspects of his account for which he provides an insufficient explanation. However, I am persuaded that the judge erred in his assessment of the evidence overall

such that it appears appropriate to set aside the decision with no findings preserved.

12. The appellant claims the judge erroneously rejected the appellant's claim that he did not refer to his relationship with S or the threat from her family during the screening interview because he had been asked to be brief and therefore did not feel compelled to mention S and the threat from her family. The appellant refers to the judgment of Lord Justice Moore-Bick in JA (Afghanistan) -v- SSHD [2014] EWCA Civ 450 in which the Court of Appeal held that the common law principle of fairness requires that a First-tier Tribunal has to consider with care the significance to be attached to answers given by an asylum seeker in screening or asylum interviews, that were recorded only by the person asking questions on behalf of the SSHD, particularly where an interpreter was required, or the asylum seeker was vulnerable by reason of age or infirmity. When he was asked during the screening interview to briefly explain all of the reasons why he could not return to Iran, the appellant had mentioned that he fears the Iranian Intelligence Service because they had found out that he was "joining the KDPI". The appellant claims the interview was completed whilst he was detained at Yarlswood IRC and having been forcefully fingerprinted and threatened in another European country, he was fearful of the UK authorities. He claims the screening interview did not give an opportunity for the appellant to expand his answers. The appellant refers to the observation made by Lord Justice Green in SB (Sri Lanka) -v- SSHD [2019] EWCA Civ 160, *at [12],* that the Screening Interview is a cursory exercise designed to collect basic information mainly for administrative purposes. The interviewing officer asks the scripted questions and therefore does not engage in significant supplementary questioning. That is undoubtedly correct but it is notable that there was no reference by the appellant to his relationship with S, or any threat from her family. Equally however, the appellant claims that it was his relationship with S that was the catalyst for his having to flee his home village and seek sanctuary at the KDPI headquarters. The appellant appears to claim that it was his presence at

the KDPI headquarters that has led to the authorities to perceive him as having joined the KDPI, a matter that he did mention in his screening interview.

13. At paragraph [16], the judge considered the appellant's claim that S's family had found out that the appellant was hiding in the KDPI headquarters, but he could not explain how her family had found out. The judge states "*In short, the appellant's evidence is that Ettalaat knows the whereabouts of KDPI headquarters".* The judge considered the background material and concluded that it is not credible that knowing the whereabouts of the KDPI, the Iranian authorities raided the appellant's home but have not raided the headquarters of the KDPI. I accept, as submitted by the appellant that the evidence of the appellant was not, as the judge summarised, that the "*Ettalaat knows the whereabouts of KDPI headquarters".* The evidence was that S's family had found out that the appellant was hiding in the KDPI headquarters. The fact that they may have found out that the appellant was hiding in the KDPI headquarters is not to say that they or the authorities were aware of the whereabouts of those headquarters.

14. The appellant also claims the judge failed to set out in his decision whether he accepts or rejects the appellant's account that the appellant had approached his girlfriend's family with a marriage proposal on five occasions. He claims the background material confirms that the topic of marriage is discussed and could lead to mutual acceptance or rejection. The judge addresses this aspect of the claim at paragraphs [17] to [19] of his decision. The judge refers to the answers given by the appellant in cross-examination and it seems, he accepted the submission made by the Presenting Officer that it is a question of 'family honour' to respect marriage arrangements made by families concerning females. Without determining whether he accepts the appellant's claim regarding the repeated approaches made by his family, accompanied by prominent members in the village to the family of S, the judge concludes at

paragraph [29] that this does not go to the core of the claim. The appellant's relationship with S, is in fact at the heart of the claim advanced by the appellant. As the judge set out at paragraph [8] of the decision, the appellant claims that he continued to meet S secretly and he was discovered by her brother and cousin. It was that the appellant claims, that caused the appellant to run away to his maternal uncle's house and subsequently seek sanctuary at the KDPI headquarters. The appellant's relationship with S was therefore an important part of the claim being advanced by the appellant.

15. I reject the appellant's claim that the judge adopted the wrong standard of proof in considering the claim for international protection. The appellant points to paragraph [37] of the decision of the FtT in which the judge concludes that the appellant has "not proved, on balance, that he is likely to face *"very significant obstacles"* in integrating in Iran. At paragraphs [5] and [6] of his decision the Judge correctly identifies the burden and standard of proof relevant to the claim for international protection. In addressing the claim for international protection, at paragraph [15], the judge plainly notes that the core elements of the appellant's claim do not stand up to scrutiny *"to the lower standard"*. This all demonstrates that in considering the claim for international protection, the judge did have in mind the correct standard of proof. At paragraphs [31] to [38] of his decision, the judge is clearly addressing whether removal of the appellant would be in breach of Article 8. The judge had concluded that the appellant is of no adverse interest to the Iranian authorities and at paragraph [37] was addressing the question that arises when considering the appellant's private life and whether there would be very significant obstacles to the appellant's integration into Iran. In a human rights appeal the appellant must satisfy the FtT, the balance of probabilities that removal would be in breach of Article 8.

16. Finally, the appellant claims the judge erred in failing to make a finding regarding the appellant's failure to claim asylum in France or Bulgaria and

the extent to which that was relevant to the assessment of credibility. There is not merit whatsoever to this ground. In giving its reasons, the FtT is entitled to focus on the principal issues in dispute between the parties. In JT (Cameroon) -v- SSHD [2008] EWCA Civ 878, the Court of Appeal confirmed that The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 s.8 was no more than a reminder to fact-finding Tribunals that conduct coming within the categories stated therein, had to be considered when assessing the credibility of an asylum seeker. Although it was open to the judge to have regard to the conduct of the appellant and any explanation provided, the Court of Appeal confirmed that s8 did not dictate that damage to credibility inevitably resulted.

17. In the end, the FtT's decision is to be read looking at the substance of the judge's reasoning and I am satisfied that the judge has failed to properly address the claim advanced by the appellant such that it is appropriate to set aside the decision with no findings preserved. I am satisfied the judge rejected the core of the account without properly addressing the claim being advanced and the appellant's evidence.

18. As to disposal, the assessment of a claim for asylum such as this is always a highly fact sensitive task, and in all the circumstances, I have decided that it is appropriate to remit this appeal back to the F*t*T for hearing afresh, having considered paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012. The nature and extent of any judicial fact-finding necessary will be extensive. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

Notice of Decision

19. The appeal is allowed. The decision of F*t*T Judge Lawrence promulgated on 29th August 2019 is set aside, and I remit the matter for re-hearing de novo in the First-tier Tribunal, with no findings preserved.

V. Mandalia
Upper Tribunal Judge Mandalia

11th June 2020