



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09144/2019

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 17 March 2020

Decision & Reasons Promulgated
On 22 April 2020

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

D. A. I.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Schwenk, Counsel, instructed by Freedom Solicitors

For the Respondent: Mrs R Petterson, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of Judge of the First-tier Tribunal T R Smith ('the Judge') sent to the parties on 18 November 2019 by which the appellant's appeal against the decision of the respondent to grant him international protection was dismissed.
2. Upper Tribunal Judge Finch granted permission on all grounds.

Anonymity

3. The Judge issued an anonymity direction and neither representative sought for it to be set aside. The direction is confirmed at the conclusion of this decision.

Background

4. The appellant is a national of Iran and an ethnic Kurd. He is aged 29. He asserts that having left school in year 4 or 5 he worked as a farmer and also in a shop. He then transported illegal goods, including alcohol, for approximately one year before leaving Iran as his family required money.
5. Four months before he left Iran a cousin approached him and asked if he would transport political material on behalf of the Democratic Party of Iranian Kurdistan ('KDPI'). He agreed to, not because of politically held beliefs but because he would be paid. He smuggled political materials on four occasions.
6. He asserts that in September or October 2017 he was ambushed by Revolutionary Guards whilst travelling with his goods. He left the goods and fled. He stayed with a friend for ten to fifteen days and during this time his uncle informed him that the authorities had visited his home looking for him. The appellant left Iran with the help of an agent. He clandestinely arrived in the United Kingdom on 7 March 2018 and claimed asylum. The respondent refused the application for international protection by a decision dated 8 September 2019.

Hearing before the FtT

7. The appeal came before the Judge sitting in Bradford on 31 October 2019. The Judge dismissed the appeal having found the appellant incredible as to his personal history of persecution. The Judge found that it was plausible that the appellant might have been involved in smuggling to supplement his income but did not accept that he had been engaged in the smuggling of political literature reasoning, *inter alia*:

“66. On the Appellant’s account he smuggled literature for the KDPI on four occasions. The Appellant’s account as to why he smuggled KDPI literature was contradictory. On the one hand he said he did it simply for the money, but before me, said he was ready to do anything to assist Kurdish rights. As Ms Hopkinson submitted the Appellant statement before me that ‘as long as I am alive, I will fight’, in reference to Kurdish rights, did not sit comfortably with his initial account. I found this submission to have some weight.

67. I also noted that despite the Appellant’s apparent commitment to the Kurdish cause, when he was interviewed by the Respondent, he said in his AIR that he had no links to any political party and didn’t support political parties (question 82). The contradictory account was a factor that I gave some weight to in adversely assessing the Appellant’s credibility.

68. I find force in the submission of Ms Hopkinson that the description given by the Appellant as how he was recruited to help the KDPI was not consistent with the external evidence which suggested that there was a

period of close scrutiny and vetting before a person was trusted (refusal letter paragraphs 38 and 39). Further the Appellant's own account was that he was not a supporter and had no interest in politics at the time (AIR 81 and 156) and thus I did not accept that he would have been of interest to the KDPI as a recruit.

69. Connected to the above point the Appellant could not satisfactorily explain in cross-examination why if he was a supporter of Kurdish rights his cousin had not asked him to join the KDPI. His answer was that he didn't have the time. Again, I did not find this explanation credible given the Appellant's contention that he was always a strong supporter of Kurdish rights. Again, this was a factor I gave some weight in adversely affecting the Appellant's overall credibility.
 70. I did not find it plausible that the Appellant's cousin would pay the Appellant to smuggle literature for the KDPI when he himself was a smuggler. The Appellant's explanation for this was vague and unconvincing when put to him. It also contradicts the external evidence set out in the Respondent's refusal letter (paragraph 39) that sympathisers would distribute political material on a voluntary basis."
8. At [75] of the decision the Judge did not accept that the appellant had been engaged in the smuggling of alcohol. He reasoned that the appellant's account lacked detail and at times was not plausible.
 9. The Judge rejected the appellant's account as to his being at risk of persecution in Iran:
 - "76. The Appellant did not suggest that any action had been taken against his family who remain in Iran and which consisted of his mother, father, brother and sister. His account, at the highest, was that when (sic) the Pasdars searched the family house and threatened to his family (AIR 132). However, the external evidence points to the fact that families of those who are considered by the Iranian authorities to be political activists are targeted and at the very least repeatedly harassed and frequently arrested: (CPIN - Iran Kurds, January 2019, A1 page 169). The discrepancy with the objective external evidence is a factor that I give considerable weight to in adversely assessing the Appellant's credibility.
 77. The Appellant's case was that his uncle remained in Iran and he had been told that an arrest warrant had been issued against him. The Appellant was asked what steps he [had] taken to obtain that document, for example his uncle sending him the document in the United Kingdom. The Appellant contended that he had lost touch with his uncle because he lost his mobile phone. However, he accepted he had not reported the loss of the phone to the police. He was also to later say in his evidence he had access to a phone in order to engage in Facebook postings. The Appellant then gave another account as to why he could not obtain a copy of the arrest warrant. He said he could have contacted his uncle via an Internet café and did so but never thought to ask him about obtaining a copy of the arrest warrant. The Appellant's account as to what steps he had taken to obtain the arrest warrant was inconsistent and this was a factor I gave some weight to in adversely assessing the Appellant's overall credibility."

10. The Judge concluded as to the appellant's history in Iran:

"78. The Appellant's whole account of why he was now supporting the Kurdish cause was implausible and I preferred the submission of Ms Hopkinson that in effect the Appellant had engaged in activities in order to bolster his asylum claim. This was a factor I weighed against the Appellant in assessing his credibility.

79. Having considered the evidence in detail, I have gone on to consider it in the round by weighing those factors that tell both for and against the credibility of the Appellant. Having done so I am not satisfied that there is at least a reasonable degree of likelihood that the Appellant has given a truthful account of the circumstances that led him to come to the United Kingdom."

11. The appellant informed the First-tier Tribunal that he was politically active in pro-Kurdish politics in this country and had attended demonstrations outside the Iranian Embassy in London on three occasions from September 2018 onwards. The Judge observed at [86] that evidence placed before the Tribunal confirmed that one of the demonstrations said to have been attended by the appellant was actually held in Manchester. The Judge concluded as to the appellant's attendance at these demonstrations:

"88. The Appellant explained his level of involvement in demonstrations in his AIR (question 157). It is important to put the evidence in context. The AIR took place in August 2019 and at that stage the Appellant had attended two demonstrations on his evidence. He was asked in his AIR if he was involved in any Kurdish political party since he arrived in the United Kingdom and answered as follows 'no I only participated in commemorating one of the leaders deaths in London three or four weeks ago and also last year I participated in two events but nothing to do with the parties'. In the letter from the Appellant's solicitors, 19 August 2019, seeking to 'clarify' the response his solicitor said the Appellant had attended an event commemorating the death of Dr Ghassemiou and another event seeking the release of Abdullah Ocalan and called for the release of a prisoner due to be executed (R1 page 51). I found the contemporaneous account given by the Appellant in his AIR to be a better reflection of his involvement, commitment and understanding of his attendance.

89. The Appellant was not the organiser of any of the demonstrations.

90. The Appellant was not an activist within the demonstrations, for example carrying a loudhailer on leading chanting.

91. The Appellant was simply a member of the crowd.

92. The Appellant did not suggest that he had had any information that Iranian agents or informers were mingling with the crowds at the three demonstrations he said he attended.

93. I do not accept the Appellant's evidence that he believed there were people with cameras filming the protests (witness statement paragraph 18) because I did not find the Appellant to be a credible witness. The Appellant

did not produce credible external evidence to show demonstrations outside the Iranian embassy were always filmed.

94. The Appellant claimed he had burned the Iranian flag but, on the photographs, shown to me I did not see evidence that he had done so. Indeed, no direct evidence was placed before me that the Appellant actually appeared in the photos, although I am prepared to infer that the Appellant does bear a marked similarity to one demonstrator in some of the photos. I did note in one photograph there appeared to be an image of a person who could have been the Appellant who appeared to be burning a piece of paper but the paper was so badly burnt it was not possible to determine what it originally said (A1 page 26).
 95. The theme of the demonstrations appears to be protesting as to the position of the Kurds in Iran and their ill-treatment.
 96. There was no cogent evidence before me that any of the demonstrations were reported in the news media.
 97. The Appellant did not claim he had given interviews to the news media in any format."
12. The Judge further determined that the appellant's entries on his Facebook page did not establish a well-founded fear of persecution to the required standard:
- "104. Given the possible risk such posts might expose him or his family to, he could not explain to me why he would not use a privacy setting, particularly as he has family in Iran.
 105. I asked the Appellant why he could not delete his posts. No evidence was placed before me that posts once deleted could be viewed by a third party. The Appellant sought to avoid the question and I had to put it to him again. He eventually claimed he was so committed to the Kurdish cause he would not do so. I did not believe him. The Appellant could easily delete the posts such as to reduce risk if returned to Iran."

Grounds of Appeal

13. The appellant advances two grounds of appeal with the first being subdivided into several challenges as to the Judge's approach to credibility.
14. Ground 1 details that the Judge's findings as to appellant being incredible on core issues were erroneous in law.
15. Ground 2 complains that the Judge erred in law when rejecting the appellant's sur place pro-Kurdish political activities as being implausible.
16. In granting permission to appeal, UTJ Finch observed, *inter alia*:

'In paragraphs 66 and 67 of his decision the Judge failed to take into account the fact that the appellant had consistently explained that he was motivated as a Kurd to assist by smuggling literature for the KDPI. There was also evidence to suggest that the KDPI had tried to recruit the appellant. The appellant also gave a detailed account of his smuggling activities in his asylum interview.

The objective evidence indicated that arrest warrants were not handed to an accused or his family. For these and other reasons raised in the grounds of appeal, the credibility findings made by the Judge were unsustainable in the light of the evidence before him.

It is also arguable that a person can have a political opinion without belonging to a political party and that the Judge failed to take into account the decision in HB (Kurds) Iran CG [2018] UKUT 00430 (IAC).'

17. No Rule 24 response was filed by the respondent.

Decision on Error of law

18. Before me Mrs Petterson candidly confirmed the respondent's position that when considered cumulatively there was insufficient reasoning by the Judge to justify the conclusions reached. She accepted that the grounds of appeal raised appropriate concerns as to the Judge finding contradictions as to certain elements of the appellant's evidence in circumstances where it could be said that the appellant was referring to different issues, and so was not contradictory in his evidence.
19. She further accepted that the Judge failed to give adequate reasoning at [70] as to why the appellant's explanation as to his cousin paying him to smuggle literature for KDPI was vague and unconvincing in circumstances where the decision does not record the appellant being expressly asked a question on this subject, nor if it was asked an answer being recorded.
20. Mrs. Pettersen informed me that consideration had been given by the respondent as to whether some elements of the decision could be preserved, but the conclusion reached was that when considered in the round it would not be safe to do so. The respondent accepted that cumulatively there is insufficient reasoning to permit the decision to safely stand. In such circumstances the respondent accepted that the appellant should succeed in his appeal to the extent that the decision of the Judge is set aside.

Re-making the Decision

21. Both representatives agreed that it would be appropriate for this appeal to be remitted back to the First-tier Tribunal so that a credibility assessment could be undertaken. I am in agreement that this is the most practical course because as the present time the appellant has not enjoyed a fair hearing as to the consideration of his asylum appeal.

Notice of Decision

22. The decision of the First-tier Tribunal involved the making of an error on a point of law and I set aside the Judge's decision promulgated on 18 November 2019 pursuant to Section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007.

23. This matter is remitted to the First-tier Tribunal for a fresh hearing before any Judge other than Judge of the First-tier Tribunal T R Smith.
24. The hearing of this appeal is transferred to the First-tier Tribunal sitting in Manchester.
25. No findings of fact are preserved.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

26. Unless the Upper Tribunal or a court directs otherwise no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings.

Signed: *D O'Callaghan*

Upper Tribunal Judge O'Callaghan

Date: 31 March 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days, if the notice of decision is sent electronically).
3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically).
4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days, if the notice of decision is sent electronically).
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent’ is that appearing on the covering letter or covering email