



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/09424/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 27 April 2021  
Extempore

Decision & Reasons Promulgated  
On 12 May 2021

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

A R  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms M Chaggar, instructed by Fountain Solicitors (Walsall)  
For the Respondent: Mr T Melvin, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge Watson promulgated on 18 March 2020 dismissing his appeal against a decision by the Secretary of State to refuse his asylum claim and to refuse his human rights claim. Although the appellant's age was formerly in dispute it is now accepted that he was born on 16 May 2001.
2. Broadly, the appellant's case is that he is an Iranian Kurd, which is not in dispute, that he and some of his friends were involved in supporting the Partiya Jiyana Azad a Kurdistanê ("PJAK") by delivering leaflets and one night when they were out a policeman was killed in the area where they were delivering leaflets. Although the appellant had nothing to do with this incident his home was raided and he was suspected of involvement. His friend with whom he had been delivering leaflets was arrested and was found to be in possession of a firearm. The appellant was able, he says, to avoid arrest as although police raided the family home he in fact was staying with his sister and his father contacted him, arranged for an agent to facilitate his departure and flight from Iran overland and he left later that day.
3. The Secretary of State did not accept the appellant's account, did not accept what had happened to him, did not accept there had been a raid nor was she satisfied that he had been delivering leaflets for PJAK.
4. The judge heard evidence from the appellant and found that the appellant's core account was consistent in the main albeit he was so lacking in detail that it was difficult not to attain consistency. She noted his account that he had been delivering leaflets at midnight to 2am, that he then returned to his sister's house and that at 9am in the morning his father came to the sister's house and told them that their own home had been raided and a policeman had been killed earlier in the day and he had been suspected of involvement and a friend of his had been arrested. The father did not know why he was suspected but speculates that his name may have been given by the friend who was arrested.
5. The judge expressly said that she thought there was no damage to the appellant's credibility by not having claimed in a safe third country but in essence found the core account of the raid to be implausible.
6. The judge found that it was clear from the external evidence that action against family members of those suspected of involvement in anti-government politics is severe and added to this the murder of a policeman the account that the appellant gives is not credible, it not being plausible that the police seeking the murderer of one of their colleagues had sufficient knowledge to raid the family home very swiftly after the claimed killing but then did not seek the suspect at his known sister's home which is nearby, that it was not plausible that there would be no attempt to search cars in the area and that the appellant could leave so straightforwardly.
7. Further, she did not find it plausible that the appellant's father, who is said not to know anything about his claimed activities, would be able to raise what must be a

large sum of cash to pay for the agents within a few hours of the house being raided and arrange for the appellant's flight. She stated:

"This account is not consistent with the background evidence before me and whilst acknowledging the consistency of the account given by the appellant this cannot make the incredible credible"

but the judge also directed herself as to the dangers as to importing her own social and cultural background into the assessment of credibility and that she had not discounted the possibility of the appellant's account delivering leaflets with little knowledge of the group to be plausible.

8. The judge did find one minor inconsistency which she found would not have been determinative. The judge then went on to dismiss the appeal, stating:

"I have accepted explanations given for a major inconsistency and have not found that this has tainted his account. However looked at in the round I find the account not credible."

9. The appellant sought permission to appeal on the grounds that the judge had erred in rejecting the account of a police raid on the family home on plausibility grounds and that this amounted to improper speculation as was the finding that it was implausible that the police did not search the sister's house. It is also submitted that the father's ability to raise the money involved was a subjective matter and not objective and was not supported by background evidence. It is said that the findings are thus flawed and not sustainable.
10. In her submissions before me Ms Chaggar accepted that the background evidence did show that the family members of those suspected of involvement in PJAK and other Kurdish groups are harassed but submitted that in her assessment of plausibility, the judge had erred in not taking into account an important point in the appellant's evidence, which was that he had gone to the sister's house and that there was no evidence to suggest that the authorities would have known of the sister's house. Ms Chaggar also submitted that there was insufficient evidence to show that the sister would have been known to the police or that they would have gone to her home. With regard to raising money she submitted that there was no background evidence as to ability to raise funds and that the assessment was purely subjective.
11. Mr Melvin submitted relying on his Rule 24 letter that the background evidence was, as the appellant accepts, indicative that the family members of suspects in circumstances such as this were likely to be harassed and arrested; and, it was open to the judge to conclude that if there had been the killing of a policeman, then they would have visited the other family members, having spoken to the father and have received no information. He submitted further that in the context of the family being harassed as the background evidence shows it was implausible that the father would have been able to visit the agents and to raise the cash involved.

12. In response Ms Chaggar submitted that on the second point that was not what the judge had said in that she had relied on background evidence and had not drawn specific attention to any particular point.
13. I consider that in light of the background evidence set out in particular in the CPIN Kurds and the evidence of the harassment to which those suspected of Kurdish separatist involvement are subjected that it was open to the judge to conclude that it was not plausible that they should not then have gone on to seek the suspect at other places. It is also evident from the background information that it is relatively common for them to let people go and observe their activities. It is, however, less clear that there would be no attempt to search cars in the area but equally I consider it entirely rational for a judge to conclude that in the circumstances, given the enmity of the Iranian authorities towards Kurds, that they would not in the circumstances have increased patrols or put up some type of searching and on that basis that finding is sustainable.
14. I do not, however, find that the judge's finding with regard to raising funds is sustainable. If the judge had said in light of the fact that he was likely to be harassed and traced that he would not have been able to raise funds, then that would be one thing and indeed that is the position put forward by the Secretary of State but that is not what the judge says. She says that she found it is not plausible that he would be able to raise money within a few hours. There is nothing in the background evidence that suggests that is so and indeed the speculation that a large amount of cash was handed over presupposes a cash transaction. The reality is we simply do not know the terms on which any passage out of Iran was arranged and on that basis I consider the judge has in the somewhat confused paragraph 23 reached a finding which was not open to her for the reasons given.
15. The question then raised is whether this is material, given that the judge has given other reasons which I have found sustainable for concluding that the core of the appellant's claim about being wanted by the authorities is not safe. Is the sentence which commences with "Further" effectively an aside?
16. I consider, bearing in mind what the Court of Appeal said in Lowe that an Appellate Tribunal should be reluctant to set aside findings of fact reached by a Tribunal which heard the evidence, that this was not material. That is all the more so where, as here, there is no sufficient basis on which it could be said that the judge misdirected herself as to the law.
17. It is clear from what the judge says towards the end of paragraph 23 that her main concern about the account of the raid on the family home was that it was not plausible when looked at in the context of the background information and in particular the clear information about discrimination and suspicion against Kurds in Iran. On that basis I consider that whilst the findings with regard to the plausibility of the father being able to raise cash is not material, further, it is possible to read the phrase, "this account is not consistent with the background evidence before me and whilst acknowledging the consistency of the account given by the appellant this

cannot make the incredible credible” as relating to the whole of the account, not simply the father raising cash, which by the use of the word further at the beginning of the sentence is in effect parenthetical.

18. I conclude, therefore, that the reference to the raising of money was simply one of the factors that the judge bore in mind when concluding that the account was not plausible. It was open to her to do so, and the reference to the cash was simply an additional reason for not believing the appellant; she had already given adequate reasons for doing so.
19. Accordingly, for these reasons I consider that the decision of the First-tier Tribunal did not involve the making of an error of law affecting the outcome of the decision and I uphold it.

### **Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

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

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 29 April 2021

*Jeremy K H Rintoul*  
Upper Tribunal Judge Rintoul