



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

Appeal Number: PA/08774/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 30 June 2017**

**Decision & Reasons
Promulgated
On 11 July 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

[S M]

~~{ANONYMITY DIRECTION NOT MADE}~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Mellon of Counsel instructed by Fadiga & Co Solicitors

For the Respondent: Mr P Singh, Home Office Presenting Officer

DECISION AND REASONS

Introduction and background

1. The appellant is an Iranian Kurd who was born on [] 1996, although there are other dates of birth given in the papers that I have seen.

2. The appellant was arrested on 24 February 2016 by Lancashire police. It appears that he entered the UK clandestinely. He claimed during his screening interview that he had helped Kurdish freedom fighters move from one area to another and that put him at conflict with the authorities. According to Ms Mellon, who represented the appellant before the Upper Tribunal, the appellant came into the UK shortly prior to his arrest by the police. However, there is no independent verification as to when he came here.
3. He appeals to the Upper Tribunal with permission from Judge of the First-tier Tribunal Grant-Hutchison given on 17 May 2017. Judge Grant-Hutchison considered it at least arguable that Judge of the First-tier Tribunal Cohen (Judge Cohen) in his decision promulgated on 24 April 2017 may have misdirected himself by not making any findings on the expert evidence. This failure, it was argued, could make a material difference to the outcome of the decision. In addition, the grounds of appeal dated 4 May 2017 impugn the findings the judge made in relation to several aspects of the case including credibility. As to the *sur place* claims, the appellant claimed that his involvement with the Komala Party had continued since he came to London, i.e. after he claimed asylum in the UK, in that the appellant had met deputy leader of KOMALA in the UK. It was contended in the grounds of appeal that Judge Cohen failed to deal adequately with this additional risk factor.

The Appeal Proceedings

4. The appellant's application for asylum was refused by the respondent in a detailed Reasons for Refusal Letter dated 9 August 2016. That document states that the respondent did not accept that the appellant had given a credible and truthful account of events in Kurdish Iran. The claimed immigration history was noted as was the fact that the appellant appeared to have travelled through a number of safe countries before he arrived into the UK. The respondent did not accept that the appellant had demonstrated a risk on return, noting references in the screening interview to the events in his home country. The respondent noted a number of inconsistencies. In particular, the appellant had claimed to have helped the peshmerga move from one place to another but there was an inconsistency between this claim and answer in the screening interview to the question "did you carry out any other work to support the peshmerga?", to which he replied "no". The respondent doubted the credibility of the asylum claim, pointing out that the discrepancies undermined the credibility of the whole account. For example, when asked in the screening interview whether he had committed an offence in any country for which he would be convicted he replied "no". However, in his asylum interview he had claimed the authorities were looking for him because he had helped the peshmerga and this would be an offence in Iran. In the end the respondent rejected the alleged fear of future persecution and considered the appellant did not qualify for humanitarian

protection in the UK under paragraph 339C of the Immigration Rules. The respondent also considered whether the appellant might qualify under any of the Articles of the European Convention on Human Rights (ECHR) but concluded that the appellant did not satisfy the stringent criteria for the grant of protection on the basis that his Article 3 rights would be infringed, nor did he satisfy the requirements of the Immigration Rules or the requirements of Article 8 in relation to his private and family life. There were no exceptional circumstances justifying departing from the requirements of the Immigration Rules.

5. At the appeal hearing the appellant gave evidence through an interpreter. The Immigration Judge provided a succinct decision on 24 April 2017, the hearing having been on 29 March 2017. Amongst the documentation submitted was an expert report in support of [SM]'s claim at page 16 of the bundle of documents supplied by the appellant's representatives in advance of the hearing. That was prepared by Dr Firangis Ghaderi, a Middle East expert. Another document that was produced at the hearing was the photograph of the appellant taking coffee with one Reza Kaabi at Oxford Circus in the summer of 2016. He was described as the deputy leader of Komala. The expert instructed on behalf of appellant, Dr Ghaderi (also referred to by Ms Mellon in paragraph 8 (iii) of her skeleton argument as Dr Kakhi?) indicated that there was a long tradition of hospitality between Kurds. It was submitted that the appellant's claim of taking peshmerga backwards and forwards was potentially consistent with the position on the ground and his expert opinion. The potential punishment for members and supporters of the Komala was severe and, as the expert indicated in his report, which Judge Cohen summarised at paragraph 13 of his decision, as a returning failed asylum seeker the punishment could be particularly severe. Due to the appellant's Kurdish ethnicity, he could face a lengthy prison sentence. Having heard evidence at length including cross-examination by Ms Vatish, the Presenting Officer at the hearing before the FtT, Judge Cohen decided that he did not accept the appellant had given an honest and truthful account and basically, he upheld the respondent's decision which was to find that it was not credible. The appellant had said that he would be thought to have assisted freedom fighters if he returned to Iran and that he would be tortured if he had to give his name on returning there. However, this was not accepted by the respondent. There were several aspects of the appellant's claim which were rejected by the Immigration Judge, who found the appellant's account not to have been credible. The Immigration Judge went on to find at paragraph 38 of his decision that the appellant had not undertaken any political activities in the UK. He found that the appellant did not exit the country illegally and even if he were to accept that claim, having regard to the appropriate case law (see e.g. **SSH & HR (Iran) CG [2016] UKUT 308 (IAC)**) he found that the appellant would not be detained, interrogated or ill-treated. Based on his findings he concluded that the appellant qualified neither for asylum in the UK nor was he entitled to humanitarian protection. Furthermore, he considered that the appellant had not shown that he qualified under any of the Articles of the ECHR for

ongoing protection in the UK. He found overall there were no substantial grounds for believing that the appellant would face torture or inhuman and degrading treatment if he were returned to Iran.

6. Notwithstanding these adverse findings of credibility and fact, detailed grounds of appeal were submitted to the Upper Tribunal and it is clear based on the decision of Judge Grant-Hutchison that they were felt to be at least arguable. Mr Singh did not seek to argue that it was inappropriate for the Upper Tribunal to consider all the grounds raised, although the judge granting permission had focused on one or two of the grounds of appeal.

The Hearing before the Upper Tribunal

7. At the hearing, I heard submissions by both representatives. The appellant was represented by Ms G Mellon, who presented her client's case fully to the Upper Tribunal explaining that as far as she could see the Immigration Judge had only found that the appellant had contact with the individual Peshmerga member concerned on two occasions. The individual concerned, called [S], is supposed to have introduced the Peshmerga to the appellant. It is true that the appellant had only assisted the Peshmerga on two occasions, but this was an issue of the utmost sensitivity in Iran and he would face persecution if he returned there. There was the additional fact that the appellant had been in touch with the Komala since he came to the UK and he would have an imputed political opinion based on membership of a particular social group. The appellant was a person who had left Iran illegally and would face persecution on his return. There were other issues about his ethnicity which also were relevant, particularly his Kurdish background. It was submitted forcefully by Miss Mellon that Judge Cohen had given inadequate reasons for rejecting the appellant's account and that he had not dealt properly with the expert evidence, mentioning it only once in his decision at paragraphs 11-13 in the passages that I referred to earlier. He should have properly analysed the expert evidence and indicated why he rejected it, if he did.
8. The second error identified by Ms Mellon was that Judge Cohen had failed to have adequate regard to the appellant's account at the hearing. Instead, the Immigration Judge had given excessive weight to the account the appellant had given in the screening interview. Miss Mellon said that he had not dealt fully with the full interview nor had Judge Cohen fully dealt with the evidence the appellant had given at the hearing. I was referred to a number of key passages in support of the submission.
9. Thirdly, it was submitted the Immigration Judge had not dealt adequately with the appellant's *sur place* activities and his Kurdish ethnicity. These were issues of great importance to the outcome of the appeal. The appellant had had contact with the Komala group. It was wrong of the First-tier Tribunal to require any corroboration of his account. The appellant had illegally exited from his country of origin and Ms Mellon reiterated that he would face adverse consequences on return.

10. The respondent, represented by Mr Singh, also took me through some of the key points of the decision but said that it was open to Judge Cohen to make adverse credibility findings of fact based on the evidence he heard. He referred me to an old case called **YL (China) [2004] UKIAT 00145**. In that case he said that the IAT had to consider a case where excessive weight had been given to the interview rather than the screening interview. The case gave an analysis of the importance of the screening interview because it is the first opportunity the appellant has of presenting his case. Provided there is no question mark over the circumstances in which the interview was conducted, it ought to be an opportunity for the appellant to put forward his case straightforwardly. Unfortunately, this case had not been at all straightforward and the screening interview contained a number of inconsistencies with his later accounts and it was entirely proper of the Immigration Judge to give weight to these factors, as he did at, for example, paragraphs 25 to 27 of his decision. In particular, I was referred to paragraph 29, where the appellant had produced the photograph of himself with deputy leader of the Komala and it was said that there was no attempt for the person in the photograph to attend court or for the appellant even to obtain a letter from him to explain who he was.

The issues

11. It seems that following the hearing the following issues present themselves:
- (1) whether the failure to refer to or consider the substantive asylum interview undermined the whole of the Immigration Judge's decision or whether it was a peripheral matter;
 - (2) whether there was a failure to consider adequately the expert report, analyse its contents and apply it to the facts of this case;
 - (3) whether the judge failed to consider adequately or at all the:
 - (a) *sur place* activities in the UK;
 - (b) the manner of the appellant's departure and risk on return.

Consideration of these issues

12. In consideration of these issues it is clear to me that the Immigration Judge was presented with a detailed account by the appellant but essentially the appellant had claimed that there were only two occasions when he had assisted Peshmergas early in 2016. The Immigration Judge did deal with the case succinctly but he was entitled to do so. An Immigration Judge presented sometimes with three or four contested hearings in one day which he has to write up does not have the luxury of being able to analyse

to the finest degree every part of the case presented to him. What is demanded of an Immigration Judge is that he gives an overview of the case for each side, that he demonstrates that he has considered the relevant factors and he has come to conclusions which are sustainable based on the evidence he heard. In my view, the Immigration Judge did that in this case. I agree that it was unfortunate that he only made one reference to the expert report but on the other hand it was in his mind and the fact that he did not make a subsequent reference to it under the heading "Findings" does not mean it was not a matter that he took into account.

13. The first question therefore is: whether the failure to refer to or consider the subsequent interview with the respondent's representative undermined the whole decision or whether that was merely a peripheral matter? I considered that the appellant was given an opportunity in the first screening interview to present his case. However, a number of inconsistencies arose, which he was required to answer. Some weeks later (the initial screening interview having been conducted on 22 February 2016 and the latter statement of evidence for and full interview having been conducted on 1 August 2016) he had an opportunity to plug some of the inconsistencies. It is striking that even after having several weeks to consider his case obtain the benefit of legal advice, he was unable to dispel the concerns over his credibility. Therefore, the adverse credibility findings which Judge COHEN subsequently came to appear justified. The fact that a different judge might have included greater detail in his decision and, possibly, reached a different conclusion does not on its own suggest any material error decision of the F T T.
14. In relation to the expert's report I have now had an opportunity of considering that report. It is quite a detailed document, but it has been stressed in a number of cases that an expert cannot supplant the role of the judge. The judge is the person who hears the evidence and has to make decisions based on the credibility of the account that has been given. Judge Cohen had that opportunity here and he reached clear findings. They might not have been as fully reasoned but they might have been but they were sufficiently clear for them to be sustained on appeal.
15. In relation to the third issue, whether the appellant has been involved in any significant activities since he came to the UK, I am satisfied that Judge Cohen dealt fully with that matter. He found that the appellant had not undertaken any political activities in the UK. It was right of him to record that there had been no additional evidence to corroborate the photograph. The lack of corroboration is not in itself a reason for rejecting an asylum claim but it is a relevant matter that a judge is entitled to consider. Furthermore, Judge Cohen was entitled to take into account the lack of any oral evidence from Mr Kaabi. Indeed, as Judge Cohen and commented in paragraph 29 of his decision, Mr Kaabi lived in London and was clearly aware of the appellant's appeal, yet he neither attended court nor provided a letter himself. As I understand it, there was only a letter from a

“gentlemen”, referred to in paragraph 30 of the decision, who was a member of the KOMALA group.

16. For these reasons, I have concluded that the decision Judge Cohen came to was one he was entitled to come to based on the evidence given and the submissions made. Accordingly, the appellant has failed to establish any material error of law in the decision of the F TT.

Notice of Decision

17. The appeal to the Upper Tribunal is dismissed and the decision of Judge Cohen, promulgated on 24 April 2017 in the First-tier Tribunal, stands.

18. No anonymity direction is made.

Signed

Date 11 July 2017

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 11 July 2017

Deputy Upper Tribunal Judge Hanbury