



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04211/2017

THE IMMIGRATION ACTS

Heard at Birmingham
On 29 March 2018

Decision and Reasons Promulgated
On 19 April 2018

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

S R

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:	Mr J Fraczyk	(Counsel)
For the Respondent:	Ms H Aboni	(Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal, brought with the permission of a judge of the First-tier Tribunal, from a decision of the First-tier Tribunal ("the tribunal") which it sent to the parties on 26 June 2017. The tribunal, in fact, dismissed the claimant's appeal against a decision of the Secretary of State, which she had made on 20 April 2017, to refuse to grant the claimant international protection. Since the tribunal granted the claimant anonymity and since nothing was said at the hearing before me to suggest that I should do anything other than continue that grant, I have decided to do so. Accordingly, the claimant remains entitled to anonymity.

2. By way of brief background, the claimant was born on [] 1948 and is a national of Iran of Kurdish ethnicity. She says that she lived with her husband and her son and that her son was a member of the Kurdistan Democratic Party of Iran ("KDPI") and had been a member for some eight or nine years. She also says that she would help him by hiding party literature in the family home and providing food for other KDPI members. Further, some members would hold secret meetings with her son at the family home and whilst such meetings were taking place, she would keep watch outside in case the Iranian authorities approached.

3. The claimant asserts that there came a time when her son was informed by the KDPI that two of the Party's fighters had escaped the clutches of the authorities and were in hiding locally. He was instructed to take food and water to them which he did. However, she says that he was apprehended in doing so and the family home was subsequently raided. Family members were arrested although the claimant herself was not arrested because she was outside taking some farm animals owned by the family to graze. She asserts that a warrant for her arrest was issued but that she was nevertheless able to flee Iran with the assistance of her brother who had managed to secure the assistance of a people smuggler.

4. In pursuing her asylum claim the claimant set out the above history and said that if she were to return the authorities in Iran and those associated with the authorities would seek to arrest her and/or persecute her.

5. Put simply, the Secretary of State did not believe her. So her claim for international protection was refused. She appealed. There was an oral hearing at which she gave evidence and at which both parties were represented. But the tribunal did not believe her either. In explaining why it did not do so it said this:

"35. This appeal rests on the credibility of the Appellant. I observed the demeanour of the Appellant whilst she gave evidence and noted she did so with what I considered to be a certain distain (sic) for the position she found herself in and in answering the questions put to her by Miss Brown.

36. At the time the Appellant left Iran, she was 68 years old. She suffers from various medical ailments, including heart disease and hypertension. Despite this, she recounts in her witness statement dated 30 March 2017 at paragraph 3 (B2 in the Respondent's bundle) that during Peshmerga visits to her home for secret meetings with her son, 'I was guarding for them in order to ensure nobody would bind out about that. Because it was really dangerous and if the authorities would have found out about that we all would have been in danger'. I do not find credible the Appellant's account that at her age and with her medical conditions she would have stood guard over her house to protect her son and his Peshmerga colleagues from arrest by the authorities.

37. I further note that throughout the course of her interview, the Appellant was unable to provide specific details of her son's activities for the KDPI other than that he

transferred goods and literature. If she had been aware of his membership for almost 10 years and had assisted him for the majority of that time, it is quite reasonable to conclude that she would have had knowledge of his activities within the Party.

38. I note that on the day of the alleged raid on her home, the Appellant was somewhat conveniently out of the house at the time. By her own admission, the Appellant suffers from obesity, heart disease, hypertension and problems with her eyes. I do not accept, therefore, that she would be taking the cows to graze nearly every day. Further, at paragraph 14 of her witness statement of 19 May 2017, the Appellant claimed to have been half way to Mir Safa when found by her granddaughter. This would have been a 15 minute walk according to objective evidence which means that almost every day she walked for almost 90 minutes to take the cows for grazing. I do not find this credible for someone of her age and with her medical conditions.

39. The Appellant also stated that her granddaughter found her after her house had been raided. She gives an account of this at paragraph 5 in her last witness statement where she says her granddaughter brought a message from her daughter not to return home as the situation was too dangerous. 'As my family members (my daughter, son and close relatives) had been interrogated and arrested but later released based on undertaking with the authorities'. If the Appellant's daughter had been arrested and interrogated, it is not credible that she would have had time to send her own daughter on a 45 minute walk to find the Appellant without alerting those who had arrested her.

40. In relation to the arrest warrant the Appellant says was issued against her, it has not been produced. She states at paragraph 19 of her witness statement that her brother told her about the arrest warrant which suggests he had seen it or was in possession of it. Objective information provided by the Immigration and Refugee Board of Canada states that court summons are delivered to the person in question to their home or workplace and if they are not present, a family member can receive it in his or her place. If no person or family member is present to receive the summons it can be put in their mailbox or a neighbour might accept it on behalf of the suspect. Accordingly, one of these methods of serving the arrest warrant must have been used by the authorities. As to how the Appellant's brother got to know about it is not known but, if it exists, it could have been produced. The Appellant's choice to confirm its existence adversely affects her credibility when she cannot produce it.

41. I further note from paragraph 21 of the Appellant's statement that she states that Etelaat members are still looking for her. She does not elaborate on this comment by explaining how she knows this. There is no statement from anyone in Iran and particularly not her brother. The same applies to the arrest of her daughter and son-in-law who were required to sign an undertaking to inform the authorities of the Appellant's whereabouts if they knew. This in itself is not credible given the objective information referred to in the Refusal Letter which confirms the potentially hostile treatment to family members of those involved with the KDPI."

6. So, the appeal failed. But that was not the end of the matter because the claimant, through her representatives, applied for and obtained permission to appeal to the Upper Tribunal. The grounds, it is fair to say, represented a full frontal attack upon the credibility assessment and the judge granting permission to appeal thought there was merit in those arguments. Permission having been granted the matter was listed for a hearing before the Upper Tribunal (before me) so that it could be considered whether the tribunal had erred in law or not and, if it had, what should flow from that. Representation at that hearing was as stated above and I am grateful to each representative.

7. I have decided, albeit not without hesitation, that the tribunal did err in law with respect to its credibility assessment. I shall now explain why I have reached that conclusion.

8. Mr Fraczyk in his oral submissions maintained what had been contented in the written grounds to the effect that the tribunal had erred in taking into account the claimant's demeanour when giving evidence. He had in mind what the tribunal had had to say at paragraph 35 of its written reasons. Pausing there, the tribunal did make a typographical error but it is clear that what it was saying was that the claimant had shown "disdain" during the hearing. One of the points made was that it was unclear what the tribunal actually meant. It was further said that there was no explanation as to why any such perceived disdain was relevant to the tribunal's credibility assessment. Mr Fraczyk reminded me of case law suggesting that making credibility findings upon demeanour is something which is "fraught with danger".

9. I did wonder whether, in fact, what was said at paragraph 35 might be regarded as no more than passing comment rather than an integral part of the credibility assessment which, on that view, would commence at paragraph 36. However, I have concluded that that is not clearly the case. Further, whilst it might have been that the tribunal was suggesting the claimant had treated the tribunal, the hearing and questions put to her with contempt, which might be thought to be inconsistent with someone whose safety is genuinely at risk and who would therefore want to properly engage with the fact-finding process, that is not what it actually said. Indeed, it is unclear why the tribunal thought the claimant did treat the proceedings with disdain and even if she did it is unclear why it thought that did justify its taking an adverse credibility point. So, this represents an error through a failure to properly set out and explain its reasoning and its thought processes.

10. As to paragraph 36 of the written reasons, it seems to me that all that was really being said by the claimant was that she had acted as what might be referred to as a "lookout" when political meetings were taking place at the family home. It was not, so far as I can see, being asserted that she somehow "stood guard over her house to protect her son and his Peshmerga colleagues from arrest by the authorities" as the tribunal described it. I agree that had that been the assertion her health problems would have suggested that it was an untenable one. But since that does not appear to have been her case it cannot be said, as the tribunal thought, that her health problems would prevent her from carrying out the function. So I find, with respect to that particular matter, the tribunal erred through misunderstanding her account.

11. At paragraphs 40 and 41 of the written reasons the tribunal said since the claimant had asserted that an arrest warrant had been issued in respect of her, it was damaging to her credibility that she had not produced evidence of it. The tribunal may well have had in mind the possibility that a family member could have sent the original to her or, at least, a copy and that the document could then have been translated. The complaint about that, made on behalf of the claimant, is in effect that the tribunal erred through failing to consider the possibility that no one would want to send the warrant or a copy to her because the act of doing so might, if detected, place the sender at risk. I am not sure to what extent, if at all, the absence of evidence of the warrant was addressed by the representatives before the tribunal. Further, it might be thought that if the claimant's safety was truly at risk her family in Iran would have found a way of sending the document even if there was some element of risk to themselves. But I am narrowly persuaded that the tribunal was obliged to at least consider the possibility that sending such documentation might have been a risky undertaking for her family prior to taking an adverse point against her.

12. I have not found myself to be persuaded by other arguments which have been brought with respect to other elements of the tribunal's adverse credibility finding. But I am not sure that what is left intact would necessarily, of itself, have persuaded the tribunal to reach the adverse credibility

conclusion that it did. So I cannot conclude that the errors I have decided the tribunal did make are immaterial ones.

13. In the above circumstances I must set aside the tribunal's decision. Since I have done so on the basis of what I have ultimately concluded to be an unsafe credibility assessment, I have also concluded that remittal to the First-tier Tribunal for a complete rehearing is the appropriate course of action. I have, therefore, issued brief directions which will hopefully afford some assistance with respect to the remaking process.

Directions for the rehearing

- A The decision of the tribunal which was sent to the parties on 26 June 2017 having been set aside, the case is remitted to the First-tier Tribunal for a complete rehearing. None of the findings and conclusions are to be preserved.
- B. The appeal will be heard by the First-tier Tribunal at the Birmingham Hearing Centre with a time estimate of three hours. The hearing should not take place before Judge Butler. The claimant should be provided with a Kurdish-Sorani speaking interpreter.
- C. These directions may be replaced, amended or supplemented by further directions which may be issued by any salaried judge of the First-tier Tribunal in the Immigration and Asylum Chamber.

Decision

Since the decision of the First-tier Tribunal involved the making of an error of law, that decision is set aside.

The case is remitted for a complete rehearing before a differently constituted First-tier Tribunal.

Anonymity

The claimant was previously granted anonymity by the First-tier Tribunal. That status is continued by the Upper Tribunal under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. So, unless and until a court or tribunal directs otherwise, the claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies to all parties to this appeal. Failure to comply might lead to contempt of court proceedings.

Signed:

Dated: 17 April 2018

Upper Tribunal Judge M R Hemingway