



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/11318/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
on 1 February 2018**

**Decision & Reasons
Promulgated
on 12 February 2018**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

**AS
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Gherman, Counsel, instructed by Virgo Solicitors
For the Respondent: Ms Fijiwallah, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Judge of the First-tier Tribunal N J Bennett (the judge), promulgated on 26 September 2017, dismissing the appellant's appeal against the respondent's decision dated 29 September 2016 refusing his protection and human rights claims.

Factual Background

2. The appellant is a national of Iran, of Kurdish ethnicity, date of birth 10 November 1994. He claims to have arrived in the UK on 6 March 2016.

He made an appointment to claim asylum on 10 March 2016. His asylum claim centred on his involvement with the PJAK (Party of Free Life for Kurdistan), a pro-Kurdish group that often carried out armed attacks in North-West Iran, sometimes on civilians. The following is a summary of his account. In January 2015 he began working for a friend of his father, Mr H, who was a member of the PJAK and told him about the group. Twice a month Mr S, a friend of Mr H, would bring boxes to Mr H's garage which were collected by other people in vehicles. The appellant helped load the boxes onto the vehicles. He was told that they contained medical and other supplies for the PJAK.

3. On 9 February 2016 Mr S telephoned the appellant and told him that two people would be coming to collect some goods. Mr H was ill and therefore not present at the garage. After arriving Mr S sent the appellant to a nearby restaurant to get some food. On leaving the restaurant the appellant saw that the Iranian security forces had arrested Mr S and the other men at the garage. The appellant went to a friend's house where he spent the night. The next day the appellant was informed by his friend, who visited the appellant's house, that the security services had left a warrant for his arrest. Arrangements were made for the appellant to leave the country.
4. The respondent did not accept the appellant gave a credible account of his involvement with the PJAK, or that he left the country illegally. The appellant's knowledge of the PJAK was limited and some of the information he provided was incorrect. The respondent relied on inconsistent evidence allegedly given by the appellant relating to the arrest warrant, and because he could not explain incriminating evidence allegedly found on his mobile phone by the Iranian security services.

The decision of the First-tier Tribunal

5. The judge heard evidence from the appellant, who adopted his statement dated 10 November 2016, through examination in chief and cross examination. At paragraph 20 the judge summarised the respondent's 'Country Information and Guidance' (CIG) document relating to Kurds and Kurdish political groups in Iran. This indicated that the Iranian government does not tolerate Kurdish political parties and regards the PJAK as a banned terrorist group.
6. At paragraph 21 the judge accepted that the appellant displayed "some knowledge of the PJAK" when interviewed and that he may have learnt this from someone with whom he worked. The judge acknowledged the appellant's claim that all he did for the party was help load boxes at Mr H's garage which were brought there by Mr S. The judge therefore accepted that the appellant may have learnt about the PJAK from Mr H and that he may have been involved in helping Mr H load vehicles with goods destined for the PJAK.

7. From paragraphs 22 to 28 the judge gave reasons for rejecting the appellant's account of the raid on Mr H's garage. At paragraph 23 the judge specifically rejected the appellant's claim that his mother had lost or misplaced the arrest warrant. The judge noted that the arrest warrant was "... a most important document" which went to the heart of the claim, and that his mother should have realised the need to keep it safe because its absence could cause her serious problems. The security services had asked the appellant's mother where he was and told her to give him the warrant. If she was unable to produce the warrant to the authorities they would conclude that she had given it to him and that she knew more than she was telling them. The judge referred to background documents indicating that the Iranians authorities applied considerable pressure to family members to make them disclose a suspect's whereabouts.
8. Given that the appellant had been legally represented since August 2016 the judge considered that his late discovery of the fate of the warrant (his mother has lost or misplaced the warrant), just before an initial appeal in the First-tier Tribunal in November 2016, lacked credibility. The judge noted the absence of any other evidence, such as local newspaper reports, confirming the raid on the garage, and there was no evidence that he attempted to obtain such evidence. Nor was there any evidence from the mother about the arrest warrant. The judge did not accept that her age and illiteracy were good reasons for the absence of such evidence given that she could have asked others, such as the appellant's uncle, to assist her in writing a letter. The judge considered the appellant's claim that the authorities had seized his mobile phone as speculative, and noted that he could not explain how, even if the authorities had his phone, they would have been aware of his involvement in loading boxes or his home address.
9. At paragraph 29 the judge stated,

Miss Gherman accepted in her skeleton argument that the Tribunal found in [*SSH and HR (illegal exit: failed asylum seeker) Iran* CG [2016] UKUT 00308 (IAC)] that there was no real risk to returnees on the basis of ethnicity alone unless that person was otherwise of interest to the Iranian authorities. Having rejected the appellant's account, I do not accept that it is reasonably likely that the Iranian authorities are aware of his support for the PJAK which, he says, was confined to helping Mr H and Mr S, or that they will become aware of this at some future date. I do not accept that it is reasonably likely that he will engage in any activities after returning to Iran which manifests support for the PJAK. He became involved with the PJAK to help his employer. He has not expressed any wish to continuing [sic] helping it. He has not expressed any continuing interest in the PJAK or done anything to support it in this country. If he is asked why he left Iran, he can give his real reasons, which were not imparted to me. It is fanciful to suggest that he will be asked about his or his previous employer's political sympathies.
10. The judge consequently dismissed the protection appeal. The judge gave brief reference to an article 8 argument advanced on behalf of

the appellant but concluded, in light of his factual findings, that there were no significant obstacles to the appellant's reintegration into Iran.

The grounds of appeal and the error of law hearing

11. The grounds are twofold. The 1st ground relies on the judge's limited credibility findings. Given that the judge found that the appellant supported the PJAK, and was therefore connected in some way with an illegal political party, there was be a real risk that he would disclose his involvement when interrogated on return to Iran. In reliance on *RT (Zimbabwe)* [2012] UKSC 38 the appellant could not be expected to lie in order to achieve safety in Iran and, as he would come into direct contact with the authorities if returned home, who had both the time and inclination to interrogate returnees (*AB and Others (internet activity - state of evidence) Iran* [2015] UKUT 0257), he could not be reasonably expected to conceal his political support and actions.
12. The 2nd ground contends that the judge placed disproportionate weight on the appellant's inability to produce the arrest warrant. The grounds criticise the judge's reliance on a lack of supporting evidence for the raid and contend that he placed too great a weight on other matters without considering any explanation as to why other documentary evidence might be lacking. Permission was granted on both grounds.
13. Ms Gherman adopted and expanded upon her grounds at the 'error of law' hearing. She submitted that the appellant would be at risk if the Iranian authorities became aware of his albeit limited involvement in the transportation of goods for the PJAK. I was referred to paragraph 36 of *RT*. A person should never have to lie in order to avoid persecutory treatment. With respect to the 2nd ground, it was submitted that the judge attached disproportionate weight to the appellant's inability to produce the arrest warrant and that he failed to take into account the explanation given by the appellant.
14. Ms Fijiwala submitted there was no material error. The judge, at paragraph 20, took into account the Iranian regime's lack of toleration of opposition political parties, but found that the appellant's involvement with an opposition political party only extended to loading boxes onto vehicles. The judge's findings at paragraph 29 suggested that the appellant would not have to lie because his involvement with the PJAK was only tangential to his employment by Mr H and he would not continue supporting the party. I reserved my decision.

Discussion

15. It is appropriate to consider the 2nd ground of appeal first. Ms Gherman relies on *TK (Burundi)* [2009] EWCA Civ 40 to support her

submission that the judge attached a disproportionate amount of weight to the appellant's inability to produce the arrest warrant, that the judge focused to a disproportionate extent on the absence of the arrest warrant, and that he failed to take account of the appellant's explanation for the absence of this document.

16. I cannot accept these submissions. The arrest warrant was clearly a central feature of the appellant's account. At paragraphs 22 to 26 the judge gave careful and detailed consideration to the appellant's account concerning the arrest warrant. At paragraph 23 the judge specifically engaged with the explanation provided by the appellant for his failure to produce the arrest warrant. In rejecting the appellant's claim that his mother lost or misplaced the arrest warrant the judge noted the significance that the arrest warrant would have had for the appellant's mother. It was open to the judge to conclude that the absence of the arrest warrant could cause the appellant's mother significant problems given that the Iranian authorities applied considerable pressure to family members to make them disclose a suspect's whereabouts. The judge was additionally entitled to rely on the appellant's relatively late discovery that the warrant was missing as a factor undermining this aspect of his account, especially given that the appellant had been legally represented from August 2016. The judge was additionally entitled, for the reasons given in paragraph 25, to rely on the absence of any letter or any other evidence from the appellant's mother detailing her involvement with the arrest warrant.
17. The judge provided a number of other reasons to support his finding that the appellant's account of the raid on the garage was a fabrication. Given that the authorities would have engaged in a successful raid on a terrorist organisation if the appellant's account was accepted, the judge was entitled to note the absence of any local newspaper report concerning the raid. It was open to the judge at paragraph 26 to draw an adverse inference relating to the timing of the disclosure of the arrest warrant at the initial stage of the investigation. Moreover, given the timeline of events provided by the appellant the judge was again rationally entitled to hold against him the "very considerable speed" with which he was identified by the Iranian authorities.
18. The challenge to the judge's adverse credibility findings is essentially a disagreement with the weight the judge attached to certain aspects of the appellant's account. The judge's factual findings were however rationally open to him on the evidence before him and were supported by legally sustainable reasons.
19. I turn now to the 1st ground of appeal. It is important to note at the outset that the judge did not find that the appellant was involved with the PJAK other than by helping Mr H and Mr S to load boxes [21]. In his statement (2(c)) the appellant indicated that he was sympathetic to the PJAK. It was never his case that he was a member of the organisation or that he provided any other support for them other

than by loading boxes in the course of his employment. The judge found that the garage had never been raided, and there was consequently no basis for the authorities to suspect that the appellant had ever been involved, to any extent, with a proscribed organisation. At [29] the judge did not find it reasonably likely that the appellant would engage in any activities after being returned to Iran which would manifest support for the PJAK. The judge specifically found that the appellant became involved with the PJAK to help his employer, that he had not expressed any wish to continue helping the organisation, and that he had not expressed any continuing interest in the PJAK. These were factual findings rationally open to the judge on the evidence before him.

20. The judge's findings at paragraph 29 are to the effect that the appellant does not have any continuing interest in the PJAK and that his very limited prior involvement was only tangential to his employment. As the judge determined that the appellant did not have any continuing interest in the PJAK he would not be required to lie about his political beliefs if questioned on return. As the judge made clear in paragraph 29, if the appellant was asked why he left Iran he would be able to give his real reasons, which were not imparted to the judge, but which, in view of the judge's findings, did not stem from a fear of the authorities as a result of loading boxes for the PJAK. There was no reason for the authorities to suspect that the appellant was ever involved with the PJAK. There was therefore little evidential basis capable of supporting a finding that he would be at real risk of being questioned about the PJAK given that the authorities would have no reason to suspect him of any involvement. The appellant would therefore not be required to modify his behaviour or lie in order to avoid persecutory treatment.

Notice of Decision

The First-tier Tribunal did not make any material legal error. The appeal is dismissed.

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

Unless and until a Tribunal or court directs otherwise, the appellant in this appeal 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.



8 February 2018

Signed
Upper Tribunal Judge Blum

Date