



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

Appeal Number: PA/12938/2018

THE IMMIGRATION ACTS

**Heard at Bradford
On 29 August 2019**

**Decision & Reasons
Promulgated
On 5 September 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**DTK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Karnik

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. By a decision dated 3 June 2019, I found that the First-tier Tribunal had erred in law such that its decision failed to be set aside. My reasons were as follows:

“1. The appellant was born on 8 July 1997 and is a male citizen of Iran. By a decision dated 28 October 2018, the Secretary of State refused the appellant’s claim for international protection. The appellant appealed to the First-tier Tribunal which, in a decision promulgated on 24 January 2019, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. By a Rule 24 notice dated 25 March 2019, the Secretary of State indicated that he did not oppose the appellant’s application. However, the Secretary of State did state that, ‘the credibility findings against the appellant has not been challenged and, as a result, any rehearing would be restricted to risk on return as a failed asylum seeker with no profile known to the authorities.’

3. The appellant sought permission to appeal to the Upper Tribunal on the basis that the judge had not made any proper findings regarding his claim that his father, a member of the KDP, had been executed when the appellant was aged two years old. The judge recorded the appellant’s claim in this regard as did the Secretary of State in the refusal letter. However, the Secretary of State made no specific response to that part of the appellant’s claim and likewise the judge made no specific finding. Having said that, the judge at [26-27] concluded that the appellant was not the witness of truth; it could be said that the judge rejected all aspects of the appellant’s claim, including that regarding his father and his fate. However, the Secretary of State has not sought to oppose the appeal to the Upper Tribunal. I set aside the decision of the First-tier Tribunal preserving all the findings of fact. The decision will be remade in the Upper Tribunal at or following a resumed hearing. The grounds of appeal [3] state (correctly) that the judge did not make a specific finding regarding the appellant’s father was the claim was ‘not a fact rejected by the respondent.’ In the judge’s grant of permission [2] it is stated that ‘it was not disputed [by the Secretary of State]’ that the appellant’s father had been executed as claimed’. That seems to me to be a misreading of the refusal letter and, indeed, of the grounds of appeal. The fact remains that there has been no unequivocal acceptance by the Secretary of State or clear finding by the Tribunal that the appellant’s father was executed as claimed. That claim will need to be considered and a finding of fact made by the Upper Tribunal before the decision is remade. The Upper Tribunal will hear evidence from the appellant on this issue only; the First-tier Tribunal’s findings regarding the appellant’s own credibility will not be revisited. If the Upper Tribunal finds that the appellant’s father was executed as claimed, the appellant will need to prove to the necessary standard that he is himself at risk on return to Iran as a consequence. If the Upper Tribunal finds that the appellant’s father was not executed as claimed, then the appellant will need to prove that he is nonetheless at risk on return to Iran.

Notice of Decision

The decision of the First-tier Tribunal promulgated on 24 January 2019 is set aside. All of the findings of fact shall stand. The decision will be remade in the Upper Tribunal at or following a resumed hearing. The Upper Tribunal will determine whether, as claimed by the appellant, his father was executed when the appellant was aged two years old. The Upper Tribunal will thereafter determine the risk on return to Iran of the appellant.”

2. The burden of proof is on the appellant. The appellant is required to prove that it is reasonably likely that at the date of this decision there are substantial grounds for believing that the he meets requirements of the Refugee or Person in need of international protection (Qualification) Regulations 2006 and the Statement of Changes in Immigration Rules CM6918 and/or insofar as applicable to the decision appealed against is not in breach of the appellant's protected human rights under the Human Rights Act 1998.
3. The appellant had filed and served an additional bundle of documents which includes an updated witness statement. The appellant gave evidence in Kurdish Sorani with the assistance of an interpreter. He adopted his written statement as his evidence in chief. He was cross-examined by Mr Diwnycz, who appeared for the Secretary of State.
4. I reserved my decision.
5. I refer again to my error of law decision. I directed that the findings of fact of the First-tier Tribunal should stand and that only the question of the alleged execution of the appellant's father remained to be determined along with any risk and return to Iran which the appellant might face should he be able to prove that his father had been executed. Notwithstanding that direction, the updated bundle of documents submitted by the appellant contained printouts of Facebook pages; the appellant continues to claim that his activity in support of opposition groups on Facebook may expose him to risk and return. I allowed Mr Diwnycz to cross-examine the appellant in respect of these printouts. At [19] of the latest bundle there is a photograph which all parties agree shows the appellant standing in a road and holding a placard. The Facebook posting bears the date 15 May but with no year; the appellant said that the year was 2019. The photograph purports to be an updated cover photograph for the appellant's Facebook account. In cross-examination, the appellant was asked whether the photograph was taken in front of the Iranian embassy in London. The appellant said that it had been taken at that location but he could not say when it had been taken; he did not, when questioned, claim that it been taken on 15 May 2019. When asked to identify the Iranian Embassy in the photograph, the appellant said that the photograph was 'not very clear' and that he could not say whether the Embassy was located on the right or left of the appellant. At one point in cross examination, the appellant said that he could not confirm where the photograph was taken. When asked again, he said that the Iranian Embassy is situated on the right of the photograph (that is, to the appellant's left side).
6. I found the appellant's evidence under cross-examination regarding the photograph to be very confused. It is, frankly, not credible that he could not remember the year in which the photograph had been taken given that he considered it sufficiently significant to post on Facebook as his cover photograph. His inability to identify readily the location of the Iranian Embassy leads me to conclude that the appellant has failed to

discharge the burden of proving that the photograph was taken outside that Embassy. Further, I am reminded of the findings of the First-tier Tribunal as regards the appellant's reliability as a witness have been preserved. The First-tier Tribunal found that the appellant was 'perfectly comfortable at telling lies and in doing so has substantially undermined his credibility.' The judge found that the appellant had concocted his account of events in Iran and had told lies in respect of his asylum claim 'from the very outset'; at [22], the judge found that the appellant had even lied about his date of birth. It is against the background of those preserved findings that I need to assess the credibility of the appellant's evidence before the Upper Tribunal. I find the appellant has failed to discharge the burden of proving that he is a genuine supporter of Iranian opposition political groups in the United Kingdom. I find that the photographs in his most recent bundle of documents cannot be relied upon as showing that he has been actively involved in *sur place* activities in opposition to the Iranian state.

7. As regards the appellant's claim that this father was executed in Iran, he has now filed and served a copy of a document which purports to detail court proceedings in January 2001 following which the appellant's father was sentenced to be executed. Significantly, the appellant has not produced the original document. In his most recent statement [13], the appellant claims that he only received the document on 9 August 2019. He claims that it been sent to him by a friend who had, in turn, sent the document via a third party from Iraq. Again significantly, the appellant has not kept the original envelope in which he claims the document arrived at his home in the United Kingdom. I considered this document in accordance with the principles set out in *Ahmed* [2002] UKIAT 00439. Neither I nor the First-tier Tribunal judge whose findings of fact I have preserved have been satisfied that this appellant is a reliable and truthful witness. In all the circumstances, I do not find that the document which he has now filed which he claims relates to his father's sentence of death can be relied upon at all.
8. Even if I am wrong in reaching that finding, I agree with Mr Diwnycz who submitted that the document, whilst it refers to the sentence of execution, is not proof that the appellant's father was executed as he claims. In light of what I have said above regarding the appellant's lack of credibility as a witness, I find the appellant has failed to discharge the burden of proving that his father was executed as he claims. The appellant will not, therefore, face any risk and return on account of his being related to a deceased known opponent of the Iranian state.
9. In conclusion, I find of the appellant is an Iranian citizen of Kurdish ethnicity. No part of his account of past events in Iran may be relied upon. I find that the appellant has not proved that any activities purportedly in support of Iranian opposition groups in which he claims to have been involved in the United Kingdom will have come to the attention of the Iranian state or are reasonably likely to expose into any risk on return to Iran. I find the appellant has failed to prove that his father was executed

and, further, that the document which is now produced which he claims relates to a sentence of death against his father is not reliable evidence at all. I refer to the First-tier Tribunal decision at [28-39] and adopt the reasoning contained therein. The appellant will present to the Iranian authorities and return as a failed asylum seeker of Kurdish ethnicity; beyond possessing those characteristics, there is nothing whatever in this appellant's profile which is likely to excite the interest of the Iranian authorities. Having regard to all the background material and relevant country guidance, I find that the appellant is not at risk on return to Iran. His appeal is, therefore, dismissed.

Notice of Decision

The appellant's appeal against the decision of the Secretary of State dated 28 October 2018 is dismissed.

Signed

Date 29 August 2019

Upper Tribunal Judge Lane

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

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