



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09116/2019 (P)

THE IMMIGRATION ACTS

Decided Under Rule 34
Without a Hearing on
4th September 2020

Decision & Reasons Promulgated
On 9th September 2020

Before

UPPER TRIBUNAL JUDGE KEITH

‘AA’

(ANONYMITY DIRECTION CONTINUED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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

Unless and until a Tribunal or court directs otherwise, by virtue of the appeal relating to a protection claim, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

Introduction

1. This is an appeal by the appellant, who was the appellant before the First-tier Tribunal (‘FtT’). I will therefore refer to the parties as they were referred to by the FtT.

2. The appellant appeals against the decision of First-tier Tribunal Judge Traynor, promulgated on 23rd March 2020, by which he dismissed the appellant's appeal against the respondent's refusal of his asylum claim.
3. In essence, the appellant's claims involved the following issues: whether, as an acknowledged Iranian national of Kurdish ethnic origin, aged 17 at the date of the FtT's decision, his father had been executed by the Iranian authorities in around 2012, when the appellant was 10 years old and 5 years before the appellant left Iran illegally, because of the Iranian authorities' belief that his father had been involved with the Party of Free Life for Kurdistan ('PJAK') an armed opposition group; and whether, around 5 years' later, the appellant's mother had been summoned to a police station and informed that the appellant was suspected of involvement, so she procured his escape from Iran using an agent.

The FtT's decision

4. The FtT made a detailed analysis of the evidence, running from [§43] to [§60] of his decision. The FtT found that the respondent had conducted very careful searches of all documents in the public domain, which had not disclosed any evidence of the appellant's father's execution. The FtT regarded as internally inconsistent the appellant's account of coming from a poor family, but at the same time, his mother was able to procure his exit via payment to an agent and to give the appellant \$300 and a mobile phone, prior to his departure. The FtT also regarded as inconsistent the appellant's claim not to be in contact with his family for fear of endangering their safety, yet at the same time having been given a mobile phone. The FtT did not regard as plausible that if the authorities were interested in the appellant, they would have forewarned his mother; or that his father would have been executed despite having no interest in politics, at least to the appellant's knowledge (noting he was 10 at the time). The FtT took the view that repetition of a consistent account by the appellant did not amount to evidence of his father's execution. The FtT also took into account that the appellant had travelled through safe countries without claiming protection.
5. Having considered the evidence as a whole, the FtT found that the appellant's account was fabricated, and he had no genuine fear of persecution, whether well-founded or otherwise.

The grounds of appeal and grant of permission

6. The appellant lodged grounds of appeal which are essentially: (1) the FtT's reference to very careful searches by the respondent, as referred to in the respondent's decision letter, failed to consider what these detailed searches were, except the citation of a single website, which itself did not purport to provide an exhaustive list of executions; (2) the FtT failed to engage with the appellant's wider evidence of disappearances and non-disclosure by the Iranian authorities of detainees, with only a small minority of executions carried out publicly; (3) the FtT was unreasonable in expecting the appellant, a minor child, to be able to adduce evidence of his father's execution. The appellant's account could and should have been assessed as to its

consistency by reference to objective evidence; (4) the FtT's conclusion that the appellant's family's poverty was inconsistent with his mother's ability to pay an agent to procure his escape was irrational. The appellant had been clear that he did not know how much the agent was paid or who paid for the agent's help.

7. First-tier Tribunal Judge Murray granted permission on 23rd April 2020, on all grounds.

Directions in the light of Covid-19

8. Upper Tribunal Judge Sheridan issued directions on 27th June 2020, indicating that on his provisional view, the questions of whether the FtT had erred in law and whether his decision should be set aside could be resolved without a hearing. The parties were directed to provide further submissions and where, despite the provisional view expressed, they regarded a hearing as necessary, they were required to submit reasons for that view.
9. Both parties responded, agreeing that the issues of error of law or whether the decision of the FtT should be set aside could be resolved on the papers.
10. I have considered the matter afresh and endorse Upper Tribunal Judge Sheridan's view that the determination of the error of law and whether the FtT's decision should be set aside can be resolved without a hearing. The reason for this is that the scope of the issues is clearly outlined, limited to the four grounds set out; the appellant did not give oral evidence and so the FtT's analysis itself was based on the documentary evidence and oral submissions. There is no suggestion that there are further submissions which could only be made at a hearing, which had not been addressed in the appeal. I therefore conclude that it is in accordance with the overriding objective that I reach a decision on the error of law and whether the FtT's decision should be set aside, on the papers.

The parties' submissions

11. The appellant was content to rely on the grounds of appeal, without further addition.
12. The respondent replied in relation to each of the grounds:
 - 12.1. Ground (1) – the respondent's refusal letter had clearly referred to extensive external research, as exemplified by references to someone of the same name as the appellant's father being executed, but at too early a date; and the names of others with different names executed in 2012. The search was not limited to one website.
 - 12.2. Ground (2) – there was a distinction between a public execution, and one carried out privately, but acknowledged in public records. The fact that other evidence referred to by the appellant quoted the number of executions, supported the respondent's position that executions were publicly recorded.
 - 12.3. Ground (3) – the FtT was entitled to expect the appellant, as someone who had managed to travel across Europe, to be able to obtain evidence of his father's

execution. In any event, this was only one aspect of the FtT's concerns about the appellant's credibility.

- 12.4. Ground (4) – the FtT was entitled to find as not credible that a family of limited financial means would be unable to afford to pay an agent to assist the appellant in fleeing Iran.

Discussion

13. By way of general observation, I am conscious that findings in relation to credibility (which go to the heart of this appeal) are often complex and nuanced and it is not for me to consider what I would or not have found, in lieu of the FtT's own analysis of the issues. The FtT's findings were detailed and he engaged with many aspects of the evidence, but I nevertheless find that there were both elements of the evidence which were not adequately resolved; and reasoning by the FtT which did amount to an error of law. I set these out below.

Grounds (1) – evidence of extensive external research and ground (2) – wider external evidence said to be inconsistent with all executions being publicly recorded

14. The respondent's refusal letter includes, at [§37], the following:

"You claim that the father was killed seven years ago ... and you left Iran five years after his death. Your age the time of you claim your father was killed is 10 years of age. You left Iran at 15 years of age. You have provided no evidence of the father's death, extensive external research of this event has provided no information to substantiate your claim. In fact, there is one article of an [name redacted] being executed in Iran, but this occurred in 2001, before your claimed birth. There were no reported deaths in Iran during 2011 – 12 other than for rape, murder and drugs offences, there is one report of three males being executed for terrorism in October 21, 2012 that these males have different names from your father."

15. The end of that paragraph includes a footnote to the website: www.capitalpunishmentuk.org/world/html.
16. The FtT referred at §44 to 'very careful searches of all documents in the public domain,' which had not revealed the appellant's father's execution. The FtT accepted the submission that all executions in Iran are public events and therefore in all reasonable likelihood, had the appellant's father had been executed, this would have been reported somewhere. On that basis, the FtT found that the appellant had not established to any reasonable degree of likelihood that his father was deceased or that he was killed by the Iranian authorities.
17. I accept the appellant's submission that, contrary to the respondent's submissions, it is far from clear that the respondent did any more than search the single website referred to above. Despite the generalised assertion about 'extensive external research', no details of the respondent's research about executions, beyond the website, are recorded and indeed the examples cited then have the website added as a footnote, to denote the source material, suggesting that the website was the source

of that evidence. Neither the FtT nor the respondent, in her submissions in response to this appeal, engage with the issue of whether the website purports to be an exhaustive and comprehensive list of all executions. The appellant's grounds refer to other evidence before the FtT (specifically the Iran Human Rights Documentation Center ('IHRDC') report, which had referred to only 73 executions being publicly announced out of 215 and there being disappearances. As the report states at page [157] of the appellant's bundle, "*as many as 60% of executions are kept secret.....for many of those [215] executions, the government did not release further information such as names, execution dates or crimes for which they were executed.*" I accept the challenge that the FtT failed to explore what the respondent's searches were, beyond the website referred to, when these searches were not specified; and failed to explain how the FtT could be confident that the website was exhaustive or that all executions would have been publicly reported, when the other evidence referred to in the grounds, which was before the FtT, suggests directly the opposite. While there is clearly a distinction between where an execution takes place, as opposed to how publicly it is reported, the IHRDC report makes reference to executions that are kept secret, without the detail of names, execution dates, or crimes being published. The distinction which the respondent seeks to draw between the public place of execution and the public reporting of executions does not engage with the evidence such as the IHRDC report. The FtT's failure to engage with that evidence amounts to an error of law, as does the failure to adequately analysis and explain the conclusion regarding the extensive research undertaken by the respondent. Both errors of law are material, going as they do to the heart of the appellant's claimed fear of persecution, namely the claimed death of his father at the hands of the Iranian authorities.

Ground (3) – consideration of the appellant's ability to prove his father's execution

18. The FtT referred at §[44] to the fact of the appellant's father's death as "*capable of verification and he has adduced no evidence that would support his claim and therefore what he has said is true.*" Even the brief excerpt from the IHRDC report before the FtT refers to the majority of executions (60%) being kept secret and names, dates of execution and crimes remaining unpublished. While the accuracy of that report needs to be assessed, nevertheless the conclusion that the appellant, a minor, could have proved his father's death, based on the assumption of a comprehensive public record of executions, and because the appellant has not done so, this undermines his claim, contains the same material error of law as in relation to grounds (1) and (2), namely the reasoning in reaching the conclusion that there is a comprehensive list of all executions in Iran.

Ground (4) – implausibility between claim of limited financial means and an ability to pay an agent

19. The FtT's reasoning is at §[45] and [46]. The FtT refers to the appellant providing "almost no information concerning his life", although such comment appears to ignore the fact that the appellant is a minor and his ability to relate his family circumstance may be limited as a result. The reasoning continues:

“On the one hand he claims that his family are poor yet, on the other hand, he suggests that his mother was unable to afford to pay an undisclosed amount of money to an agent to assist him leave Iran and was also able to provide him with US\$300 to assist him on his way and provide him with a mobile telephone.”

20. While I accept the respondent’s submission that the criticism of the plausibility of that account is only one aspect of the FtT’s concerns, which also included references to the appellant’s claimed lack of contact with his family, nevertheless, I accept the thrust of the challenge that it was unreasonable expect the appellant, as a minor, to be aware of and explain how much was paid to the agent, or how this was funded, despite the family’s limited financial means. At §[17], the FtT records the appellant’s submission that he was not aware of how much was paid to the agent. Later, at §[46], there is reference to the amount being ‘*undisclosed*.’ The FtT does not appear to engage with the earlier recorded evidence that the appellant was not aware of the financial arrangements between the agent and his family. There was also no analysis of whether this lack of knowledge was consistent with the appellant’s young age, namely whether he could be expected to have known about the financial arrangements. These circumstances and possible alternative explanations for the ability of a family of limited financial means to pay an agent (for example through loans) were not considered or analysed when assessing the plausibility of the appellant’s overall account. Whilst it might have been that the FtT ultimately might have discounted such alternative possibilities such as family loans, the failure to consider the appellant’s lack of knowledge of financial arrangements and possible alternative explanations was in my view, a further material error of law.

Decision on error of law

Decision

21. **For the reasons set out above, there are material errors in the decision of Judge Traynor and I must set it aside. I do so without preservation of any finding of fact, so that the appeal must be considered afresh. Therefore, the appellant’s appeal succeeds.**

Disposal

22. With reference to paragraph 7.2 of the Senior President’s Practice Statement, given that the errors go to the heart of the assessment of the appellant’s credibility, and the scope of the necessary fact-finding in remaking the decision, this is a case where, exceptionally, it is appropriate that the remaking is remitted back to the First-tier Tribunal.

Directions to the First-tier Tribunal

23. This appeal is remitted to the First-tier Tribunal for a complete rehearing with no preserved findings of fact.

24. The remitted appeal shall not be heard by First-tier Tribunal Judge Traynor.
25. The anonymity directions continue to apply.

Signed *J Keith*
Upper Tribunal Judge Keith

Date: 4th September 2020