



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

**Appeal Number: PA/01659/2016**

**THE IMMIGRATION ACTS**

**Heard at Birmingham  
On 5 May 2017**

**Sent to parties on:  
On 18 May 2017**

**Before**

**UPPER TRIBUNAL JUDGE HEMINGWAY**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR BILAL OMAR NEJAD**

**(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr D Mills (Senior Home Office Presenting Officer)  
For the Respondent: Mr J Howard (Solicitor)

**DECISION AND REASONS**

1. This is the appeal of the Secretary of State for the Home Department (Secretary of State) from a decision of the First-tier Tribunal (Judge J Robertson hereafter “the Judge”) whereupon he allowed the claimant’s appeal against the Secretary of State’s decision of 12 February 2016, refusing to grant him international protection.

2. By way of brief background, the claimant is an Iranian national of Kurdish ethnicity. In seeking asylum he had claimed to have been a supporter of the Kurdish Democratic Party of Iran (KDPI) and asserted that his loyalty to that Party had become known to the Iranian authorities such

that he had had to flee Iran in order to avoid persecution. Whilst the Secretary of State had expressed certain other credibility concerns, a particular issue arose regarding the date of certain key events. That is because the claimant initially indicated (in his asylum interview) that he had left Iran on 9 October 2015 (see question 25 of the interview record) but when it subsequently came to light that he had been fingerprinted in Greece in September 2015, he had asserted there had been an interpreter error at the interview and that he had, in fact, left Iran in early September 2015.

3. The Secretary of State refused the claim. The Judge heard the appeal on 2 September 2016. The claimant was represented but, unusually I think, the Secretary of State did not field a representative. The Judge heard the claimant's oral evidence, heard submissions from his representative and in a determination promulgated on 20 October 2016, allowed his appeal. As to the evidence before him and the conclusions reached, the Judge said this:

**"Evidence**

7. I have appeal bundles from both parties and heard oral evidence from the Appellant who gave his evidence through an independent interpreter. I also have the Screening Interview conducted on 22<sup>nd</sup> October 2015 and the Asylum Interview Record of 26<sup>th</sup> January 2016.

8. The Appellant adopted his witness statement and gave oral evidence. His evidence is summarised as follows:

- i) He was born in Iran
- ii) He was a supporter of the KDPI for a few months before he fled the country. He distributed leaflets at schools, mosques and where there were people passing by. His cousin was a member of the party and provided the leaflets, they would distribute them together at night.
- iii) His house was raided and his father was taken and later released. His cousin was arrested and no one knows what happened to him. He was not at home but hid at his sisters and his brother in laws parents. After a few days he was taken by lorry to leave the country.
- iv) He disputes the answers given in interview as the interpreter had obviously not fully understood him. The Interpreter was Kurdish Sorani of Iraqi nationality and misunderstood the months of the Farsi calendar. He only received the refusal letter and went through the interview record recently as his previous representatives had not gone through all the details with him before. He does not understand the English calendar and could not convert the dates himself. He did not raise any concern at interview as he thought that the interpreter had understood him.
- v) He left Iran on 8.09.15 and entered the UK on 22.10.15. He had not mentioned that he was fingerprinted in Greece as he was afraid that he would be deported.
- vi) He became a supporter of the KDPI in March 2015. People did not discuss the details of their involvement with others as if the government were to find out they would be hanged. Being a member is a secret. He just knew that his cousin was involved and could assist him in becoming a supporter. He wanted to make a difference to those suffering in Iran.
- vii) He was informed of Bhaktiar's arrest on 6.09.15. It was reasonable to think that it was for his involvement with the KDPI.
- viii) Since being in the UK he has had some contact with his family. He has no family in the UK.
- ix) It is unfair to blame him for the interpreter's errors. He had a high standard of living in Iran and had no reason to leave his wife and parents other than his life being at risk.

9. Mr Sharif sought to rely on his skeleton argument. The Appellant was introduced to KDPI by a relative and distributed leaflets against the Iranian regime. He has described how he undertook those activities and his account is consistent with his fear of arrest, detention and ill treatment due to acts of political dissent. If it is accepted that he undertook those acts and that his relative was arrested then it must be accepted that he was at risk as the Iranian regime will not tolerate political opposition especially from a Kurdish party. The interview record is consistent with the exception of the dates which the Appellant has explained in his evidence. The Appellant gave dates in the Persian calendar and they were converted wrong. His explanation is plausible given that the interpreter was not a Farsi speaker but conducted the interview in Kurdish/Sorani. The Respondent has acknowledged that the Appellant had a good knowledge of the KDPI. He referred me to the interview and submitted that the Appellant gave detailed answers. He also referred me to the case law and Country Information and Guidance submitting that all the subjective evidence is consistent with the Appellant's account. He did not address Article 8.

### Findings and Decision

10. I have given very careful consideration to all the evidence put before me in this case which I have considered in the round.

11. The Appellant's claim is based upon a fear of persecution on return to Iran. He claims to have exited illegally having been involved with KDPI.

12. The Respondent relies on inconsistencies in the Appellant's evidence and questions his credibility. However it has been accepted that he is an Iranian of Kurdish ethnicity who has a detailed knowledge of the KDPI.

13. Overall I find the Appellant's evidence to be convincing. His account of events is detailed and has not been embellished which I consider goes to his credibility.

14. On the issue of credibility I have given particular consideration to the reasons for refusal:

- i) The Respondent submitted that the Appellant was not of interest to the Iranian authorities. His joining of the party is questioned. The Appellant has explained in his statement the risk in discussing political affiliation. He has not claimed to be a member of KDPI but a supporter. He was aware of his cousin's involvement with the party and wanted to 'make a difference' himself. It is understandable that he approached someone he knew. I do not consider his lack of knowledge of his cousin's role in the party to be inconsistent when considered against the context of fear and mistrust. The Appellant had not been involved with the party for very long and this information may have been forthcoming from his cousin at a later date.
- ii) The Appellant demonstrated a detailed knowledge of the KDPI and the political situation. He states that he assisted in distributing leaflets supplied by his cousin in support of the KDPI. The Respondent has disputed that the Appellant would have come to the attention of the authorities as he stated in interview (Q73 & 74) that his face was covered. In fact the interview records that he did not have his face covered but they were distributing the leaflets at night in order not to be seen.
- iii) The Respondent considered the Appellant speculative in concluding that the authorities were interested in him. I disagree. The Appellant had been actively and publicly supporting the KDPI with his cousin, albeit for a relatively short period. On discovering that his cousin had been arrested and his home raided with his father taken, I consider it to be a reasonable conclusion to reach that the authorities were aware of his activities.
- iv) In respect of the Appellant's flight from Iran he denied having had his fingerprints taken in Greece. This is a countervailing factor which he has sought to explain.
- v) The Respondent found his claim to have exited Iran illegally in October unsubstantiated. A major factor is the evidence of his having been in Greece in September 2015. On the issue of dates the Appellant has submitted that the interpreter misunderstood the conversion from the Persian to the English calendar. I note that the refusal letter refers (para 16) to the

interview being conducted in Sorani however at Q15 the interviewer had recorded *[interpreter tells me that the applicant is using Farsi words]*. I therefore accept that there may have been a degree of misunderstanding between the Appellant and the interpreter as the language used does not appear to have been consistent throughout.

15. The Appellant has provided an acceptable explanation for the inconsistencies. Overall I find the Appellant to be a credible witness. His account of events is consistent in terms of detail.

16. In the light of the above I find that the Appellant was politically active as claimed and that he exited Iran illegally.

17. In relation to the fear of persecution I am guided by the background information in particular the CIG of July 2016 which suggests:

*'3.1.12 those involved in Kurdish political groups are however, at risk of arbitrary arrest, prolonged detention and physical abuse from the Iranian authorities. Even those who express peaceful dissent or who speak out about Kurdish rights can be seen as a general threat and face a real risk of persecution'.*

In the light of this I am persuaded to the low standard of proof applicable that the Appellant is an Iranian national of Kurdish ethnicity who has a well-founded fear of persecution on return due to his imputed political opinion."

4. The Secretary of State sought permission to appeal, seeking to challenge the Judge's credibility assessment but, in particular, the reasoning appearing at paragraph 14(v) of the decision concerning a "misunderstanding" between the appellant and the interpreter regarding the conversion of dates. Permission was granted by a judge of the First-tier Tribunal and the salient part of that grant reads as follows:

"The grounds assert that the judge failed to provide adequate reasons for her findings on material matters, including her acceptance of the appellant's assertion that the official interpreter at interview had erroneously converted dates from the Persian to the Gregorian calendars. Whilst credibility is a matter for the judge, it was incumbent on her to provide adequate reasoning for accepting the appellant's oral evidence asserting an erroneous conversion of dates. As the dates were stated in the interview record in both the Persian and Gregorian calendars, it would not appear to have been unreasonable to expect the appellant's oral assertion to have been supported by independent expert evidence on the alleged erroneous conversion of dates, particularly in light of the appellant's previous denial of having been in Greece at the time of the relevant alleged past events in Iran. In the absence of any such corroborative evidence, it is arguable that the apparent acceptance of the appellant's bare assertion was inadequate per se."

5. Permission having been granted there was an oral hearing before me so that it could be decided whether the Judge had erred in law and, if so, whether that meant his decision ought to be set aside. Representation was as stated above and I am grateful to each representative.

6. Mr Mills, for the Secretary of State, handed in some conversion calendars. He used those calendars to seek to demonstrate that the claimant's particular explanation regarding interpreter error, as contained in his witness statement, could not be correct. In a nutshell, that was because whilst the claimant was saying he had indicated, in interview, that his departure date had been 8 September 2015, it was recorded specifically that he had said that the departure date had been in a month known as "Mehr" and 8 September does not fall within that month. The Judge's reasoning on the point had been inadequate. He could have easily had recourse to conversion calendars and checked the matter for himself. The lack of a presenting officer did not mean he could simply uncritically accept the claimant's case. Mr Howard, essentially, contended that the Judge had reached findings open to him and which he had adequately explained, such that there was no error of law.

7. I have concluded that the Judge did not err in law. In general terms, what he has to say in his decision shows that he gave careful consideration to the various matters of dispute and to credibility generally. His task was to decide the appeal on the basis of the material before him and that is what he did. If the Secretary of State had considered that provision of a conversion calendar perhaps accompanied by a written argument based upon it was important, such could have been sent to the Judge prior to the hearing. It cannot realistically be said that, having heard the oral evidence and having documentary evidence in front of him including the record of interview, the Judge was simply not in a position to make a decision such that he was required to go outside of what was before him in order to check, for example, whether 8 September 2015 fell within the month of Mehr or not.

8. Further, I do not accept the submission, if that is what is being contended, that the Judge had a general duty to cast around for further evidence which might assist him simply because there was no Presenting Officer present. I certainly accept Mr Mills submission that it was not open to the Judge to accept the claimant's evidence simply because of the absence of a Presenting Officer. However, that is not what the Judge did. What he did was consider the evidence before him and then to arrive at a reasoned conclusion. He did not penalise the Secretary of State for the failure to field a representative.

9. In simple terms, whilst I appreciate that Mr Mills has characteristically put much thought into the argument he advances, the Judge had a job to do and did it. In so doing he did not err in law even if, on one view at least, his findings as to credibility might be thought a little generous.

10. In the circumstances I have concluded that the decision did not involve the making of an error of law and that it shall, therefore, stand.

11. I have not made any anonymity direction. I was not invited to do so, I can see no obvious justification for my doing so and no such direction had been sought before nor had given by the Judge.

**Decision**

The decision of the First-tier Tribunal did not involve the making of an error of law. Its decision shall stand.

No anonymity direction is made.

Signed: Date: 16 May 2017

Upper Tribunal Judge Hemingway

**TO THE RESPONDENT  
FEE AWARD**

I make no fee award.

Signed: Date: 16 May 2017

Upper Tribunal Judge Hemingway