



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01773/2016

THE IMMIGRATION ACTS

Heard at Glasgow
on 24 July 2017

Decision & Reasons Promulgated
on 1 August 2017

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

H C

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr M Templeton, of Quinn, Martin & Langan, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a decision by First-tier Tribunal Judge Green, promulgated on 9 February 2017, dismissing his appeal against refusal of recognition as a refugee from Iran.
2. The first ground of appeal is on these lines. The judge failed to make adequate findings on central elements of the claim. The judge noted inconsistency over when

the appellant became a member or supporter of the KDP. It is accepted that confusion arose, and that no challenge can be taken against the drawing of an adverse credibility finding on this aspect. The judge found confusion over when the appellant started smuggling goods for the party. On that, there was no confusion. The appellant's evidence, written and oral, was emphatic that he started smuggling goods on 2 April 2015. The judge said that as he did not accept that the appellant had been engaged in smuggling activities for the party as he claimed, his further claims about a raid on his house and his rationale for fleeing Iran could not be sustained. The judge erred by dismissing the entirety of the account based on the one adverse finding that the appellant was (not) a member of the KDP. It was not permissible to disbelieve one aspect and use that as a basis for the credibility of the whole.

3. The second ground maintains as follows. The inadequate credibility findings are significantly compounded by reference throughout the judgement to "an entirely different political party, the KDPI ... an extremely worrying error". The respondent's refusal letter was based on the appellant's purported membership of the KDPI, an entirely different political party from the KDP. A previous hearing had been adjourned owing in part to this error and with a view to revisal of the refusal letter. The refusal letter had not been revised, but the erroneous reference had been acknowledged. Despite that earlier procedure, the judge wrote "an entire judgement premised on the appellant's case being about membership of the KDPI. This ... must be regarded as creating a sense of real injustice... that the judge has simply not applied the proper anxious scrutiny".
4. The third ground relates to the appellant not producing at interview on 21 January 2016 a letter from the KDP which he obtained in February 2016, and it being held against him that he provided no satisfactory explanation for not producing this earlier. The appellant had said in an early statement that he hoped to be able to send further documentation from his paternal aunt's husband. He explained in cross-examination how he obtained it, just over 3 months from his arrival in the UK, "not of itself a lengthy period but in particular not a lengthy period when obtaining it required the appellant to correspond with his uncle in Iraq... it is simply perverse for the judge to conclude that the letter ought to have been obtained earlier". The matter of late receipt had not been raised either by the respondent or by the judge with the appellant. It was a further error to hold that against the appellant, when he had not been asked for an explanation.
5. Mr Templeton submitted further along the lines of the grounds, as follows. Once the error of fact identified at ground 1 was excised, there was insufficient reasoning left. The appellant had been cross-examined on when he began to support the party or became a member, but not on when he started smuggling, on which there was no inconsistency. This was not a case where inconsistency on one aspect could undermine the whole. It was unsatisfactory to refer to the party by the wrong initials, when the correct identification had been a major issue. That was bound to leave a sense of injustice. There was no significant delay in producing the letter. The case should be remitted for fresh hearing.

6. Mr Matthews made close reference to the evidence at interview (in particular Q/A 38, 57, and 58); the paragraphs in the refusal letter, putting the appellant on notice of the credibility issues (¶36 - 46, in particular ¶39); and the oral evidence, as recorded in the decision, 7 (iv), which he said demonstrated multiple inconsistencies, and no error in the conclusion that the appellant gave confusing and self-contradictory evidence not only about one point, but on the whole matter of supporting or joining the party, and when, including smuggling. He submitted further that there was such a strong basis in those matters for the adverse decision that separate discussion about the alleged raid and the appellant's flight was not required. Ground 2 was at worst an unfortunate slip. The background materials produced by the appellant showed that the two parties arose from a split, has similar emblems, and described themselves in very similar terms which could give rise to either set of initials in English. If there was a misconception, nothing turned on it. There was no error in what the Judge said about late production of the letter from the party, but that was a minor point and not the reason for giving it little weight. It was found to be of no real worth, based on its own terms, at 14 (iii), a finding not criticised by the appellant.
7. I reserved my decision.
8. The extent to which adverse findings extend to the rest of a case varies with the circumstances. There is no general obligation to provide separate reasoning on each specific allegation. Mr Matthews was able to demonstrate the strength of the adverse findings by reference to the underlying evidence. The evidence was poor, on aspects which, once disbelieved, necessarily fed into the rest of the case. Ground 1 resolves on examination into no more than disagreement with factual findings which were open to the Judge and for which he has given legally adequate reasons.
9. One party heads its notepaper as, "Kurdistan Democratic Party, (KDP - Iran)"; the other as, "Kurdistan Democratic Party, (PDK - I)". The assignation of the initials in English "KDP" and "KDPI" might well apply to either. A case might arise which turned on the distinction, but this is not it. Even if the description in the decision is in some sense "wrong", that had nothing to do with the outcome.
10. It was well within reason for the Judge at ¶13 and 14 (ii) to take the late production of the letter as an adverse point, by reference to the obligation to make prompt and full disclosure under immigration rules, ¶339L. As Mr Matthews pointed out, the letter was found for other reasons to have "very limited evidential value" at 14 (iii), and no criticism was or could be made of that.
11. As to the development of this ground into a point of procedural fairness, the record in the decision shows that the chronology was put to the appellant, that he said all he has to say on the matter, and that he has nothing to add. The evidence was there for the Judge to resolve. Neither procedural nor substantive unfairness is discernible.

12. The grounds and submissions for the appellant do not demonstrate that the making of the tribunal's decision involved the making of any error on a point of law, such that it ought to be set aside. The one possible error is use of the wrong initials for the party, but that is less than clearly established, and even if so, it is beside the point.
13. The decision of the First-tier Tribunal shall stand.
14. An anonymity direction was made in the FtT. It is not said why that may have been appropriate, but as the matter was not addressed in the UT, this decision had been anonymised.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

28 July 2017
Upper Tribunal Judge Macleman