



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

Appeal Number: PA/13251/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 20 July 2017**

**Decision & Reasons Promulgated
On 1 August 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**M D
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Francesca Clarke, Counsel instructed by Fadiga & Co

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals from the decision of the First-tier Tribunal (Judge Zaheed sitting at Hatton Cross on 25 January 2017) dismissing his appeal against the decision of the Secretary of State to refuse to recognise him as a political refugee. The First-tier Tribunal made an anonymity direction in favour of the appellant, and I consider it is appropriate that this direction be maintained for these proceedings in the Upper Tribunal.

The Reasons for Granting Permission to Appeal

2. On 8 June 2017 First-tier Tribunal Judge McCarthy granted the appellant permission to appeal for the following reasons:

The first ground of application argues that the Judge unfairly fixed the appellant with something he had said in his screening interview. The Judge is alleged to have failed to have proper regard to the explanation provided for the inconsistency with the appellant's later account. I am aware that the Judge does not appear to have considered the Upper Tribunal's guidance in **YL (rely on SEF) China [2004] UKIAT 00145** and for this reason I find this ground to be made out. The other grounds of application relate to possible evidential mistakes made by the Judge. I find they are all arguable.

Relevant Background Facts

3. The appellant is a national of Iran, whose date of birth is 6 August 1993. He claims to have left the United Kingdom on 16 May 2016 concealed in a lorry. He is recorded as having made an application for asylum on the same day at London Road Police Station in Glasgow.
4. As summarised in the subsequent decision letter, his claim was that he was from Ahwaz in Khuzesgan province, and he was an Ahwazi. He had worked in Iran as a labourer. His family, including his parents and siblings, remained in Iran. At the end of 2014 he had become a member of the Ahwaz Democratic Algardatmon Party ("ADAP"). His uncles, J and M, were also members of the Party and J was in charge of his local group. He claimed that he distributed leaflets for the Party, and that he also took photographs at demonstrations, including at a football match where Arabs were arrested.
5. On 15 August 2015, his uncle J had been arrested whilst on a mission for the group. He was told of this by his uncle M, who then picked him up and took him to the house of a relative. He remained there, while the relative, Adnan, went to the town to see what he happened. He reported back that their homes had been cordoned off by the police. M found out that J had been detained and tortured, and had given the names of everyone in the group.
6. The appellant left Adnan's house 10 days later, on 26 October 2015, and travelled to Oromia, and then crossed the border to Turkey the next day. They travelled in Mansur's car (Q&A 101). They arrived in Turkey on 29 August 2015, and remained there for 25-28 days. After that, they had taken a dingy boat and crossed the sea to Greece. As soon as they arrived there, they were seized by the Greek police. They arrested M, his cousin Q and the agent. The appellant and another person managed to run away. After a few days, he managed to contact the agent in Turkey, and he arranged for him to meet a new agent in Greece. He stayed with this agent for a week, and then he left. He was then arrested by the police. They interviewed him and let him go. He made contact again with the agent, who took him to a village in a where he remained for 5 months with other asylum seekers. He had not had any contact with his uncle M until he arrived in the UK, and spoke to his family. His parents told him that M

was in London. At the time of the appellant's asylum interview, both M and Q had been accepted as refugees by the UK authorities.

7. On 15 November 2016, the Secretary of State gave her reasons for refusing the appellant's protection claim. It was not accepted that he was a member of ADAP. In answers in interview about the contents of the leaflets which he said he had distributed, he said that he could not read them and did not know what they said. As he claimed to have been actively involved in the Party, it was reasonable to expect him to know what was said on the leaflets that he was handing out. In addition, it was noted that when he was asked questions about the Party, when it was formed, who was the founder, and what the purpose of the Party was, his knowledge was vague and was not such that would be expected of someone who was an active member of the Party.
8. It was noted that there were two Ahwaz political parties which had bases in the UK. There was the Ahwaz Democratic Popular Front ("ADPF") which was formed in 1990, and the Democratic Solidarity Party of Ahwaz ("DSPA"). However, the dates when this Party was formed, and its founders, remained unclear. There were no search results for a party called ADAP, which he claimed was formed in 2003.
9. He claimed to have attended events in the UK on behalf of ADAP, but he had not submitted any evidence of this.

The Hearing Before, and the Decision of, the First-tier Tribunal

10. Both parties were legally represented before Judge Zaheed. The Judge received oral evidence from the appellant, his uncle M, and his cousin Q. In his witness statement M said that he was an Ahwazi Arab, and he fled Iran on 28 August 2015 with his cousin's son Q, and the son of another cousin of his, the appellant. He arrived in the UK on 18 March 2016 and claimed asylum. He was recognised as a refugee on 16 September 2016. He confirmed that he was a member of DSPA and that he had been politically active in this group since 2005. In 2014 he decided to form a new political cell in Iran. He first invited Q to join him, and then a few months later he invited the appellant and J, the husband of a cousin, to join the group. He was the leader of the cell. On 15 August 2015, he took Q and J to an area in Ahwaz to distribute leaflets. He returned to the area about one hour later to pick them up. He only saw Q waiting for him there. He said that they had separated to distribute leaflets, and he had not seen J again. They waited about 20 minutes, but J did not come. He contacted the appellant to get ready and told him that he would come and pick him up. The appellant's place was about 20 minutes away by car. After picking up the appellant, they went to the house of his brother, who lived nearby. In the morning, he took the appellant and Q to the place of a relative of his called Adnan. They stayed with Adnan for about 10 days. They were informed that the Iranian authorities had raided their houses looking for them. They fled Iran for their safety. He had got separated from the appellant and Q in Greece.

11. In his subsequent decision, the Judge set out his findings of fact and conclusions in paragraph [16] onwards. He said that, in reaching his findings, he had taken into account all the documents that had been submitted and considered all the evidence that was given at the hearing, including the appellant's Counsel skeleton argument and the submissions made by both parties. He said that he had also taken into account the background evidence and the case law that had been mentioned by the parties. At paragraphs [17]-[25], the Judge gave his reasons for reaching the following conclusion at paragraph [26]:

Taking all the evidence into account and my adverse credibility findings against the appellant and his witness, I find to the lower standard of proof, that the appellant was not a member of any political party, that his house was not raided and that he is of no interest to the authorities. I find that there is no risk on return to the appellant, and that he is a purely economic migrant who has travelled through Western Europe in order to seek a better life in the UK. I dismiss this asylum appeal.

The Error of Law Hearing

12. At the hearing before me to determine whether an error of law was made out, Ms Clarke developed the grounds of appeal that she had advanced in the permission application. Mr Bramble submitted that no error of law was made out.

Discussion

13. The first ground of appeal relates to paragraphs [17] and [18]. The Judge contrasted the evidence that the appellant had given in cross-examination with what he had said in his initial contact and asylum registration form at 4.1. In the latter, he said that he had been arrested by the authorities. Thereafter, he had maintained that he had not been arrested by the authorities. When this inconsistency was put to the appellant in cross-examination he had stated that he meant he escaped and they came to his house and he left the country. He was never arrested, but they raided his house. The Judge said that the appellant's answer about the authorities raiding his house did not explain the inconsistency in the initial contact form where he stated that the authorities arrested him. He found that this was an inconsistency which went to the core of his claim and damaged his credibility and his claim.
14. As advanced by Ms Clarke, Ground 1 is that the Judge was wrong to treat the inconsistency as going to the core of the appellant's claim, as the core of the appellant's claim was that he escaped from arrest. Mr Clarke did not rely on the case of **YL** in the permission application, and she had not brought along a copy of **YL** to the hearing before me. In **YL**, the Tribunal said at paragraph 19:

Whenever a person seeks asylum in the United Kingdom he is usually made the subject of a screening interview ... The purpose of that is to establish the general nature of the claimant's case and the Home Office Official can decide

how best to process it. This concerns the Country of Origin; means of travel, circumstances of arrival in the United Kingdom, preferred language, and other matters that might help the Secretary of State to understand the case. Asylum seekers are still expected to tell the truth and answers given in the screening interviews can be compared fairly with answers given later. However, it has to be remembered that a screening interview is not done to establish in detail the reasons a person gives support to a claim for asylum. It would not normally be appropriate for the Secretary of State to ask supplementary questions or to entertain elaborate answers, and an inaccurate summary by an interviewing officer at that stage would be excusable. Further, the screening interview may well be conducted when the asylum seeker is tired after a long journey. These things have to be considered when any inconsistencies between the screening interview and the later case are evaluated.

15. The case advanced in the permission application was not that the Judge was precluded from comparing the answer given in the screening interview with the case later put forward by the appellant. The complaint is a more subtle one: it is that the Judge allegedly failed to recognise that the appellant had been consistent - since the screening interview - in maintaining that he had escaped arrest, as distinct from being arrested, and then escaping. However, the Judge acknowledges this fact at paragraph [18], where he makes reference to *"his evidence before me and throughout the rest of his claim that he was never arrested."*
16. In the same screening interview, the appellant gave a detailed and lucid account of his journey to the UK, and he said that his health was good. So it was not unfair of the Judge to compare the answer which he gave in his screening interview with the case which the appellant put forward later, notwithstanding the fact that the appellant first put forward the new case by letter dated 20 July 2016 from his solicitors who said that their client had identified a number of mistakes in his screening interview, including at question 4.1, where they said that their client wished to clarify that he had stated that he was never arrested in Iran, but that his cell-mate J was arrested and that he fled as a result.
17. Ground 2 relates to paragraphs [19] and [20] of the decision, where the Judge contrasted the evidence given orally about the appellant's knowledge of the contents of the leaflets as against what he had said on this topic in his asylum interview. The Judge found that there was a clear discrepancy between the appellant in his asylum interview being unable to state the contents of the leaflets on the ground that he was unable to read or write Arabic, whereas in his oral evidence he said that he was aware of the contents of the leaflets, as his supervisor (his uncle M) had told him the contents.
18. The Judge noted that M had given oral evidence that the appellant did not know the contents of the leaflets, and so M's oral evidence was inconsistent with the oral evidence of the appellant on this topic, and he found that such inconsistencies damages both the credibility of the appellant and his uncle.

19. The argument put forward by Ms Clarke is that the Judge was perverse in finding that there was an inconsistency, in the light of Q&A 85. Having reviewed Q&A 85, I can see nothing perverse in the Judge's line of reasoning. On the contrary, the plain implication of the appellant's answer in interview to the question which he is asked is that he does not know the contents of the leaflets because he cannot read or write Arabic. If it were true that their Arabic language contents had been explained to him by his uncle, then there was no reason why he could not volunteer this information at the asylum interview.
20. In short, it was not perverse of the Judge to find that the appellant's evidence was internally inconsistent, and also inconsistent with the oral evidence given by his uncle.
21. Ground 3 relates to paragraph [23], where the Judge noted (and said it was confirmed by the appellant's Counsel in her submissions) that M and Q were granted status in Greece. He held that the appellant could have, and should have, applied for asylum in Greece, as had M and Q with whom he claimed to have travelled. He did not find it credible that a 22-year-old who was travelling with his uncle and cousin would have separated from them because he was under the control of an agent. He found that such behaviour engaged section 8 of the Asylum & Immigration (Treatment of claims etc) Act 2004.
22. Ms Clarke did not produce her note of proceedings, and there is no record of the proceedings in my file. But since both M and Q have been granted asylum status in the UK, it is unlikely that they were previously granted asylum in Greece. So, I accept that the Judge appears to have misunderstood the evidence and/or a submission made by Ms Clarke on this issue. However, I do not consider that the Judge's mistake had a material bearing on the Judge's finding that the appellant's behaviour in Greece engaged section 8 of the 2004 Act. He had the opportunity to claim asylum when, on his own account, he was arrested by the Greek Police. Moreover, if he was able to contact the agent in Turkey for further instructions, so could his uncle and cousin. So, even if there was a temporary separation, they had the means to link up again, either through direct contact between them on their respective mobile telephones or through using the agent in Turkey as a common contact point. So the error is not material.
23. Ground 4 is that the Judge failed to make a finding on the supporting evidence of Q. Although not cited to me, I have had regard to **Muse & Others v Entry Clearance Officer [2012] EWCA Civ 10** on challenges to the adequacy of a judge's reasons. In **South Bucks District Council v Porter (2) [2004] UKHL 33**, cited with approval by the Court of Appeal at paragraph 33, Lord Brown said:

The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important

controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision maker erred in law, for example, by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need only refer to the main issues in the dispute, not to every material consideration.

24. In the light of this guidance, the Judge was not obliged to refer to every piece of evidence when making his findings. He acknowledged at paragraph [15] that Q had given evidence in support of the appellant's account. Q gave the same evidence as M, but M was the lead witness, as he was the leader of the cell. It is implicit in the Judge's findings that he rejected Q's evidence insofar as he echoed the claim of his uncle M that the appellant had been a fellow member of the cell. Q was not an independent witness. He was a relative of the appellant who, like his uncle M, had a motive to misrepresent the truth in order to assist a relative in acquiring status in the UK. Accordingly, the failure by the Judge to make an express finding on the probative value of Q's evidence does not constitute an error of law.
25. Ground 5 relates to paragraph [24], where the Judge said that the photographs of the appellant with his uncle M and other members of the DSPA and letters confirming that he was a member of the DSPA, had been submitted to bolster his asylum claim. The Judge also observed that there were no photographs of the appellant attending any marches or demonstrations, as had been claimed in the letters.
26. Ms Clarke argued in the permission application that, given the time-line, the finding that the photographs were taken to bolster the appellant's claim was clearly wrong. In her oral submissions, Ms Clarke confirmed that there had been no marches or demonstrations, as none had been arranged. She also confirmed that the photographs had been taken after the appellant's arrival in the UK. On these facts, it was open to the Judge to find that the photographs were self-serving, and that they did not constitute reliable evidence of the appellant being a genuine and committed activist for the DSPA.
27. Ground 6 relates to paragraph [25] where the Judge observed that the appellant could not even name the political organisation he belonged to in his initial contact and asylum registration form, stating that it was called the 'Al-Ahwaz Party'. Although he had seen a letter from the appellant's solicitors dated 20 July 2016 seeking to rectify the name of the Party, he did not accept that the appellant had given the original version of the name in error because he did not understand the Interpreter.
28. The clarification given in the letter of 20 July 2016 was that the Party referred to at Q5.5 was the Democratic Solidarity Party of Al-Ahwaz (DSPA). Even if the appellant misunderstood the Interpreter, it was

reasonable to expect the appellant to know the name of the Party of which he claimed to be an activist. So, the fact that he did not give the Party its full name, whether DSPA or ADAP, was reasonably treated by the Judge as undermining his general credibility.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands.

This appeal to the Upper Tribunal is dismissed.

Direction Regarding Anonymity - rule 14 of the Tribunal Procedure (Upper Tribunal) (Immigration and Asylum Chamber) Rules 2008

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their 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.

Signed

Date 29 July 2017

Judge Monson
Deputy Upper Tribunal Judge