



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

Appeal Number: PA/10360/2017

THE IMMIGRATION ACTS

Heard at Glasgow

**Decision & Reasons
Promulgated**

On 21st November 2018

On 11th December 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DEANS

Between

**NP
(Anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms D Friel, McGlashan MacKay, Solicitors

For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision by Judge of the First-tier Tribunal Boyd dismissing an appeal on protection and human rights grounds.
2. The appellant is a national of Iran of Kurdish origin. He claims his father was involved in the KDPI. After his father's death the appellant became involved and this led to him having to flee from

Iran. The Judge of the First-tier Tribunal did not find the appellant's evidence credible.

3. Lengthy grounds challenging the judge's findings were submitted on behalf of the appellant in the application for permission to appeal. Permission was granted on the ground that it was arguable that in reaching his decision the judge failed to have regard to the totality of the evidence. If the judge took into account information given in the appellant's witness statement in response to the reasons for refusal letter, he made no findings upon it and gave no reasons for rejecting it. In particular, the judge arguably failed to take into account the appellant's explanation for his supposed lack of knowledge of the KDPI and the appellant's evidence in his witness statement about his father's death.

Submissions

4. Ms Friel appeared at the hearing to replace an absent colleague. She had not had time to prepare for the hearing prior to the day it took place. She nevertheless guided me with great care through the grounds set out in the application for permission to appeal. On behalf of the Tribunal I would like to record my gratitude to Ms Friel for the effort she made and for her care and professionalism.
5. For the respondent Mr Govan said he opposed the appeal, although there was no section 24 response. The grounds of the application seemed to require the Judge of the First-tier Tribunal to carry out a forensic examination of the appellant's witness statement. It was contended on behalf of the appellant that a number of minor errors would amount to a decision which was unsafe. This was essentially a challenge based on perversity. The errors were not material.
6. Mr Govan began by looking at the first specific ground, which concerned the appellant's evidence that he had not been required to take any tests to join the KDPI. This evidence was inconsistent with background evidence on what potential members had to do. There were other related issues, such as the appellant being unable to remember the date he joined the KDPI. There was no reason to suppose the appellant's explanation for why he did not take any tests in order to join the KDPI would have changed the judge's mind. There was no material error.
7. Mr Govan continued by referring to the second ground, which concerned the appellant's knowledge of the KDPI. This was no more than a disagreement with the judge's finding. The appellant's evidence was of long family ties to the KDPI. He had studied politics and could have picked up information about the KDPI even if it was not part of his course. The judge referred to the appellant's evidence on this as lacking plausibility. It was a relatively minor part of the decision.

8. The third ground related to the causes of the appellant's father's death. The judge recorded that, according to the appellant, his father was regarded by the KDPI as a martyr, but the judge found it was more likely that the appellant's father died of heart and lung disease. According to the grounds the judge did not have regard to the appellant's witness statements, in which he said his father had been under house arrest and unable to obtain medical treatment. The appellant's father had spent a long time in the mountains as a peshmerga in difficult weather conditions and the family believed this had contributed to his disease. Mr Govan commented that there could be many possible causes of lung disease and the appellant was not sure how his father had contracted this.
9. The fourth ground related to the evidence of the appellant's brother. The judge said this evidence did not provide anything useful. The brother's knowledge of the appellant's alleged involvement with the KDPI post-dated the appellant's arrival in the UK. There was nothing wrong with this finding, which was one the judge was entitled to make.
10. The fifth ground related to the appellant's claim that other KDPI sympathisers in his town knew his full name notwithstanding that sympathisers were under instructions to use only first names. The judge did not find it credible that if the appellant was a member of KDPI his full name would be known to party sympathisers. Mr Govan submitted that the judge was entitled to find as he did. This concerned the weight to be given to the evidence and the ground was again no more than a disagreement with the judge's finding, for which adequate reasons were given.
11. The sixth ground related to a letter from the KDPI office in Paris regarding the appellant's alleged membership. According to evidence before the Home Office from the Danish Refugee Council, any letter from the Paris office about an alleged member would have been sent direct to the Home Office as the asylum administration for the UK. Such a letter would never be handed to the asylum seeker himself. The Judge of the First-tier Tribunal recorded that on 3rd August 2017 the appellant's representatives faxed the KDPI asking for a copy of a letter which had supposedly been sent to the Home Office in order that it could be translated. The response in the form of a letter from the Paris office of the KDPI was dated 9th August 2017. This was the only letter from the KDPI before the judge. The judge pointed out that the procedure to avoid forgery had not been followed and the judge considered that he could not rely on the document in question. It was pointed out in the application for permission to appeal, however, that the judge also heard oral evidence from an individual referred to by the judge as RL, who was the chairman of the KDPI committee in the UK and

who spoke to the letter being genuine. According to the grounds, no reasonable judge would have discarded the letter on the basis that the stated procedure had not been followed.

12. Mr Govan pointed out that the evidence of RL was noted by the judge at paragraph 38 of the decision. The judge had the opportunity of asking RL how well he knew the appellant. There was no evidence to back up RL's claim that he had been in contact with other people in the KDPI. The judge was entitled to make the finding which he did and, although this point might carry more weight than any of the other grounds, no error had been established.
13. The seventh ground concerned the appellant's wife's lack of knowledge prior to leaving Iran of the appellant's activities for the KDPI. The judge was entitled to find that the appellant's wife's evidence was not helpful.
14. It was pointed out that at paragraph 34 of the decision the judge stated it was implausible that the appellant's wife had no knowledge of his KDPI activities but at paragraph 38 the judge stated that the appellant's wife's evidence did not assist the appellant as she had no knowledge of his alleged activities. Mr Govan said these findings were not inconsistent. The finding at paragraph 38 was stating that in any event the appellant's wife did not know about his activities. The finding at paragraph 34 showed that her evidence was taken into account.
15. The eighth ground was that the appellant failed to have regard to the evidence of other witnesses, including the appellant's brother and the witness referred to as RL, about the appellant's activities in Iran. Mr Govan submitted that the appellant's own actions were at the core of the claim for protection. The judge was justified in rejecting the appellant's own evidence and gave appropriate reasons for doing so. The judge gave reasons for not relying on the evidence of RL.

Discussion

16. After hearing submissions I reserved my decision on the question of whether there was an error of law in the decision of the Judge of the First-tier Tribunal.
17. I will begin my consideration of the decision with the treatment of the KDPI letter of 9th August 2017. During the course of the hearing before me it transpired that the parties had further correspondence on this matter from November 2017 which had not been put before the First-tier Tribunal. It came to light only because the bundle of evidence relating to this matter to which Ms Friel referred, having picked up the file to cover for her absent colleague,

was clearly different from the bundle lodged with the First-tier Tribunal. The correspondence concerned the same letter of 9th August 2017 which was before the First-tier Tribunal.

18. The point which was made in the application for permission to appeal was that the judge failed to have proper regard to the evidence relating to the letter from KDPI. The judge should have taken into account that the letter was sent from the fax number in Paris for the KDPI. This fax number was on the letter and was referred to a fax receipt in an accompanying file note from the appellant's representatives, and on an extract from the KDPI website. There was also the evidence of RL as chairman of the KDPI committee in the UK speaking to the genuineness of the letter.
19. The Judge of the First-tier Tribunal dismissed the letter from the KDPI Paris office on the grounds that it had been sent to the appellant's representatives instead of to the Home Office, contrary to the invariable practice of the KDPI according to the report by the Danish Refugee Commission. The judge does not appear to have considered at all the possibility that in this instance the normal procedure was not followed, notwithstanding the oral evidence of RL, as a KDPI official (albeit in the UK not France) that the letter was genuine. Furthermore, the judge did not consider the possibility that the date on the copy of the letter which was sent to the appellant's representatives was not the same as the date on the original letter, assuming an earlier original existed. The date on the letter, 9th August 2017, post-dated the representatives' request of 3rd August 2017 for a copy of the letter so it could be translated. It was this which seems to have led the judge to conclude that the procedure in the Danish report had not been followed. In these circumstances the judge did not give wholly adequate reasons for concluding that the letter should not be relied upon.
20. As Mr Govan contended, taken singly none of the grounds of the application might be sufficient to show a failure in reasoning by the Judge of the First-tier Tribunal amounting to an error of law. The judge was not required to conduct a forensic examination, as Mr Govan put it, of the appellant's witness statement. At the same time, the judge was most certainly not entitled to disregard large parts of this statement in which the appellant attempted to give explanations for matters which were identified in the respondent's refusal letter as omissions or discrepancies. Had the judge omitted to mention specifically one or two such explanations it might have been implied that the judge had taken them into account but did not consider them to be material. In the application for permission to appeal, however, page after page is devoted to listing explanations given by the appellant to which the judge gave no apparent consideration.

21. It is not necessary to list all of these. They begin with how the appellant joined the KDPI and continue through the nature of the appellant's studies and his knowledge of the KDPI, the ill health of the appellant's father, how the appellant was known within the KDPI, and how much his wife knew of his activities. Indeed, in relation to the evidence given by the appellant's wife the judge found first that it was implausible that she did not know about his activities and then that, as she did not know of these activities, her evidence did not assist the appellant. Mr Govan sought to reconcile this apparent inconsistency and might have succeeded in doing so were there not so many other causes of concern arising from the judge's findings. It simply cannot be implied that the judge has done a proper and adequate job in making findings upon the evidence before him.
22. There is then the evidence of the other witnesses to consider, including the appellant's brother and LR. The evidence of LR was dismissed in its entirety on grounds which are not fully sustainable. There was the issue of whether proper procedures had not been followed in relation to the letter from KDPI. The judge expressed concern about LR having become acquainted with the appellant only a few months previously. More worryingly, however, the judge referred to a lack of documentary evidence to support RL's evidence of having been in touch with others in making inquiries about the appellant. The application for permission to appeal points out that in itself this would not justify rejecting LR's evidence, which had to be evaluated by the judge. It is difficult to be satisfied that the judge gave adequate reasons for dismissing the evidence of RL in its entirety.
23. I have made the point already that in this appeal it is the cumulative criticisms of the basis on which the judge made his findings which give cause for concern. There is in addition the fact that although the hearing before the First-tier Tribunal took place on 16th November 2017 the judge's decision was not promulgated until 1st May 2018. The causes of this delay are not specified. It seems unlikely, however, that a delay of this length would be attributable wholly to any shortcomings in the tribunal's administration. It seems likely there has been a considerable delay by the judge in completing his decision.
24. This delay was not founded upon by the appellant and, of course, the Upper Tribunal has no specific practice for addressing delay in the issuing of a decision by a Judge of the First-tier Tribunal. This is an appeal, however, in which there were several witnesses and numerous disputed issues of fact. It is not surprising that as the months since the hearing slipped by when the judge came to address these issues matters would be overlooked or disregarded.

25. The position is that looking at the decision as a whole the Judge of the First-tier Tribunal has not given proper and adequate reasons for the findings he made. The judge has overlooked or disregarded parts of the evidence and, in particular, explanations given by the appellant in his witness statement, which might have led to different findings having been made. The judge's findings are flawed and unsafe and the decision should be set aside.
26. The parties were agreed that if the decision were to be set aside there should be a further hearing. In view of the nature and the extent of the findings of fact required I consider that in terms of paragraph 7.2(b) of the Practice Statement remittal to a differently constituted First-tier Tribunal is required, with no findings preserved.

Conclusions

27. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
28. The decision is set aside.
29. The appeal is remitted to the First-tier Tribunal for hearing by a differently constituted Tribunal with no findings preserved.

Anonymity

The First-tier Tribunal made a direction for anonymity, notwithstanding a statement in its conclusions that no direction was made. In order to preserve the positions of the parties until the appeal is re-heard I continue this direction.

M E Deans
6th December 2018
Deputy Upper Tribunal Judge