



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

Appeal Number: PA/02077/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 31 July 2019**

**Decision & Reasons Promulgated
On 23 August 2019**

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

**A R
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Reid of Counsel

For the Respondent: Mr Turfan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iran born in 1994. He is a Kurd and a Sunni. He appealed against a decision of the respondent made on 20 February 2019 to refuse his claim for asylum.
2. The basis of his claim is that his father was a smuggler who was shot by Iranian border forces in 2010. This galvanised the appellant into campaigning for Kurdish rights. He was detained twice in 2015, the second time for forty days during which he was tortured. Later that year,

he got a phone call from Etella'at telling him to come to their office. He did not, but a week later, returning home saw they were raiding his house. He fled eventually leaving Iran illegally overland to Finland where he claimed asylum which was refused, after which he travelled to France for several months before coming to the UK.

3. The respondent, in summary, did not believe the appellant was politically active as claimed. His father had not been targeted as a Kurd but because he was a smuggler. His reasons for being motivated into political activity were vague and not credible. It was not accepted that the authorities had an interest in him.
4. He appealed.

First tier hearing

5. Following a hearing at Harmondsworth on 3 April 2019 Judge of the First-tier Tribunal Housego dismissed the appeal.
6. His findings are at paragraph 36ff. In summary, the appellant's account as to his motivation was not credible. His father was shot because he was smuggling not because he was a Kurd; the appellant did nothing about activism for the Kurdish cause for several years thereafter, his claim to have found out about human rights abuses of Kurds through social media was inconsistent in content and time because he was living in a Kurdish area.
7. Further, his claim to have been tortured was unspecific apart from his assertion that his toenails were pulled out. He made no mention of such in his screening interview when also he did not say he had been detained for forty days. Moreover, it was not plausible that Etella'at would have told him to come in, they would simply have picked him up.
8. The judge also found against the appellant a lack of political activity in the UK until just before the hearing, and his failure to seek asylum in France.
9. He sought permission to appeal which was refused but granted on 27 June 2019 on re-application to the Upper Tribunal.

Error of law hearing

10. In her submissions Ms Reid noted that the appeal turned entirely on credibility. The fundamental flaw on the part of the judge, who found the account to be inherently implausible, was that he relied entirely on his own reasoning; there was no reference to any background evidence as a frame of reference. As such the judge framed his assessment of credibility in the incorrect context.
11. Mr Turfan, in response, agreed that the judge erred in failing to examine the claim in the context of the background material. He queried, however,

in light of the number of adverse findings which had not been challenged, whether it was a material error.

12. I agree with Ms Reid. Credibility findings can only really be made on the basis of a complete understanding of the entire picture, placing a claim in the context of the background information regarding the country of origin (see UNHCR Handbook paras 42-43), although going into detail about the background circumstances will not always be necessary or fruitful.
13. In this case, however, I consider that reference to, and consideration of, the background material was necessary. The judge's adverse findings (at [36]) were in connection with the appellant's motivation which he found not to be credible. The judge stated that the gap between the shooting of the appellant's father and his own activism in 2015 was such that it was not credible that his political involvement was triggered by his father's shooting. In making this finding the judge did not consider the evidence in the appellant's statement that his political interest began when his father was shot and escalated to his activism in 2015. The judge then continued: "[H]is father was shot because he was smuggling not because he was a Kurd." Such ignored the background evidence, which was before him and to which he was referred in submissions, which states that there is arbitrary shooting and other mistreatment of Kurds who are transporting goods across the border (see respondent's CPIN "Iran: Kurds and Kurdish political groups" para 4.1.2). The judge failed to have regard to a material strand of evidence. There is no reference to any background evidence as a frame of reference for the assessment of the appellant's credibility. That, in the context of this case, was a material error.
14. As Mr Turfan said several adverse findings by the judge have not been challenged. However, paragraph 36 was the starting point of his analysis. I consider the errors shown there must taint the other findings with the result that the case must be remitted to be heard again.

Decision

The decision of the First-tier Tribunal shows material error of law. It is set aside. The nature of the case is such that it is appropriate under section 12(2) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2 to remit to the First-tier Tribunal for a fresh hearing on all issues. No findings stand. The member(s) of the First-tier Tribunal chosen to consider the case are not to include Judge Housego.

An anonymity order is made. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. Failure to comply with this order could lead to contempt of court proceedings.

Signed

Date

Upper Tribunal Judge Conway

22 August 2019