



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/04556/2018**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
Reasons Promulgated  
On 28<sup>th</sup> March 2019  
2019**

**Decision and  
On 08<sup>th</sup> May**

**Before**

**DEPUTY JUDGE UPPER TRIBUNAL FARRELLY**

**Between**

**MR D R  
(ANONYMITY DIRECTION MADE)**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the appellant: Mr M Sowerby, Counsel, instructed by Freedom Solicitors

For the respondent: Mr Melvin, Senior Presenting Officer

**DECISION AND REASONS**

Introduction

1. The appellant made a claim for protection on the 27<sup>th</sup> June 2017. He claimed to have arrived in the United Kingdom the day before. He said he was a national of Iran and was a Kurd. He made a living lawfully transporting goods across the border with Iraq. On 7 June 2015 his vehicle was stopped by a group of men in traditional Kurdish dress. They totalled 6. He subsequently learned that they were members of PJAK. They commandeered his vehicle, taking the appellant with them as a passenger. They later encountered a checkpoint and fire was exchanged.

2. They managed to drive away and later stopped the vehicle and the appellant and the men got out. The men returned his mobile phone. He left his identity documents in the vehicle. They had stopped near the house of one of his friends who allowed him to stay overnight. He made contact with his family the following day and his mother advised him that the authorities of been to their home looking for him. They had arrested his father. He then made his way to his sister's house. His father was released the following day and from what the appellant learnt it was felt he was in danger and should leave the country. Since then he has been in contact with his family but did not discuss events.
3. The respondent refused his claim 21 March 2018. It was accepted he was a Kurdish national of Iran. The truth of his underlying claim however was not accepted.
4. His appeal was heard by First-tier Tribunal Judge O'Hagan at Birmingham on 9 May 2018. In a decision promulgated on 17 May 2018 it was dismissed.
5. Permission to appeal was sought on 2 grounds. The 1<sup>st</sup> was that the judge made a negative credibility finding without putting operative matters to the appellant for comment. Secondly, it was contended the judge made a factual error as to the timescale as to when he learnt of his father's detention. The judge had commented, as a negative credibility factor, the apparently very short timescale between the incident and the authorities going to the appellant's home.
6. Permission to appeal was granted by First-tier Tribunal Judge Keane. Permission was not granted on the grounds advanced. Rather, First-tier Tribunal Judge Keane granted permission on the basis it was arguable the judge erred in the overall credibility assessment. The judge had accepted the appellant's account was broadly consistent with the objective evidence about events in Iran. Furthermore, the actual account was consistent and the appellant has not sought to embellish it. Points made by the respondent where discounted by the judge. However, First-tier trade Tribunal Judge Keane then felt the judge may have erred by expressing concerns about the plausibility of the account. This included an adverse inference from his failure to claim asylum in Austria where he had been arrested. First-tier Tribunal Judge Keane found it was arguable that the judge had not arrived at his conclusion on the basis of a global assessment of all the evidence.

### The Upper Tribunal

7. Mr Sowerby continue to argue that the judge materially erred by not putting certain matters to the appellant. For instance, the judge had questioned why on the account given the PJAk members would

have taken the appellant in the 1<sup>st</sup> place. On the basis set out in paragraph 36 his presence could constitute a danger for them. For instance, he could have resisted; he could have learnt more about them; if they meant him no harm then why take him in the 1<sup>st</sup> place? At paragraph 39 the judge had questioned why, having escaped the firefight the vehicle was subsequently abandoned with the occupants fleeing on foot. Regarding the second-ground advanced, he made the point that the appellant's timescale of the authorities finding out about him and detaining his father related to the following day and not immediately thereafter.

8. Mr Melvin opposed the appeal, stating there was no material error demonstrated. The judge had carried out a global assessment and he submitted there was no merit in the grounds advanced. The judge clearly indicated why the appeal was being rejected. The only issue arising in the appeal was the appellant's credibility. If he was found not to be credible and the appeal could not succeed.
9. The judge had made the point that the fact the account may be consistent did not necessarily mean it was true. Mr Melvin suggested that the consideration of the appeal should be restricted to the grounds advanced in the application for permission. There had been a subsequent issue in relation to Facebook material but he submitted this had not been an issue before the original decision maker or the judge and it was open to the appellant to make a fresh claim on this.

### Conclusion

10. I have considered the decision in its entirety. In my view this is a carefully prepared decision which is sustainable. At paragraph 5 the judge accurately sets out the claim being made. At paragraph 8 he sets out the appellant being arrested and fingerprinted in Austria. He made a claim for protection there but did not remain. Then, at paragraph 10 and 11 the judge accurately sets out the points taken in the refusal letter. This is replicated in the summary of the presenting officer's submissions at paragraph 22.
11. The judge identified that the case turned upon the appellant's credibility. This is not been challenged. At paragraph 29, under the heading `Analysis, findings and conclusions' the judge emphasised that he was looking at all of the evidence and refers to a jigsaw of evidence, the cumulative impact of which led him to find the account was not credible. At paragraph 30 he again emphasised the need to consider the evidence as a whole. The judge made the very sensible point that the fact the appellant maybe uneducated did not mean he was unintelligent.
12. The judge demonstrated an open-minded approach in considering the evidence. He took certain points in the appellant's favour. For instance, at paragraph 32 the judge referred to the

absence of documentary evidence in support of the claim but drew no adverse inferences because of this and in the circumstances found it plausible that documentation would not be available. At paragraph 35 the judge acknowledged that some points taken by the respondent were without merit. These relate to peripheral matters, such as to who engaged the agent. At paragraph 42 the judge accepted that the account of the early release of his father could have happened if he was in poor health. At paragraph 44 the judge acknowledged that a failure to claim protection in a safe country did not automatically damage credibility, albeit in this case the judge did find it to be damaging.

13. The judge acknowledged that the appellant's account was consistent at paragraph 34. The judge accepted he had not sought to embellish this simple account. The account given was also consistent with the background information about events in Iran and skirmishes between the authorities and the PJAK. All these factors however did not make the account necessarily true. Again, this was a common-sense point to make by the judge. The judge then gave specific examples which called into question the claim.
14. At paragraph 36 the judge questioned why the PJAK members would take him with them. One of their members, on his account, had driven the vehicle so he was not needed as a driver. At paragraph 37 the judge pointed out the risks to PJAK in taking the appellant with them. He could have resisted or if the opportunity arose, alerted the authorities. The longer he was with them the more he could find out about them. If they did not mean to do him harm and was suggested on his behalf then they could simply have left behind. On the face of it therefore there was no obvious reason for taking him with them. This was a matter of common sense to draw from the case presented. It is not necessary for a judge to put to the appellant conclusions drawn on the claim and no unfairness occurred. There was no surprise about what the judge did and the observations were based upon the claim made.
15. The other point taken by the judge was the claimed abandonment of the vehicle. At paragraph 39 the judge questioned why this would be done when they could have continued to drive on. Again, the judge shows an even-handed approach by suggesting possibly they may have been concerned that at that stage the authorities would be tracking the vehicle.
16. However, a compounding feature was there leaving the appellant. The judge made the point that if he were detected he might be able to give information about them.
17. A further point was the authorities returning his telephone. The judge did not find it plausible that in the circumstance PJAK would be so concerned about his loss of contact details and photographs that they would do this. The appellant had sought to suggest

returning the phone did not present a risk and there was an issue as to whether the battery was flat or whether the battery was removed. In any event, the judge made the point that he could telephone from any nearby house. Again, these are common sense observations from the case made. The judge did not see the need to specifically put them to the appellant.

18. At paragraph 41 the judge did comment as a negative credibility point the apparent speed with which the authorities could identify him. The appellant did not have any profile before the incident. It was improbable that he would have been identified at the scene. It was suggested he could have been identified through the vehicle and a driving licence left. However, this would require the vehicle being found in the 1<sup>st</sup> place and then checks made. At paragraph 41 the judge refers to this being unlikely to have taken place by the time he reached the house of his friend Sherwan. It is argued on behalf of the appellant that the judge has misunderstood the timescale in that the raid upon the family home did not take place immediately but occurred the following morning. The judge has in fact recorded this at paragraph 18.
19. I do not find any material error of law in relation to this. This was only one feature amongst many. The judge at paragraph 41 had commented as being improbable that the authorities but have identified him and being is home by the time he reached the house of his friend Sherwan. The appellant's claim was he did contact his home using Sherwan's phone the following morning. I do not find it established that the judge has made a factual error but in any event, the overall point made was the improbability of the speed with which the authorities had been to his home. In the context of the reasons as a whole I do not find any material error arising.
20. In summary this to be a carefully prepared decision in which the judge has properly evaluated the evidence and come to conclusions open to them. The judge properly addressed section 8. Whilst pointing out at paragraph 44 it was not automatically damaging to credibility, went on to find on the facts the appellant's explanation for not remaining in Austria was flimsy. Consequently, on the facts it did damage his credibility. Again, this was something open to the judge.

### Decision.

No material error has been established in the decision of First-tier Tribunal Judge O'Hagan. Consequently, the decision dismissing the appellant's appeal shall stand.

Francis J Farrelly  
Deputy Upper Tribunal Judge.

dated 06 May 2019