



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05904/2016

THE IMMIGRATION ACTS

Heard at Bradford
On 25 January 2019

Decision & Reasons Promulgated
On 6 February 2019

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

FSA

(ANONYMITY DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:	Ms G Patel	(Counsel)
For the Respondent:	Mr A Tan	(Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal, brought with the permission of a Judge of the Upper Tribunal, from a decision of the First-tier Tribunal (hereinafter "the tribunal") which it made on 24 March 2018 following a hearing of 21 March 2018 and which it sent to the parties on 27 March 2018. The tribunal's decision was to dismiss the claimant's appeal from the Secretary of State's decision of 25 May 2016 refusing to grant him international protection.

2. The tribunal granted the claimant anonymity. Nothing was said about that before me and, in the circumstances, I have decided to maintain the status quo and continue that grant.

3. The claimant is a national of Iran. The tribunal decided that he had been born on 1 January 1998 notwithstanding an age assessment report which suggested he had been born at a later date but which the tribunal found to be unreliable. He is of Kurdish ethnicity. Put simply, he claimed that he had been involved in alcohol smuggling activities with his father and that his father had been arrested by the authorities as a result of that. However, he also said that he was fearful of return to Iran because he had distributed leaflets for the pro-Kurdish oppositionist party referred to as "PJAK" and because he is a Sunni Muslim rather than a Shia Muslim. It has also been argued on his behalf that, even if his account is not true, he would be at risk at the hands of the authorities upon return as a Kurdish failed asylum seeker.

4. The respondent did not believe that the claimant had given a truthful account and did not believe, therefore, that there was any reason to conclude that he would be at risk upon return. That is why she refused his claim. The claimant appealed that decision and it was dismissed by the tribunal in an earlier decision which was sent to the parties on 10 November 2016. That decision, however, was set aside because it contained an error of law and a rehearing of the appeal was directed. It was that which led to the tribunal's decision to which I have referred.

5. The tribunal accepted that the claimant is a national of Iran, from a remote village in Iran, and that he is Kurdish. It accepted his claim of having been born on 1 January 1998 or at least that there was no reason to reach any adverse credibility finding with respect to his claims as to his age (see paragraph 16 of the tribunal's written reasons of 24 March 2018). But it rejected, as untruthful, the various claims he had made with respect to smuggling and leafleting. It explained why it was doing so in this way:

" 17. C) Alcohol smuggling. I find that the appellant's claim to have assisted his father with alcohol smuggling into Iran, later in his witness statement adding toy smuggling, does not engage the 1951 Convention. I note his claim set out in his appeal representations that as an alcohol smuggler he was a member of a particular social group in Iran. Wisely in my judgment, this particular claim was not pursued or even referred to during the course of the hearing. Neither was it argued that the appellant's alcohol smuggling activities were

indicative of him holding an imputed political opinion in Iran. However, he did claim that he was at risk in Iran because the Iranian authorities arrested his father because of his father's alcohol trading, then claiming that he was 'possibly executed'. The respondent rejected this account in its entirety because it was insufficiently detailed as to how the smuggling was carried out and how his smuggling activity was concealed from the authorities. I make the following findings.

18. I note the appellant's claims at both his screening and his asylum interviews as to his father's arrest. However, I find his account vague and in parts lacking in credibility. For example, he stated in answer to his asylum interview's question 92 that he did not know when his father was arrested but he knew that he had been and that he was held by an Iranian security agency. This was because in his original account at his asylum interview his father telephoned the appellant's mother to tell her and she in turn was able to tell the appellant's father that the house had been raided. However, the appellant's account changed when he claimed that was at the time of his father's alleged arrest at his cousin's house and was heading home when a neighbour shouted to him that his father was arrested and warning him not to return home. In answer to question 99 he was unable to remember when this happened, but when again asked he said it happened about eleven days before he arrived in the United Kingdom, a response I find unexpectedly precise for someone claiming totally literacy, and also a claim that was in stark contrast to the vagueness of his first reply.
19. During the course of the hearing the appellant stated that when he heard about his father's arrest he was at his father's cousin's house, which he visited once or twice a week. His father's cousin lived not more than five minutes walk away from the appellant's family home. I note that in answer to the asylum interview question 94 as to how the appellant knew his father was taken, he replied '*When he called my mother*'. In answer to question 96 as to when he called the appellant's mother, he replied '*When I went to my cousin's and in the evening he called my mother and she told him about the house raid*'. I then note the appellant's witness statement paragraph 9(a) in which he stated that he wished to clarify that his father did not contact his mother. He stated '*I have never said this. This must be an error in my substantive interview. My mother was with my father at the time and they raided our home and arrested him. The phone call which I have referred to in my account was from my father's cousin to my mother. My mother told him what had happened and that my father had been arrested.*'
20. I find the appellant inconsistent in this part of his account. The asylum interview record is clear and was unchallenged in this particular part until the appellant's first witness statement of 24 October 2016, six months after the asylum interview, a delay that has never been explained.

21. The appellant's account is that when he heard about his father's arrest he went back to his cousin's house, which was not more than five minutes walk away. I find it lacks credibility that if the Iranian authorities had the slightest adverse interest in the appellant that they would not have easily located him in that tiny village, which the appellant's representative at the hearing acknowledged had a population of around 250 people.
22. I find the appellant's account of his claimed alcohol smuggling activities and his father's arrest and '*possible*' execution both vague and inconsistent and therefore, even having regard to the low standard of proof in these matters, I do not believe this entire part of his claim.
23. D) Appellant's lack of education. The appellant stated several times in his account that he was illiterate and he repeated this on a number of occasions during the course of his evidence. However, in answer to the respondent's representative's question as to his age and when he stopped going to school he replied '*I was seventeen years old*'. I intervened in order to clarify his evidence. I asked him if he was saying he went to school in Iran. He replied '*Yes*'. He paused and then added '*I haven't had any education*'. I asked him whether he did or did not go to school in Iran. He replied '*Yes, I went until I was seventeen but didn't receive any education. I went every year and they sent me home every time because of my ear*'. I asked him whether he was now saying that he only went to school in Iran once a year. He replied '*I was bullied*'. I then asked him whether he would please tell me whether he did or did not go to school in Iran, yes or no. He replied, '*No I did not go to school. I can't read or write. I didn't have education*'.
24. I note the appellant's asylum interview record where at questions 12-13 he was asked whether he studied in Iran. He replied that his father took him to school but he experienced bullying because of the shape of his right ear. He stated that he stopped going to school when he was seventeen. It was pointed out to him at question 14 that he had just stated that he did not attend school because he was bullied and was asked if he was now saying that he attended school until the age of 17 and whether he could confirm if he went to school in Iran or not. He replied that he started going to school at the age of ten and his father would take him to school every day, but because he experienced the same bullying every day he did not stay at school and went home and continued like that for a number of years. I find that irrespective of the appellant's inconsistency in his evidence I do not find it credible that he was taken to school every day and simply walked out again every day. I do not believe the appellant's claim that he received no education in Iran.
25. Leafleting for PIAK. The appellant claimed during the course of his asylum interview in answer to questions 67-68 that he supported PIAK but was not politically active other than by discreetly distributing written materials for

PJAK at night time along with four other people. He stated in answer to question 74 that he carried on this activity for about two months. Of importance, however, is the fact that this was the appellant's first mention of this claim. When asked for a reason as to why he failed to mention it at his screening interview, he stated in answer to questions 81-82 of his asylum interview that because he had been held for three nights and was not allowed to go out of doors, he was mentally exhausted. He then later stated that he forgot to mention it because he was asleep when the officer woke him up and told him he was going to be screened.

26. I note case law, YL (Rely on SEF) China [2004] UKIAT 00145 in which it was held that the purpose of a screening interview was for the appellant to establish the general nature of the case in order for the respondent to decide how best to process it. It was stated that asylum seekers were still expected to tell the truth and answers given in screening interviews could be compared fairly with answers given later. Screening interviews were not carried out in order to establish in detail the reasons for a person's claim and it would not normally be appropriate for the respondent to ask supplementary questions or to entertain elaborate answers and an inaccurate summary by the interviewing officer at that stage would be excusable. Further, the screening interview might well be conducted when the asylum seeker was tired after a long journey. These things had to be considered when any inconsistencies between the screening interview and the later case were evaluated.

27. I note that the appellant gave two different reasons for failing to mention at his screening interview his claimed leafleting on behalf of PJAK. He initially stated that it was because he was held for three nights, was not allowed to go out of doors and was therefore mentally exhausted, and then stated that he forgot to mention it because he was asleep when the officer woke him up in order to tell him he was going to attend his screen interview. However, I find neither of these explanations credible. I make this finding because I would expect that if he was indeed involved with PJAK in the way claimed, this would have been at the forefront of his mind when asked to explain why he could not return to Iran and I would have expected it to form a mainstay of his asylum claim. I additionally note his professed awareness of the dangers of such involvement with and on behalf of PJAK and the risk of execution if discovered, as stated in answer to questions 73 and 78 of his asylum interview. I accept that he was not required to provide detail of his claim at the screening interview stage but he was required to tell the truth. I remind myself of question 4.2 in which he was asked to briefly explain '*all the reasons*' why could not return to Iran. His reply to the question comprised entirely of him allegedly helping his father to smuggle alcohol to Iran. He added that his father was arrested and that he was told that he was '*possibly executed*'. The appellant then stated that the authorities arrested families and he therefore feared arrest.

28. I have also considered the fact that the appellant entered the United Kingdom on 28 January 2016 and gave his screening interview the following day at 12.35 in the afternoon. I note his readiness to be interviewed, as shown at A1 of the respondent's bundle. I am satisfied that if true he would have been fully aware that his claimed activities on behalf of PJAK would lead to drastic consequences for him if detected because he said so during the course of his asylum interview three months later. I therefore do not find it at all credible that he would simply forget to mention it when asked. I find that he fabricated his claim to have carried out tasks on behalf of PJAK."

6. The tribunal then went on to consider whether the claimant might be at risk of persecution or serious harm in consequence of him being, or strictly speaking I suppose potentially being, a returned failed asylum seeker. As to that the tribunal said this:

" 30. With regard to the appellant's return to Iran, I find that he would be returned as a failed asylum seeker. I am satisfied that he does not face a real risk of persecution or a breach of his articles 2 or 3 1950 Convention rights on return to Iran on account of him having left the country illegally, if indeed he did so, or as a failed asylum seeker, because I find that it has not been shown even to the low standard in these matters that the Iranian State had the slightest adverse interest in him. I note relevant case law of *SSH and HR (illegal exit: failed asylum seeker) Iran* CG [2016] UKUT 308 setting out this principle. During the course of her submissions the appellant's representative urged me to consider paragraph 23 of the decision and to find that upon his return to Iran he would be subjected to more than a period of simple detention or questioning, this because in the context of the overall evidence his previous activities in Iran showed that he acted against the State and at the very least he would therefore be subjected to a breach of his article 3 1950 Convention rights. However, I do not for one moment accept this. Indeed following careful consideration of all elements of his claim, the only matter I do believe in relation to it is set out above, namely that I have found in accordance with the lower standard of proof that he is a national of Iran. Consequently, I am satisfied on the evidence that upon return to Iran he would at most be held for a brief period and questioned at the port of entry, and I am satisfied that he has failed to show otherwise."

7. Finally, the tribunal dealt with the question of whether he might be at risk due to his being a Sunni Muslim or, indeed, due to his being of Kurdish ethnicity. As to that it said this:

" 31. I note from his appeal notice representations that the appellant claimed that he was unable to return to Iran because of his Kurdish ethnicity and his Sunni Muslim religion. However, I am satisfied that he failed to show that he would be at real risk for either of these reasons. I also remind myself of

paragraph 34 of *SSH and HR* in which it was noted that although it was not suggested that the Kurdish appellants in that particular appeal faced risk on return on the sole basis of being Kurdish, the Upper Tribunal's conclusion was that even though being Kurdish was relevant to how a returnee might be treated by the authorities, the evidence did not show a real risk of ill-treatment to Kurdish returnees who were not of adverse interest to the Iranian State, either on the basis what would happen to him when questioned at the airport or subsequently if they were convicted of an offence of illegal exit. Specifically, the Upper Tribunal noted that in respect of one of the appellants in that appeal, it did not appear to be disputed that he was Kurdish and undocumented and therefore the Upper Tribunal saw no reason for remittal to the First-tier Tribunal, as prosecution for illegal exit was an outcome not experienced by such returnees and where it did occur, the most likely sentence in relation to the illegal exit charge would be a fine. It was not shown that there would be a real risk of prosecution under Article 500 for propaganda against the State on the basis of having made an asylum claim which was found to be false."

8. The tribunal then made a finding in the alternative to the effect that if the claimant were to be at risk in his home area he would be able to take advantage of an internal flight alternative.

9. Permission to appeal was sought. The grounds run to six pages but to summarise and I hope permissibly truncate, they assert as follows:

- (a) the tribunal wrongly detected inconsistency in the claimant's account as to how it had been discovered that his father had been arrested by the authorities;
- (b) the tribunal had erred in its assessment of credibility through failing to take account of the claimant's young age;
- (c) the tribunal had wrongly concluded or had failed to explain how it arrived at the view that the account the claimant had offered with respect to alcohol smuggling was vague;
- (d) the tribunal had provided an inadequate assessment as to the risk the claimant might face (irrespective of the truth or otherwise of his account) on return to Iran.

10. Permission to appeal was granted. The Granting Judge thought it arguable that the tribunal had wrongly identified a non-existent inconsistency and that it had failed to take into account the claimant's age 'at the time certain events occurred'.

11. Permission having been granted the matter was listed for an oral hearing before the Upper Tribunal (before me) so that consideration could be given to the issue of whether the tribunal had erred in law and, if so, what should flow from that. Representation at that hearing was as indicated above and I am grateful to each representative. Ms Patel, essentially, relied upon the written grounds. She argued that the tribunal had clearly misunderstood the indications given by the claimant as to how the father's arrest had come to light. She argued that that infected all of the credibility findings and rendered the tribunal's decision unsafe. The tribunal had failed to indicate, in its written reasons, that the claimant's young age had been taken into account with respect to its credibility assessment. It was not enough for it simply to have mentioned his age. That did not mean it had been properly taken into account. The account given in the substantive asylum interview as to smuggling was not vague at all. As to risk on return, whilst the tribunal had referred to the then most relevant Country Guidance decision in *SSH and HR (Illegal Exit: Failed Asylum Seeker) Iran CG* [2016] UKUT 308, it had been required to go further than it did in its analysis and should have appreciated that the claimant would be asked questions upon return which would reveal the basis of his claim had involved pro-Kurdish activities and that that, of itself, would have excited further interest which would have led to ill-treatment. Mr Tan, for the Secretary of State, argued that the tribunal had carried out a holistic consideration with respect to credibility, that even if it had wrongly identified an inconsistency that did not detract from the soundness of the overall credibility assessment and that it had properly applied the Country Guidance with respect to risk upon return.

12. I have decided, as I indicated to the parties at the end of the hearing, that the tribunal did not err in law. I shall now explain why I have so decided.

13. The tribunal, with respect to the claimant's claimed activities which he said had caused him to be at risk, reached a clear adverse credibility conclusion. It explained that in a part of its written reasons which I have reproduced above. There is a specific attack upon what it had to say at paragraph 19 of its written reasons regarding what it perceived to be inconsistency in the account given at the substantive asylum interview as to who it was who had informed his mother of his father's apprehension by the authorities. The tribunal thought that he was clearly saying it was the father himself who had called his mother to explain that. Ms Patel says it is clear that the claimant was saying it was his cousin and not the father. The relevant passage of the substantive asylum interview is from question 92-98. I would accept that, whilst it is just about possible to read the passage in the way that the tribunal did, it is very much more likely that what the claimant was trying to convey was that his cousin (not his father) had called his mother to relate the relevant information. So, I conclude that the tribunal did misunderstand the evidence with respect to that discrete aspect. But, as Mr Tan points out, the tribunal had other concerns with respect to that aspect of the account. At paragraph 18 of its written reasons the tribunal noted that the claimant had said he became aware of his father's arrest at a time when he was in his cousin's house (see question 93 of the substantive asylum interview record and his answer) but had then gone on to say that he had found out about the arrest when, whilst walking home, he was informed of it by a neighbour.

14. Additionally and in any event, the adverse credibility assessment as contained in the written reasons is a broad based one which does not simply rely upon a consideration as to the circumstances surrounding the father's claimed arrest. The tribunal had other concerns. The most notable of those was that the claimant had delayed in claiming to be at risk due to his having been leafleting for PJAK. Ms Patel criticised the tribunal before me for attaching weight to that delay but it carefully explained, at paragraph 25 of its written reasons, why it was doing so notwithstanding that the omission had occurred in a screening interview rather than in the substantive asylum interview. In my judgment the credibility assessment is entirely sustainable notwithstanding the single imperfection identified. I do not agree that the one error it made infected the whole of its adverse credibility findings.

15. As to the claimant's young age, the tribunal did not expressly say that it was taking his young age into account when assessing credibility. Perhaps its written reasons would have been more complete if it had, albeit briefly, said something to that effect. But it did give consideration to the question of the claimant's age so it clearly knew that it was dealing with a young person. Assuming the above birth date is correct the claimant was aged 18, albeit only just, and so was an adult albeit only just, at the time of both the screening interview and the substantive asylum interview. I am satisfied that the tribunal would have had at the forefront of its mind the claimant's young age when it was making its credibility findings. Given that it had spent some time addressing the evidence regarding his age, it can hardly be said that it had suddenly, for some reason, lost sight of that.

16. As to vagueness, this only relates to what the claimant had had to say about smuggling. It is fair to say, as does Ms Patel, that the tribunal did not actually explain why it thought the account offered with respect to smuggling had been vague as opposed to what it also said which was that it was inconsistent. Ms Patel, in suggesting that the account was the opposite of vague, takes me to a passage of questions and answers from the substantive asylum interview running from question 104-117. I agree it may well be that the tribunal had that passage in mind when it said what it did. That is because it is at that point in the interview that the claimant was asked about the smuggling. I agree that he did provide detail about aspects of it but he did not, for example, explain how the smuggled goods would be obtained nor who the goods were then sold on to. I am narrowly persuaded that it was open to the tribunal to characterise the account as vague on that basis. But additionally and in any event, it does not seem to me that that aspect played a significant part in the tribunal's view that the claimant was not a witness of truth.

17. Turning then to the question of risk on return, as I understand it, Ms Patel seeks to argue that the tribunal should have asked itself what the claimant was likely to be asked by the authorities upon return as a failed asylum seeker who had illegally exited Iran. Such a consideration would have led to a conclusion that he would be asked what he had said in support of his unsuccessful claim for asylum. Since (argues Ms Patel) the claimant cannot be expected to lie, he would tell the authorities or it should be assumed that he would tell them, that he had claimed to be leafleting for PJAK. Since the authorities are

very concerned about that sort of oppositionist activity, that would lead to more intense scrutiny of him and to ill-treatment during the process of further investigation.

18. The most obviously relevant Country Guidance decision is that of *SSH and HR* cited above. The tribunal expressly referred to that at paragraph 30 of its written reasons. It concluded that he would be subjected to what would amount to relatively brief questioning but no more than that. In *SSH and HR* it was said that a male returnee would not be at risk upon return solely on account of illegal exit or being a failed asylum seeker. It was specifically considered that no such risk would exist at the time of questioning on return to Iran. The tribunal was simply following the Country Guidance, in that regard, as it was required to do. Additionally and in any event, it does not appear that the tribunal was invited to specifically entertain the possibility that a question might be asked which would reveal that the claimant had asserted to the UK immigration authorities that he had been leafleting for PJAK and that such would, of itself, lead to persecution or serious ill-treatment. In the circumstances I detect no error of law in the tribunal's careful approach.

19. It has not been shown that the tribunal made an error of law. Accordingly, its decision shall stand and this appeal to the Upper Tribunal must fail.

Decision

The decision of the First-tier Tribunal did not involve the making of an error of law. Accordingly, its decision shall stand.

Signed:

Date: 4 February 2019

Upper Tribunal Judge Hemingway

Anonymity

The claimant was granted anonymity by the First-tier Tribunal. I continue that grant pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Accordingly, no report of these proceedings shall directly or indirectly identify the claimant or any member of his family. This applies to all parties to the proceedings. Failure to comply may lead to contempt of court proceedings.

Signed:

Date: 4 February 2019

Upper Tribunal Judge Hemingway