



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

Appeal Number: PA/11875/2019

THE IMMIGRATION ACTS

**Determined without a Hearing
On 17 June 2020**

**Decision & Reasons Promulgated
On 26 June 2020**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**MKM
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make this order because the appellant is an asylum seeker.
2. This appeal was determined without a hearing following special directions sent by the Tribunal because of the well-known “lockdown provisions” by Upper Tribunal Judge Gill. In response to those directions I have written submissions from the appellant dated 30 April 2020 and written submissions from the respondent dated 28 April 2020 and I have considered them.
3. This is an appeal by someone who identifies himself as a citizen of Iran against a decision of the First-tier Tribunal dismissing his appeal against a decision of the Secretary of State refusing him international protection.

4. Permission to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Plimmer who said:

“For the reasons set out in the renewal grounds of appeal, it is arguable that the First-tier Tribunal gave inadequate reasons for rejecting the expert evidence regarding the appellant’s claimed identity card and failing to apply the correct standard of proof.”
5. Upper Tribunal Judge Plimmer gave further directions that the respondent ensured that the identity card in her possession was brought to the Upper Tribunal on the day of the hearing to facilitate a decision in the event of an error of law being established but this has been overtaken by the decision to dispense with a hearing.
6. I begin by considering the First-tier Tribunal’s decision.
7. The judge’s task was simplified by two entirely sensible concessions by the Secretary of State in the Reasons for Refusal. First, the Secretary of State accepted that by reason of his in-country activity the appellant would face a real risk of persecution in the event of his being sent to Iran and, second, the expert relied upon by the appellant was an expert to be respected. It follows that the sole point of contention was whether the appellant had established that he is in fact a citizen of Iran.
8. His case had been determined previously and he had been disbelieved. The First-tier Tribunal, rightly, took the existing decision, a decision of Immigration Judge Davda dated 8 April 2011, as his starting point but was alert to look for new evidence. The judge correctly summarised the appellant’s case. He said that the appellant was born in June 1991 and left Iran in October 2007 before arriving in the United Kingdom and claiming asylum on 11 January 2008. He was accepted to be a minor and given leave appropriate for his minority. He then applied for further leave but that application was refused and a subsequent appeal dismissed. That is the decision that is the starting point.
9. In outline it is the appellant’s case that he is an Iranian Kurd and the son of a Kurdish Democrat Party activist whose father had been arrested and punished by the authorities and the appellant was frightened of a similar fate in the event of his return.
10. However, as the First-tier Tribunal noted, when the appeal was first heard the Home Office produced evidence that the appellant had not done very well in a geography test. He was ignorant of basic knowledge of Iran, for example he could not describe properly the Iranian flag, he did not speak or appear to understand Farsi and could not answer questions about the basic political organisation of the country. Additionally he had no persuasive evidence of his identity.
11. The judge noted that the appellant had now produced what purported to be evidence of his identity. He produced something described as a “birth certificate” and described by the appellant in his statement as a shanasnameh.
12. This did not satisfy the Secretary of State. The Secretary of State had the document examined and it was found to be unsatisfactory. The Secretary of State’s evidence was set out in a proforma Home Office document examination

report dated 2 May 2018 of a kind that is well-known to practitioners in this area of law. It showed that the document contained a substituted photograph and altered or added detail with the explanation, in what might be thought to be rather gleeful terms, that

“the current photograph found with this document is not the first photograph to be affixed into this document. There are multiple vacant staple holes seen behind the current photograph which suggest a previous photograph had been affixed to the document. Using infrared light sources, additional wet ink authenticating stamps can be found where the previous photograph was positioned and also at the bottom of the same page. Therefore this document cannot be relied upon as evidence of the holder’s nationality and/or identity.”

13. The respondent did not ask the appellant for any explanation and the application was refused
14. The appellant obtained an expert report from one Pouneh Saatnia who has both Iranian and British nationality and who practises law in Iran. I do not wish to be disrespectful in any way to Mrs Saatnia whose underlying competence has not been challenged and who extended the courtesy of writing in the English language but I cannot avoid observing that her syntax is not always conventional and her meaning not always clear.
15. The appellant had explained that the photograph *had* been changed and Ms Saatnia said (page 25 in the appellant’s bundle) that:

“there is possibility to change the photograph of an existing birth certificate ... and the issues raised in relation to the staple holes and new rubber stamp, this would be expected if the above explanation and does not necessarily indicate that the document is not genuine or authentic.”
16. The judge noted that it was the appellant’s case that it was wholly unsurprising that there were signs of an earlier photograph being affixed to the identification document because he knew an earlier photograph had been affixed to an identification document and would have said so if anybody had troubled to ask him.
17. The judge outlined the appellant’s oral evidence including his answers in cross-examination. The appellant said that he could not remember when the birth certificate had been sent to him but he thought it was “one and a half to two years ago”. He had not seen the document when he applied for leave in 2018 but that claim clearly was not right because there was reference to it, or appeared to be. It was put to the appellant that an identity document and a birth certificate are different documents but he claimed not to know.
18. However the appellant had said on an earlier occasion that his father had told him that a photograph was needed on his “birth certificate” when he achieved the age of 15. It was now his case that the document relied upon had had a new photograph added because, for reasons he could not explain, the earlier photograph had been damaged.
19. The judge’s conclusions begin at paragraph 23. The judge found no satisfactory explanation for the identity document not being produced until 2018 when its absence was noted in the refusal letter of 2011 and this was not

helped by there being no independent evidence, such as an envelope with postage stamps, showing when the document was sent from Iran.

20. The judge also said at paragraph 26 “the fraud unit had seen the original, the expert has not”, and then that the explanation for there being a replacement photograph was contradictory being both that it was damaged and that it was affixed when the appellant was aged 15 years.
21. Importantly the judge said at paragraph 28:

“If it was a replacement document to an existing birth certificate that should be recorded and it hasn’t been and the expert does not say it is valid but only that the document meets all the requirements to be a valid birth certificate – it contains the information that one would expect and perhaps she goes no further because she has not seen the original”.
22. The judge then noted there was evidence from friends and college lecturer but that could not be good evidence that the appellant was in fact a citizen of Iran. The witnesses were passing on what they had heard from the appellant and with the additional comment that he was thought to be trustworthy. Likewise his association with political activities in the United Kingdom do not prove his nationality but his expressed interest in Kurdish separatism.
23. The judge found that the appellant had not established his nationality.
24. It is a very frustrating feature of the case that the respondent seemed to have missed the point completely. I can understand, as a matter of common sense, that when an identity document is shown to have had the photograph changed its value is considerably diminished. However there is nothing in the report from the Secretary of State to show that the examiner had any expertise in the law of Iran or anything else to substantiate the commonsense observation that a changed photograph was unsatisfactory.
25. The appellant’s expert does have expertise in the law of Iran and is quite plain that photographs *can* be changed because both parties accept that it has been changed. It is therefore deeply regrettable that the Secretary of State, having seen the expert report, did not look into the matter further. A possibility is that the expert is just plain wrong to say the law provides for a photograph to be changed but that is inherently unlikely given her professional expertise and there is certainly no evidence to substantiate such a finding. Another possibility is that there are means of changing the photograph lawfully and properly (something which is not in any way inherently surprising) but they had not been carried out here.
26. The difficulty with the appellant’s case is when the expert comments on the possibility of change she says: “Any such replacement to an existing birth certificate should be recorded” but does not say expressly where there records should be made and if there is such a record here.
27. The expert does say under the heading “conclusion”:
 “I confirm that I have done the actual checks to verify that the documents have genuinely been issued by the Islamic Republic of Iran Ministry of interior state registrar of civil status under the Chapter 3 – Birth Registration of the Law on Registration in point of my view this is genuine and correct.”

28. However Ms Saatnia does not explain what she means when she makes this observation. According to the grounds of appeal the meaning is that Ms Saatnia had made independent checks with records in Iran but that meaning is not obvious and, in my judgment, the First-tier Tribunal should not be criticised for not assuming or even considering that possibility. It is not for the respondent to prove that the document is forged but for the appellant has to prove that the document is reliable. The short point is that the First-tier Tribunal did not find the additional evidence particularly helpful to the appellant because the expert report did not satisfy the judge that the document relied upon was in fact good evidence of the appellant's nationality.
29. I have read the grounds and I consider specifically the appellant's skeleton argument.
30. The written submissions begin, after appropriate and helpful introductions, with the assertion that the flaw in the Secretary of State's decision was "the decision that the strength of Pouneh Saatnia's expert opinion that the birth certificate was genuine did not matter if the NDFU had already found it to be unreliable."
31. This, I find, is substantially made out. I have already indicated that the Secretary of State is to be criticised for just not engaging with the expert evidence. However corrected such errors is one of the purposes of an appeal and it was for the appellant to make his case at the appeal hearing and he failed to do that.
32. The next point made is that the judge did not have proper regard for Ms Saatnia's assertion that she had made all the necessary checks. The problem is, as I have indicated, that these checks are not explained. It is not an error of law for the judge to resolve a possible unexplained ambiguity and I am not at all satisfied that Miss Saatnia meant that she had made external checks in appropriate registries that had referred back to the document. I make it plain that if that was her meaning then the appellant's representatives might want to give thought to further representations based on a clearer report. However that meaning is not plain and I do not agree there was an error of law in the judge not interpreting it that way. The judge was under no obligation to resolve any ambiguity in favour of either party.
33. Many of the other criticisms have merit. It is immaterial that the appellant did not see the expert. The expert was not asked to comment on the appellant but on the document. Similarly the late production does not of itself impact on its authenticity although proper reasons have been given for finding that it does impact on the appellant's credibility. I just do not agree that the expert report authenticated the document. The expert report recognised that it had all the necessary ingredients which, as the First-tier Tribunal Judge pointed out, is not the same at all.
34. The fundamental problem with this case is the appellant could not prove his nationality. It may well be the case that he is of limited education and may not be very well informed about the geography of Iran. It may well be that his loyalties even within the parameters set by his education make him think more of his Kurdish rather than his Iranian identity. Nevertheless he was very ignorant about the country and no amount of explanation for that ignorance

elevates the poor evidence he gave into good evidence of his nationality. He really has nothing except his certificate which is supported by a report that is found to be ambiguous.

35. Whilst I do accept that the judge might have erred, for example in apparently giving weight to the fact that the fraud unit had seen the original and the expert had not, I do not accept that the errors are material. They do not undermine the findings about the expert report.
36. Additionally, I am not satisfied that the judge erred in referring to contradictory explanations for the need to replace the photograph. An explanation that in substance is "I fixed a photograph because I was 15" is not inconsistent with an explanation that boils down to a "I had a replacement photograph fixed because the earlier one was damaged". These could be answers to different questions or at least questions that were understood in a different way and it may not be safe to put much reliance on this point.
37. I also am concerned that the judge's finding that he preferred the evidence and conclusions of the fraud unit to those of the expert. They were not really in conflict. The problem was the fraud unit had shown no inclination whatsoever to consider the possibility of the alteration being consistent with it being a legitimate document.
38. It follows that there are elements of that decision that concern me but as a whole the core point is not undermined. The only point going for the appellant was an identity document. He had produced it late without a good explanation. He had not been clear about the need or reasons for replacing a photograph, especially bearing in mind that if he is telling the truth it should have been a fairly recent event because he would almost certainly have been aged over 15 before any photograph was placed on it.
39. At the risk of being unhelpfully repetitive it may be that if the expert's report is reworded the case will have to be looked at again. The Secretary of State has committed herself to accepting the expertise of the expert. That of course can change but only for a proper reason. However on the expert's report as given the decision was open to the judge and it follows that I find that there has been no material error and I dismiss the appeal.

Notice of Decision

40. No material error law has been established and I dismiss this appeal.

Jonathan Perkins

signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 17 June 2020