



IAC-FH-CK-V1

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

Appeal Number: PA/11879/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House
On 7 October 2020

Decision & Reasons Promulgated
On 27 October 2020

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

**HM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Harvey, Counsel, instructed by Latta & Co Solicitors

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. I did not experience any difficulties and neither party expressed any concern with the process.

DECISION AND REASONS

1. It is common ground that the appellant is Kurdish. However, his nationality is in dispute. The appellant claims to be Iranian. The respondent's position is that he is from Iraq.
2. The issue of the appellant's nationality has been considered by the First-tier Tribunal on two occasions.
3. In a decision promulgated on 5 June 2017, Judge of the First-tier Tribunal Porter ("Judge Porter") rejected the appellant's claim to be from Iran and found that he is from Iraq, as had been contended by the respondent. Judge Porter gave several reasons for not accepting the appellant's claim to be from Iran. This included that (a) he told the French authorities on three occasions he was from Iraq; (b) despite claiming to be a smuggler he was unable at the hearing to name nearby areas and the mountains surrounding his claimed village; (c) he lacked knowledge of the Persian calendar; and (d) it was conceded that the photos submitted did not assist in showing that he was from Iran.
4. In September 2019 the appellant made further submissions, in which he continued to claim that he was from Iran. These were rejected on 15 November 2019 by the respondent.
5. The appellant appealed to the First-tier Tribunal, where his appeal was heard by Judge of the Tribunal Farrelly ("Judge Farrelly"). In a decision promulgated on 8 April 2020, Judge Farrelly dismissed the appeal, finding that the appellant is a citizen of Iraq, not Iran.
6. Before Judge Farrelly, the appellant relied on an expert report by Dr Kakhki, dated 31 January 2020, that had not been before Judge Porter. Dr Kakhki expressed a firm view that the appellant is an Iranian citizen. As this appeal turns on Judge Farrelly's approach to this expert opinion, I have set out the relevant part of the report in full:
 20. Returning to Mr M's illiteracy, it is my opinion that his poor educational background is likely to have had a detrimental effect on the quality of his answers and his level of understanding during the course of his interviews. In other words, Mr M's family background and the remote nature of his home village could have well affected his ability to provide solid, knowledge-based, logical, and complete answers to the questions asked. It is common knowledge in Iran that rural residents are simple individuals, who consequently often come across to those from more urban areas as rather naive and lacking in basic general knowledge and/or reticent to speak/challenge others in comparison to those originating from a similar demographic within urban society. In this respect, I am of the opinion that Mr M's comprehension of the questions put to him and the answers provided should be considered in light of his poor educational background and lack of exposure to common information sources (such as newspapers, internet articles, journals etc.)."
 21. Having thoroughly reviewed Mr M's responses to the questions relating to his nationality in the context of the applicable country information, in my opinion, his answers to the majority of the questions are accurate and

consistent with the background information in this respect and I therefore found it somewhat surprising that his Iranian nationality was not accepted.

22. It is apparent from the interview records that Mr M speaks Kurdish Sorani, a language widely spoken in the Kurdish region of Iran. He correctly identified that his village, Dulkan, is located in the Sardasht region, within West Azerbaijan province. He further explained that Dulkan is situated in the Alan area, which is a district in the vicinity of Sardasht city where smuggling activities are prevalent. Mr M was asked to explain how long it takes to travel from his village to Sardasht, and his response was that it takes an hour by car. A simple search of Google Maps shows that in fact it takes one hour and three minutes to travel between the two locations by vehicle. A copy of the relevant page of the search results has been appended to this report.
 23. Mr M also correctly identified a number of villages in his local area... It should also be noted that it is not common knowledge that there is a form of exemption from military service for individuals who are the only son of the family and, in my view, Mr M's explanation on this point seems to have been grounded in his actual experiences. When Mr M was asked about the colour of the Iranian flag, he correctly identified the relevant colours, whilst he was also able to identify the currency, the highest mountain (Damavand), Iran's neighbouring countries and a famous waterfall in his home region ...
 24. Lastly on this point, I would like to note that Kurdistan smugglers/farmers do not tend to use the Farsi language or calendar system, rather focussing on the practical aspects of their daily lives, namely managing their crops and/or transporting their cargo. To put simply, there is little requirement for a Kurd in Mr M's circumstances to use a calendar in his day-to-day life as the nature of smuggling activities is as such that they work on an as and when basis (often at night, sometimes during the weekdays and/or weekends, etc.). Therefore, Mr M's ability to provide at least some dates in the Persian calendar, in my view, lends weight to his claim of being an Iranian national.
 25. All in all, it is my view that Mr M's responses to the questions relating to his nationality are of the nature and quality that would be expected from an Iranian Kurd in his claimed circumstances, particularly in view of his cultural and ethnic background, his educational level, his place of birth and residence, as well as his job as a smuggler."
7. Judge Farrelly found at paragraph 29 of the decision that Dr Kakhki was merely repeating arguments made before Judge Porter. Applying *Devaseelan* [2002] UKIAT 00702, he found that the new evidence from Dr Kaakhi, which he stated could have been obtained "at the outset", did not "detract from the original reasoning".
 8. The reasons given by the judge for reaching this conclusion are set out in paragraphs 23 - 28, where the judge, inter alia, found that:
 - (i) The appellant's lack of education does not mean he lacks intelligence or an awareness of immediate events;

- (ii) the appellant's knowledge of the local area and rules regarding military service exemption as described by Dr Kakhki did not "demonstrate something unique which would only be known to an Iranian Kurd"; and
- (iii) Dr Kakhki's report did not demonstrate that Iranian Kurds would be unaware of the national calendar.

9. The grounds of appeal make three arguments.
10. Firstly, it is argued that the judge failed to give proper consideration to Dr Kakhki's report and did not adequately explain why his evidence failed to address the issue of the appellant's nationality and was not persuasive. Reference is made to the expert's comments about the appellant's knowledge of his local area and of military service rules and to his knowledge of the Persian calendar. The grounds state that the judge failed to give adequate reasons for not accepting the opinion of the expert on these points.
11. Secondly, the grounds argue that the judge took into consideration irrelevant information by stating that there was no reason why the expert report could not have been commissioned at the outset.
12. Thirdly, the grounds of appeal argue that the judge misapplied the law by failing to recognise that the explanation given by the appellant as to why he gave the French authorities incorrect information regarding his identity could not be said to be inherently implausible.
13. In his submissions, Mr Harvey only addressed the first ground. He submitted that the judge erred by failing to follow *Mibanga* [2015] EWCA Civ 369, where Wilson J stated at paragraph 24:
- "It seems to me to be axiomatic that a fact-finder must not reach his or her conclusion before surveying all the evidence relevant thereto. Just as, if I may take a banal if alliterative example, one cannot make a cake with only one ingredient, so also frequently one cannot make a case, in the sense of establishing its truth, otherwise than by combination of a number of pieces of evidence".
14. Mr Harvey submitted that the judge fell into a "Mibanga trap" by not recognising that even though *Devaseelan* was applicable it was necessary to consider all of the evidence (including the expert report) before reaching a conclusion on whether the appellant was from Iran.
15. He sought permission to rely on an unreported case where the interplay of *Devaseelan* and *Mibanga* was considered and it was stated that the judge in that case had erred by not carefully considering the evidence as a whole to determine whether, taken together, the new expert evidence justified departing from the previous appeal decision. I did not give permission to cite the unreported case because there is no need to rely on it to support what is essentially a noncontroversial position that was not disputed by Ms Cunha, which is that Judge Farrelly was required to carefully consider Dr Kakhki's report along with all of the other evidence in order to reach a conclusion on whether departure from the decision of Judge Porter was justified.

16. The difficulty with Mr Harvey's submissions, and the reason why the first ground of appeal cannot succeed, is that this is precisely what Judge Farrelly did. Dr Kakhki gave several reasons why he was of the view that the appellant was from Iran. Judge Farrelly did not discount these reasons merely because they conflicted with the conclusion reached by Judge Porter. Rather, he addressed them. At paragraph 26 he considered Dr Kakhki's comments about the appellant having some local knowledge (and knowledge about military service that is not commonly known) and found that none of the information provided was something that would only be known to an Iranian Kurd. And at paragraph 27 he considered what Dr Kakhki stated about use of the Persian calendar but did not accept that the appellant would be unaware of the national calendar given what had been said about children being taught in Farsi. The judge then considered other evidence (including, most significantly, that the appellant had told French officials he was from Iraq) alongside the new expert evidence before concluding that the new evidence did not justify a departure from the previous decision. As the appellant's credibility was not determined without first assessing the expert evidence - and all evidence was considered together - the approach taken by Judge Farrelly was not inconsistent with *Mibanga*.
17. The second ground of appeal is plainly without merit as, far from being irrelevant, the fact that Dr Kakhki's report was not commissioned earlier is a consideration highlighted as relevant in *Devaseelan*: see paragraph 40(5), where it is stated that such evidence should be treated with caution.
18. The third ground of appeal is difficult to understand and was not developed (or argued) by Mr Harvey. In the absence of any particularisation (or explanation) the appellant cannot succeed on this ground.

Notice of Decision

The grounds of appeal do not identify an error of law. The decision stands and the appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

D Sheridan

Upper Tribunal Judge Sheridan

Date 21 October 2020