



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: LP/00014/2020  
PA/50112/2019

**THE IMMIGRATION ACTS**

Heard at Field House  
On 14 October 2021

Decision & Reasons Promulgated  
On 17 November 2021

Before

THE HONOURABLE MR JUSTICE PUSHPINDER SAINI  
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)  
UPPER TRIBUNAL JUDGE ALLEN

Between

MR D A  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr H Sadiq, Solicitor, Adam Solicitors

For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. There was an anonymity direction made below. We will also make an anonymity direction for the purposes of the present appeal.

2. This is an appeal against a decision of First-tier Tribunal Judge Alis dated 7 October 2020. By that decision the judge dismissed the appellant's asylum claims and his humanitarian protection claims.
3. By way of background, the appellant is a national of Iran born on 22 December 1999 and he claimed to have left Iran on 28 or 29 September 2016 and travelled to the United Kingdom via Turkey, Italy and France. He was fingerprinted by the Italian authorities on 13 October 2016 and entered the United Kingdom on 24 November 2016 where he claimed asylum. After initially refusing the claim on third country grounds the substantive asylum claim was considered in due course by the Secretary of State but was refused on 27 September 2019. The principal basis for the judge's refusal of the asylum claim was his finding that the appellant lacked credibility. In that regard one needs to turn to the nature of the claims being made.
4. The basis of the appellant's claim was a series of events in 2016 which are described in the judge's decision at paragraphs 15.f. to n.:

**"15.**

...

- f. On 26 September 2016 five members of the Iraqi Peshmerga visited his factory and told him that they wanted food whilst they waited for other to join them. The appellant told him to wait outside near the orchard tree as he did not wish to be associated with them, but they refused and remained on the farm. The appellant prepared food for them in a house that was attached to the farm.
- g. Just over an hour later three men entered where he was and shouted to turn the lights off. The appellant did as he was told as he saw the Iranian authorities were chasing these men and a shootout took place.
- h. The appellant fled to a local village where his uncle lived which took him around four hours. He could not take his car because this was parked near to where the shooting was taking place. He initially walked on foot to C before taking a taxi to his uncle's home in A.
- i. He asked his uncle to find out what had happened and whether it was safe for him to return home, but when his uncle returned he stated that the Iranian authorities had been to his father's house and his brother's house looking for him as he was suspected of helping the Peshmerga. His father was arrested although he was released within 24 hours. His uncle told him that the authorities had found leaflets at the family farm. In his oral evidence, he stated the authorities came to his family house on two or three occasions between 26 and 30 September 2016. When asked why he had said in

his interview that they came as recently as October 2018 he denied saying this.

- j.** His uncle advised him that he would have to leave Iran and the appellant's uncle and son arranged for an agent to assist the appellant to leave Iran following day. He was taken to the border and he stayed at an agent's house before travelling to Turkey on 29 September 2016.
- k.** His journey took him through Turkey, Italy and France. He recalls being arrested (in Italy it transpires from the evidence) and having his fingerprints forcibly taken before being released. He did not claim asylum in Italy because he was badly treated by the authorities. He remains in the 'jungle' for around 20 days before being collected by the agent and brought to the United Kingdom whereupon he claimed asylum.
- l.** Having arrived in the United Kingdom he went to stay with his brother who lived and worked in London. His brother is a British citizen. He did not mention this fact previously as he did not want to get them into trouble. He further stated that after he was detained and released on bail he briefly returned to live with his brother, but then left because his sister-in-law did not really want him to live there and the house was small. He stopped living with them around 2 ½ years ago.
- m.** He has maintained regular contact with his wife and family and speaks via WhatsApp and Facebook messenger every two weeks. He did not speak more often as it made him upset.
- n.** He fears that were he returned to Iran he would face persecution or serious harm due to what happened in September 2016."

5. As is clear from the decision, there were certain other events which took place earlier in time in 1995 and 2005 but these events were not put forward by the appellant as the basis for his asylum claim. Those events were not relied upon and Mr Sadiq, who appears for the appellant today, makes it clear and we accept that those points would not have given the appellant the basis for a claim. However, the nub of the judge's reasoning in refusing the asylum claim was based on the chronology of events and in particular the actions taken by the appellant at the time of his initial screening interview. As recorded by the judge at paragraph 18, there were significant differences between what the appellant said at his initial screening interview and his first statement compared to what he stated at his substantive interview.

6. The major issue raised and that which was relied upon below was that it was said that the failure of the appellant to refer to the events of the period prior to September 2016 damaged his credibility. Essentially, it was said that if he were a credible

applicant he should have mentioned those matters. The appellant gave an explanation as to why he had not mentioned those matters, as recorded in the decision below. Mr Sadiq had submitted below, as he has submitted to us this afternoon, that the appellant's claim centred around what happened in 2016 and the appellant did not base his claim on earlier events. Mr Sadiq submitted below that the respondent had become distracted by non-core matters. His basic argument in this appeal and that which found favour with the judge who granted permission to appeal( as being an arguable point) was that it was wrong for the judge to have placed so much reliance on earlier events.

7. If one returns to the body of the judge's decision it is clear to us and, Mr Deller has fairly accepted, that if one puts aside the judge's finding as to the lack of credibility (by reason of a failure to mention earlier events) the decision on credibility is relatively thin. Having heard the submissions of Mr Sadiq, we consider that they are well-founded. In our view, in circumstances where the earlier events predating the September 2016 events were not relied upon they were mere history, they should not have been relied upon as a basis for an adverse credibility finding.
8. Further, having looked at the detail of the decision, if one excludes that factor it is hard to see how the ultimate result, that is a rejection of the asylum claim, is justifiable. We note and agree with Mr Sadiq's submission that the decision is infected by a failure to undertake any meaningful assessment of the true incident which was the basis of the asylum claim, that is the 2016 incident. The judge seems to have allowed himself to become distracted by the side issue of the historical matters and did not focus on determining the 2016 claim on its merits.
9. For those reasons we will allow the appeal and remit the matter back to the First-tier Tribunal for a fresh hearing.

### **Notice of Decision**

The appeal is allowed to the extent set out above.

### **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 *David Allen*

Date 29<sup>th</sup> October 2021

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Mr Justice Saini  
Sitting as a Judge of the Upper Tribunal