



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

Appeal Number: PA/03878/2019

THE IMMIGRATION ACTS

**Heard at Bradford (Via Skype)
On 23 December 2020**

**Decision & Reasons
Promulgated
On 11 January 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SMR

(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hussain instructed by Collingwood Immigration Services.

For the Respondent: Mr C Howells Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Myers ('the Judge') who in a decision promulgated on 10 July 2019 dismissed the appellant's protection appeal.

Background

2. The appellant is a citizen of Iran born on 15 August 2000 who arrived in the United Kingdom on or around 27 November 2018 and claimed asylum.
3. The Judge, in addition to the documentary evidence, had the benefit of seeing and hearing the appellant give oral evidence.
4. The Judge noted at [6] that it was confirmed at the start of the hearing that the sole issue was the credibility of the appellant.
5. The Judge sets out findings of fact from [19] of the decision in which the Judge rejects the appellant's account, finding at [26]: *"In conclusion, even applying the lower standard of proof I find that the Appellant has fabricated his account and I do not accept that he is at risk from the Iranian authorities because of his political activities in Iran. He would thus be returning to Iran as a failed asylum seeker of Kurdish ethnicity."*
6. The Judge considered whether the appellant will face a real risk as a result of his ethnicity but concludes at [28] that it would not be a case of the appellant being regarded as having been involved in any low-level political activity or anything that created a real risk for him on return.
7. The appellant sought permission to appeal which was granted on 18 November 2019, the operative part of the grant being in the following terms:
 3. The grounds claim that the judge erred because she conflated plausibility with credibility in assessing the appellant's claim, failed to take into account relevant evidence and failed to give adequate reasons.
 4. The judge arguably assessed the claim according to her own subjective and speculative expectation.
 5. The Judges entire analysis of the evidence in terms of credibility is at [21] - [25] and is arguably inadequate.
 6. Whilst the judge said that she had taken into account his tender age and lack of education, she appeared to have given him no credit in that regard.
 7. The judge's conclusions in finding that the appellant has fabricated his account arguably inadequate.
 8. The grounds disclose an arguable error of law.

Error of law

8. Before the Upper Tribunal Mr Hussain relied upon the pleaded grounds asserting the Judge has supplemented her subjective view of things which impacted upon the adverse credibility findings. Mr Hussain specifically referred to [23] which he submitted is infected by legal error as it contains a subjective assessment based upon the Judges own view and not as a result of a proper assessment of the evidence.
9. At [23] the Judge writes:

“I find he has fabricated his claim because I do not accept that he put himself at risk by distributing leaflets in Iran despite his lack of interest in politics and his fear of discovery which is so consuming that it affects his activities in the UK. In addition, he could not answer several questions about the party at his asylum interview and was vague about his motives for wanting to help. If the appellant had been genuinely motivated to do something to help the Kurdish cause I would expect him to take the opportunity to continue his political activities once he was in a safe country.”

10. Mr Howells in his response referred the Tribunal to the need to look at [21] and [22] when assessing the merits, or lack of, in relation to this aspect of the challenge. In these paragraphs the Judge wrote:

21. The Appellant stated in his asylum interview at question 73 that he did not know which political party was in power in Iran and did not “interfere in politics”, and at questions 93 to 95 he said he did not get involved in politics, he did not have a lot of information about the government and because of his age it was not good to get involved in politics or government issues. He confirmed in his oral evidence that he was scared to get involved with the Kurdish Freedom Party and that he knew that people were at risk of execution if the authorities were aware of their involvement.

22. Since arriving in the UK he has had no involvement with Kurdish political causes. He states that this is because he does not have much money to live on let alone travel to party events, and because of language problems, he cannot find out whether there are any party branches near to where he lives. In cross examination he said that he had not asked other Kurds for help or information because he was scared to talk about his involvement even in this country. He could not satisfactorily explain why he would be scared to talk about Kurdish politics in the UK when I asked him to clarify he told me that he did not mean that he was in fear in the UK but that his fear was in relation to what he had heard about actions against Kurdish political opponents in Iran.

11. The Judge clearly took into account the information relied upon by the appellant in both written and oral form. The Judge noted the appellant’s age but also that the appellant was an adult when the claimed core events he seeks to rely upon occurred. Paragraphs [21 – 23] have not shown to be findings outside the range of those available to the Judge on the evidence or to be an assessment based upon the Judges own personal beliefs contrary to the evidence that was made available.

12. Mr Hussain also submitted the Judge failed to take into account evidence from the appellants asylum interview at questions 117-120 in relation to the appellants involvement with a Mr Ali, in Iran, which had it been factored in could have resulted in a different decision being made by the Judge.

13. Mr Hussain also submitted the finding at [24] was not open to the Judge as it reflects the Judge impression of a member of the party, which is not the case. The appellant has described his limited involvement in that he was transporting papers and was not claiming to be a member of the Kurdish Party. Mr Hussain submitted this was an unpermitted assumption by the Judge.

14. At [24] the Judge wrote:

“The Appellant said at his screening interview that he was a member of the party and that if he returned to Iran he would be hanged. He also said that he might be able to obtain a reference from his political party. However, at his asylum interview

he said he was not a member, merely as supporter. The explanation he gave for this inconsistency is that he only became aware of the distinction of being a member and being a supporter when his solicitor explained it to him. I do not accept this; by stating he might be able to get a reference form his party I find the Appellant attempted to give the impression that he was a member of the party. He has not satisfactorily explained why he has made no attempt to contact anybody in the party, merely stating that he could not contact people in Iran because it could put them in danger and he has not been able to contact the party in the UK because he was unfamiliar with the culture and language. He told me that he had not asked his solicitor to help him contact the party. In my judgment, the Appellant has changed his account to say that he was merely a supporter because he has learnt that membership could be confirmed."

- 15.** As submitted by Mr Howells, the grounds do not dispute the accuracy of the Judge's finding that the appellant changed his account between claiming he was a member of the Kurdish party to being a supporter. The Judge clearly considered the explanation provided and it has not been shown to be outside the range of findings reasonably available to the Judge to find the explanation unsatisfactory. The sources referred to by the Judge in the decision have not challenged as being inaccurate nor is it established that the Judge failed to take relevant aspects of the evidence into account. This is not a case in which the screening interview was conducted immediately after arrival in the United Kingdom. Case law establishes the proper approach to such evidence. It is also the case that at the outset of his asylum interview the appellant adopted the replies given in his screening interview indicating the Judge was able to place due weight upon the same. Whilst it was submitted by Mr Hussain that the appellant had not claimed to be a member of the Kurdish party the finding he had so claimed, by inference if not specifically, has not been shown to be a finding not open to the Judge.
- 16.** The Judge is also criticised by Mr Hussain for referring at [25] the a finding that it was not accepted the appellant would have used his real name if he was frightened of identification, as the evidence was that he used his real name to Mr Ali who was a family friend and to whom he would have been known in any event.
- 17.** Mr Hussain also submitted the Judge has not demonstrated a proper grasp of the facts and supplemented assumptions when the objective and subjective evidence was available and showed the Judges conclusion are wrong. It was submitted the appellant had always said he is not a political animal.
- 18.** At [25] the Judge makes three plausibility findings. In that section of the decision the Judge writes:

25. I do not accept his account of his escape. In oral evidence he said that he had helped distribute leaflets on about seven or eight occasions. I find this inconsistent with his claim that he was inexperienced and therefore the other members of the group put him towards the back of the convoy. Furthermore, I do not accept that the Appellant would have used his real name if he was frightened of identification. I do not accept that he escaped when the convoy came under armed attack or that he looked back and witnessed other members of the convoy being detained despite being at a distance of 300 to 400m away.

19. The appellant claimed he ran away from the scene of the attack upon the convoy making it a plausible finding that he would be unlikely to be able to see what was happening behind him. Mr Howells accepted in his submissions that the other plausibility findings in this paragraph are somewhat weaker but that did not make any error material.
20. Having considered the evidence provided, the decision under challenge, and the written and oral submissions made in support of the error of law challenge, I do not find the appellant has established legal error material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering in this matter further.
21. Whilst the appellant disagrees with the Judge's findings and clearly wishes to remain in the United Kingdom, some of the allegations made amount to criticism of style rather than of substance. Whilst it was accepted that some of the points raised at [25] are weaker than others I do not find these are sufficient to undermine the Judge's overall conclusion set out at [26] which has not been shown to be outside the range of findings reasonably available to the Judge on the evidence.

Decision

22. **There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

23. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 31 December 2020