



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002993

First-tier Tribunal No: PA/50884/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

13th February 2024

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SMA
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs C Johnrose, Counsel instructed by Broudie Jackson Cater Solicitors

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 24 March 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal against a decision of the First-tier Tribunal dismissing the appellant's appeal against a decision of the Secretary of State to refuse him international protection. Permission to appeal was granted by Upper Tribunal Judge Gill who said:

"The original grounds arguably show that Judge of the First-tier Tribunal Farmer may have erred in law in her assessment of the evidence".
2. At the risk of oversimplification for the purposes of introduction, it is the appellant's case that the judge has made findings which were not open to her and that read as a whole the Decision and Reasons is just not safe and it is the Respondent's case that, contrarily, the judge has made decisions that were open to her and read as a whole the Decision and Reasons is cogent and lawful.
3. In order to make sense of these very different positions I need to begin by looking carefully at what the judge actually decided. The judge, uncontroversially, finds that the appellant is a citizen of Iran of Kurdish ethnicity who was born in 1985. He applied for international protection on 25 July 2019. The respondent refused the application on 29 January 2021. The judge found that the appellant is a married man with three children who were born in 2011, 2012 and 2019 respectively. When he was about 15 years old in 2000 he moved with his family to Mariwan where his father owned a poultry farm. In 2017 the appellant's family bought a further poultry farm in partnership with SS who was a childhood friend of the appellant's.
4. It is the appellant's case that in August 2018 he took part in anti-government demonstrations with his friends and that these lasted for about a week. It is the appellant's case that in September 2018 he was approached by a member of the Kurdish Democratic Party of Iran who I identify as "K". It is the appellant's case that K wanted him to join the KDPI and support the KDPI. Certainly the appellant says that until the time he was approached the appellant did not know that K was a member of the KDPI. It is the appellant's case that he agreed to support the KDPI and started to ask other Kurds to engage in activities against the Iranian regime. He regarded himself as a supporter.
5. In 2019 the appellant said he was preparing to attend a demonstration in August 2019 and on 25 June 2019 he received a threatening call from SS's father accusing the appellant of activities against the Iranian regime and accusing him of getting his son arrested. On the same day the appellant's brother-in-law called him and told him that there was a raid on their house. As a consequence the appellant decided to leave Iran.
6. He travelled for several weeks until he arrived in France. He left France on 24 July 2019 arriving in the United Kingdom the same day and he claimed asylum the next day.
7. The judge, unlike the respondent, disbelieved much of the appellant's evidence and I need to look very carefully at the reasons given for disbelieving the appellant because they are criticised by Mrs Johnrose in her arguments before me.
8. At paragraph 34 of the Decision and Reasons the judge says that she did not accept that the appellant had given a consistent account. The judge makes two criticisms of the evidence. The first is inconsistency with itself and the other is vagueness. Mrs Johnrose argued that the criticisms based on vagueness were unfair. The appellant, if telling the truth, should have been expected to have been vague because, on his account, he did not know the answers to the

questions that he was asked and could only speculate to a limited extent to offer assistance.

9. It is, I find, necessary to set out the whole of paragraph 34 because it needs to be considered as a whole. The judge said:

“I do not accept that his account has remained internally consistent. In his interview he refers to the leaflets being stored at SS’s home. In his witness statement (para 11) he says that the leaflets were dropped off at his place of work on 24 June 2019 ready for distribution. He does not say where they were then taken. In his oral evidence he said they were stored at his place of work that he shared with SS and in SS’s home but not at his own home. He has provided no details about how they were transported to SS’s home or how many there were or other particulars. I find his account about this to be vague and not credible. When asked why they would take these leaflets when it was risky he said they were prepared to take risks due to the importance of the cause and the fact he was standing against the regime. This is not consistent with his interview when he said he was prepared to take risks as he didn’t think he would get caught. His account is further inconsistent as he said he was not prepared to store the material at his own home, he said in re-examination that he didn’t due to fear of his father. It is not credible that he would fear his father more than the Iranian regime. He adapted his answer when he was asked another question and said that it was also a matter of respect and his father had asked him not to bring political materials into the home. I found his whole account about the delivery and storage of these leaflets to be internally inconsistent and not credible”.

10. I have considered the background material. The appellant did say in his statement that “KM dropped off KDPI material at the poultry farm that I owned with SS”. In answer to question 161 at interview the appellant is recorded as saying:

“Basically one day when I was at my farm in my agriculture - SS had some leaflets that belonged the party that K gave to him - S was supposed to deliver the leaflets to us - me and other member of the group. That is when the authority raided SS’s property and they found those leaflets”.

11. He then went on to explain that he was talking about a “thing” rather than a leaflet. It appears that a box of leaflets was meant but this is not clear.
12. Subject to anything Mr McVeety has to say this does not appear to me the kind of inconsistency necessary to support a foundation of finding a dishonesty.
13. The judge is also criticised for finding at paragraph 36 that “the appellant’s account of being approached by K a week after the demonstrations ‘not externally credible’”. It is not explained how this is “not externally credible”. No background material is referenced in the Decision and Reasons and none was referred to me in the bundle.
14. I do not understand why the judge found it “not credible” that the appellant’s close relatives would not be detained when the house was raided and the appellant could not be found. The judge refers to background material showing how family members of people associated with a Kurdish political group may also be harassed and detained but that is not at all the same as saying it is unbelievable that on this occasion they were not.
15. I do note too though the scepticism at the end of paragraph 37 where the judge finds it not credible that so much could have happened in such a short space of

time between the appellant fearing arrest and his leaving the country. The judge says at paragraph 37:

“The leaflets are delivered to his workplace on 24 June 2019. They are then (as they must have been given they were found at SS’s home) taken in part to SS’s home. Then at noon SS was arrested at his home and the leaflets seized. There is no evidence about what was done to the workplace. Only 1 hour later there was a raid on his address and he was the only person not there as he was in his father’s orchard. He was then warned about the raid and he fled. I find that it is not credible that this sequence of events happened in the space of time that the appellant claims. He also claims that his brother in law was able to arrange an agent which he paid 10,000 for and he managed to get this money together from him and family in the space of a few hours”.

16. At paragraph 38 the judge said:

“In his oral evidence the appellant was vague and inconsistent about what was seized by the authorities. He was asked what materials were taken and he said he didn’t know what they were but he thought they were leaflets, memory cards and other things belonging to the KDP which were being used to promote the KDPI. This is not consistent with his account that Karwan had just delivered leaflets and further undermines the consistency and credibility of his account”.

17. Mrs Johnrose repeated her theme that the appellant did not know what was delivered because he was not there.

18. Mrs Johnrose further argued that the judge was wrong to describe the appellant’s knowledge about attending demonstrations as “vague” without at least acknowledging that he gave evidence showing that he was familiar with the KDPI. However I find this adds little on its own.

19. I have considered Mrs Johnrose’s skeleton argument.

20. I have read the background material drawn to my attention by Mrs Johnrose. There is considerable evidence that people who are interrogated risk being tortured and pressurised into saying things that may or may not be truthful but will bring relief from being tortured. I see no justification for disbelieving the assertion that SS could be expected to give information. It is not idle speculation on Mrs Johnrose’s part but something that points towards a real risk because of the supporting evidence and it concerns me that this does not seem to be reflected in the Decision and Reasons.

21. Mrs Johnrose argued that the judge was not entitled to write off the risks from surveillance activity. The appellant had made plain in answer to questions that he was disillusioned with the KDPI because they did not help his family but that was not any kind of evidence that he was not in favour of Kurdish separatism and that, she argued, is a view that could be expected to emerge in the event of his being interrogated on return and that could be problematic. It should not have been ignored in the way that the judge seems to have ignored it.

22. Mrs Johnrose argued that the case had to be reheard.

23. Mr McVeety took a very different position.

24. He argued that the judge was entitled to identify an inconsistency and to regard that as a significant indicator of the lack of truthfulness in the appellant’s account. Mr McVeety argued that the judge was perfectly entitled to rely on the inconsistency identified in paragraph 34 and to find that undermined credibility

generally. That, with respect, only works if the judge was in fact entitled to identify a discrepancy rather than simply a difference in the evidence that was not discrepant. I repeat the judge's concerns. The judge said:

"In his witness statement (para 11) he says that the leaflets were dropped off at his place of work on 24 June 2019 ready for distribution. He does not say where they were then taken. In his oral evidence he said they were stored at his place of work that he shared with SS and in SS's home but not at his own home".

25. According to the witness statement at paragraph 11 "Karwan Mahmoodi dropped off KDPI material at the poultry farm that I owned with Shaho". The appellant also explained that he was not there at the time but was on his own father's farm. I have looked carefully at the interview notes (page 839 in the Tribunal bundle). In answer to question 10 the appellant said:

"I was a farmer and I worked in our farm - and we had a chicken farm as well".

26. In answer to question 161 the appellant is recorded as saying:

"Then I went to them and talked to them and do what they had to do and prepare for the demonstration - and then one day when I was in my aviculture - basically one day when I was at my farm in my agriculture - SHAHO had some leaflets that belonged to the party that Karwan gave to - him - Shaho was supposed to deliver the leaflets to us - me and other members of the group. This is when the authority raided Shaho's property and they found those leaflets. One thing to make clear - it is not a leaflet it was a thing - we were told that the thing had been seized by the authority".

27. I cannot make these different versions the revealingly inconsistent accounts that the First-tier Tribunal found them to be. It reads to me that the appellant is explaining (not necessarily truthfully) that he was at his farm when he had a telephone call from SS's father to say that SS had been arrested because K had dropped off political material at the farm that SS and the appellant shared. I then have to ask myself if my different understanding creates an error of law and after some reflection and with respect to Mr McVeety's arguments I conclude that it does. It has to be remembered that this is an asylum appeal where the standard of proof is low and it should be understood that people may not be able to prove their case as well as they might in an ideal world because they have to act quickly to protect themselves. The answers at interview came through a translator and although there is no suggestion the translator was not competent, there must be a risk of imprecision when answers are interpreted. The gist is clearly the same and I find it most likely that the judge has misunderstood the evidence in some way.

28. Mr McVeety accepted that there seems to be no evidential basis for the finding at paragraph 35. Certainly, none was referenced.

29. He emphasised that the judge was entitled to be very doubtful about the inherently unlikely account of withdrawing at very short notice and finding \$10,000 to meet the cost of an agent and disappearing and I cannot criticise the judge for that.

30. I could not find fault in Mrs Johnrose's submission that the appellant should be expected to be vague because he could not be expected to know the answers.

31. It is apparent from my remarks above that I accept Mr McVeety's point that the judge was entitled to be doubtful about the chronology of the escape. If the

appellant is telling the truth a great deal happened very quickly and was organised at very short notice.

32. I cannot agree that the point taken at paragraph 38 that the appellant's description of the items that were taken was inconsistent with the account that Karwan had just delivered leaflets. The appellant was very determined in interview to make plain that it was more than leaflets. I do not accept that this is the kind of difference that supports the finding of dishonesty.
33. There is more merit in Mr McVeety's contention that the judge was entitled to find it significant that the appellant could not remember the dates of recent demonstrations that he had attended. It is a point that I find troubling. Some people remember dates very easily. Some people do not.
34. The judge gave reasons at paragraph 40 for disregarding the appellant's claimed explanation for not attending the KDPI meetings earlier. However, Mrs Johnrose is right that the explanation offered by the appellant that the KDPI had not helped his own family does not seem to have been considered.
35. This is not clear but having reflected on all the submissions made before me I have concluded that the findings of adverse credibility are unsafe because they are based on inconsistencies that really do not appear in the evidence. The problem with credibility findings is that once one element becomes unreliable the rest become less valuable and overall I find this decision must be set aside and the case re-determined in the First-tier Tribunal.
36. I offer a weak but sincere apology to the parties for the time it has taken me to promulgate this decision which was based very closely on a draft that I received from the typists on 12 April 2023.

Notice of Decision

37. The First-tier Tribunal erred in law. I set aside its decision and direct that the case be redetermined in the First-tier Tribunal.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

9 February 2024