



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004560

First-tier Tribunal Nos: PA/54630/2023
IA/11224/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 17th April 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

K.H.H.
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms Frances Shaw (Counsel), MH Solicitors LLP
For the Respondent: Mr Mahdi Parvar (Senior Home Office Presenting Officer)

Heard remotely by EOL from Field House on 29 November 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) 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 (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Groom, promulgated on 8th September 2023, following a hearing by FtTIAC Virtual Region, on 4th September 2023. This was in Manchester.
2. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the appeal comes before me.
3. The Appellant is a male, a citizen of Iran, and of Kurdish ethnicity. He was born on 1st July 1995. He appealed against the decision of the Respondent dated 17th October 2022 refusing him asylum and humanitarian protection.

The Appellant's Claim

4. The essence of the Appellant's claim is that he fears return to Iran due to his having been involved in the distribution of leaflets on three occasions on behalf of the KDPI Party. Moreover, having arrived in the UK, the Appellant has been involved in *sur place* activities in this country. This has taken the form of his having attended demonstrations against the Iranian regime, and he believes that the regime has hacked his Facebook account, because photographs of the demonstrations have been deleted.

The Judge's Findings

5. At the hearing before Judge Groom, the Respondent's representative argued that the Appellant had been inconsistent in his version of events. There was inconsistency regarding the delivery of leaflets and his being encountered by three men, and as to how he could possibly have been identified by them. This was an important area of contention, the Respondent had submitted, because it led to the Appellant having to leave Iran, and yet the incident was simply not a credible one. Secondly, it was submitted by the Respondent that the Appellant's Facebook evidence was a cynical attempt by him to bolster his asylum claim. The Appellant had not been able to show that his Facebook account had been monitored at all by the authorities. His claim that his Facebook account had been hacked was not backed up by any evidence. He had initially said that he had reported the hacking of his Facebook account but when cross-examined on this, admitted that he had not done so. With respect to his *sur place* activities in his having attended demonstrations in the UK, there was no evidence that such demonstrations had brought him to the attention of the Iranian authorities back home. The Appellant was not an organiser or a main speaker at any of the demonstrations. In fact, the Appellant had made no attempt to join the KDPI Party, which suggested that his actions were not those of a true political activist.
6. At the hearing, the Appellant's representative, argued that the Appellant's Facebook account must be accepted by showing him to be a person with a low-level *sur place* profile. His contention that the account had been hacked must be accepted at face value because it is difficult to see what evidence he could have provided to substantiate the claim. He was genuinely motivated in his activities against the Iranian regime, being a genuine activist. Although it was accepted that he was not of a high profile, he nevertheless remained at risk upon return. Detailed consideration was given by the judge to the core of the Appellant's claim. The Appellant had asserted that one of the three men shouted out his

name as he was delivering the leaflets. The Appellant ran and threw the leaflets as he did so. The Appellant claimed that he was then told by his cousin and a Peshmerga to go to his uncle's house and to hide there. The Appellant heard gunshots from a distance but did not know why this had happened (at paragraph 49).

7. The judge went on to record that the Appellant's uncle then informed him that the Appellant's cousin and a member of the Peshmerga had both been killed. The Appellant's uncle too was in hiding (at paragraph 50). However, the judge rejected the entirety of this claim. It was not accepted that the Appellant was even a low-level supporter of the KDPI because "he did not become a member of the party" and that "on his own account provided in interview, he states he agreed to assist the political party, which he had never even heard of, nor later knew much about", so that "to then go on to claim he was prepared to deliver leaflets for this organisation, and thereby putting himself at risk, I find to be implausible" (paragraph 51). The appeal was dismissed.

The Grounds of Application

8. The grounds of application of 22nd September 2023 are difficult to follow. It is asserted that "the judge has made findings which are negative holistically", and that "references have been made vastly to the interview and on credibility regarding the Appellant's oral evidence", and that "the Appellant has made consistent findings in relation to how he has become a supporter of the KDPI, which are found at §45 ..." (at paragraph 12). Criticism is made of the judge in failing to find credible the Appellant's account that he was recognised by three men whilst distributing leaflets. It is said that, "reference has been made to the appellant being recognised with a torch and the appellant being recognised by one of the men ..." (paragraph 4).
9. On 11th October 2023, permission to appeal was granted by the First-tier Tribunal. However, it was granted only on the basis that, "It is arguable that the judge may not have given sufficient consideration to key aspect of the evidence when making adverse credibility findings" and that "All grounds may be argued".

Submissions

10. At the hearing before me, Ms Frances Shaw, appearing on behalf of the Appellant, relied upon the grounds of application. She submitted that the judge was factually wrong to have concluded that it was not plausible that the Appellant was recognised by a group of three men whilst distributing leaflets. The Appellant had been observed under street lighting with one of the men shining a torch on him. He had panicked upon being recognised and he had then made a run. Furthermore, the fact that the Appellant was unaware about the KDPI Party before his cousin told him about it, did not mean that the claim was lacking in credibility. For her part, Ms Mahdi Parvar submitted that the Grounds of Appeal were nothing more than a disagreement with the judge's determination, which was properly thought out and well-written, and which could not be criticised in the way that was now being argued.

No Error of Law

11. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law. My reasons are as follows. One only has to

look at the determination of Judge Groom to see why this is correct. The reference is made to the incident which the Appellant claims led to his leaving Iran. This was the third occasion when he was distributing leaflets for the KDPI. It is asserted that this “took place under cover of darkness”, but that “whether the Appellant was seen by either a torch or a streetlight, on his own account, the three men he claims to have seen spotted by were some 50 metres away”, and that “there is no indication from the evidence before me that the Appellant was approached at all by any of these men, and at most, the Appellant’s evidence is that one of the men call his name”. What is completely ignored in the grounds of application is how the judge then in the next breath goes on to say that, “The Appellant has not demonstrated even on a balance how any of the three men he mentions were connected with the Iranian authorities” (at paragraph 52).

12. The grounds in any event are entirely misconceived as a matter of law. For example, it is asserted under the heading “Procedural Unfairness” that the judge at paragraph 28 “counts against the Appellant a failure to be aware of the KDPI Party before his cousin told him ...” (at paragraph 5). This is not what procedural unfairness stands for. Under the heading “Lack of Approach to Evidence-in-Chief”, it is also said that, “The Appellant has made consistent findings in relation to how he has become a supporter of the KDPI, which are found at §45 and in relation to how he supported the party by distributing leaflets”, but this has been wrongly rejected by the judge with ample reasons for doing so. The Grounds of Appeal therefore amount to nothing more than a disagreement with the judge’s decision, which is entirely sustainable.

Notice of Decision

13. There is no material error of law in the judge’s decision. The determination shall stand.

Satvinder S. Juss

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

16th April 2024