



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

Case No: UI-2024-001128
First-tier Tribunal No:
PA/53301/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 19th of November 2024

Before

UPPER TRIBUNAL JUDGE RUDDICK

Between

**BS
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Z Hasan, instructed by Migrant Legal Project (Bristol)
For the Respondent: Ms Blackburn, Senior Home Office Presenting Officer

Heard at Field House on 8 November 2024

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 him. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Row dismissing his protection and human rights claims.
2. An anonymity order was made by the First-tier Tribunal. I have considered Guidance Note 2022 No.2: Anonymity Orders and Hearings in Private and I am satisfied that it is appropriate to make such an order because the appellant has made an application for international protection. I consider that the UK's obligations towards applicants for international protection and the need to protect the confidentiality of the asylum process outweigh the public interest in open justice in this case.

Background

3. The appellant is an Iranian citizen of Kurdish ethnicity, born in Iran in June 2004. The appellant's asylum claim is based on his fear of persecution and of violations of Article 2 and 3 ECHR for reasons of his ethnicity and his work as a kolbar, and in particular, his participation in the smuggling of illegal drugs from Iraq into Iran. He claimed that he had smuggled drugs together with his cousin and that in April 2021, his cousin had been shot and killed by Iranian border guards (pasdaran). Fearing that the authorities would be able to uncover his own role in his cousin's smuggling activities, he fled the country.
4. The appellant entered the UK in August 2021 and claimed asylum. On 23 March 2023, the respondent interviewed him about his asylum claim and in a decision dated 17 May 2023, she refused it.
5. In her refusal decision, the respondent accepted the appellant's nationality, ethnicity and claimed age, as well as that he had worked as a kolbar and had exited Iran illegally. She found his account of having been involved in the importation of illegal drugs and of his cousin's death internally and externally inconsistent and vague, and rejected it. With reference to her CPINs and relevant Country Guidance caselaw, she found that the appellant would not be at risk on return for reasons of his ethnicity, past work as a kolbar, illegal exit and failed asylum claim, even taken cumulatively.
6. The appellant's appeal came before First-tier Tribunal Judge Row at Birmingham on 20 February 2024, and in a decision dated 23 February 2024, he dismissed the appeal on all grounds.

The challenged decision

7. The Judge's decision rested entirely on his rejection of the appellant's credibility [70]. He noted at [34] that the appellant relied on his oral testimony, background evidence and a medical report. He accepted the diagnosis in the medical report [41], which was that the appellant "had symptoms consistent with a major depressive episode resulting from childhood abuse and traumatic events. He was at a low risk of suicide but had self-harmed in the past." [37] However, he noted that although the psychologist found that the appellant's presentation was consistent with

his account [38], she could not say that the account was true. There could be other explanations, such as his traumatic journey to Europe [41].

8. The Judge then set out his assessment of the appellant's credibility at [43-68]. It was structured around the requirements of Para. 339L of the Immigration Rules. He began by noting that although the appellant was under "no obligation to provide corroboration of any part of his claim [...] the core of the appellant's account [...] is not supported by documentary or other evidence." He "therefore" turned to the question of whether the requirements of Para. 339L were met [43]. In this context, he made the following findings:

- (i) The appellant had made a genuine effort to substantiate his claim [44]. This is a reference to Para. 339L(i).
- (ii) He had made his protection claim at the earliest possible time [45] (Para. 339L(iv)).
- (iii) His claim did not run counter to general information relevant to his case [46] (Para. 339L(iii)).
- (iv) The respondent's specific criticisms of the plausibility of the appellant's claim and the level of detail he had given were rejected. The account was sufficiently detailed and not inherently implausible [48-56]. (Para. 339L(iii)).

9. However, the Judge found that there were two ways in which the appellant's credibility was damaged. The first was that there was no "satisfactory explanation" [58] for the absence of evidence corroborating his cousin's death. Here, the Judge is echoing the language of Para. 339L(ii). The Judge found:

"59. The appellant's evidence is that he is in regular contact with his family in Iran. G was his cousin. It would have been open to the appellant to request his family to provide him with evidence of his relationship to G, a copy of his death certificate, and perhaps hospital records if these existed.

"60. It would have gone a significant way to clarify matters if the appellant could demonstrate that he had a cousin called G and the G had been killed by gunshot wounds in 2021. It would have been relatively straightforward to obtain this information. It ought to have been readily available."

10. There is no indication that at any time prior to the hearing, the appellant had been asked either to provide such evidence or to provide an explanation for its absence. The issue was not raised at the appellant's asylum interview and it is not mentioned in the refusal decision. However, it appears from the Judge's decision that someone asked the appellant at the hearing why there was no such evidence and he said that he was "unaware that it would be required." The Judge rejected this explanation

on the grounds that, “It would be expected that [h]is solicitors would have raised this matter.” [61]

11. The second matter that the Judge found to have damaged the appellant’s credibility was his failure to claim asylum in Italy or France. This was relevant conduct under Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 [62]. The Judge noted that the respondent had found that the appellant’s credibility had not been damaged by this, in light of the appellant’s age and the fact that he had been under the control of agents throughout his journey [63]. However, the appellant’s evidence at the hearing had been “different”. He had described arranging his own journey, albeit with the assistance of agents, and deciding to travel on to the UK after discussions with “colleagues”. It was not plausible that someone genuinely seeking safety would have undertaken such a long, expensive and dangerous journey, rather than seeking it “closer to home” [66]. The decision to come to the UK would, however, “make sense” if the appellant were an economic migrant [67].
12. The Judge then concluded his credibility assessment by finding that the appellant had not met all of the requirements of Para. 339L [68].
13. At [69-73], the Judge set out his conclusions. He noted that the appellant was a young adult and was vulnerable, and that the standard of proof “is a low one” [69]. Nonetheless, he did not believe the appellant, for the following reasons:

“His failure to seek to obtain obvious evidence which would have been relatively straightforward to obtain, his failure to claim asylum in several safe EU countries, and the implausibility of his explanation of the reasons for his journey to the United Kingdom, all damage his credibility. His account depends on his credibility.” [71]

14. The medical report did not “verify” his account, for the reasons given previously in the decision [71]. The account was a fabrication [72].

The grounds of appeal

15. The appellant applied for permission to appeal on three grounds, and on 15 March 2024, First-tier Tribunal Judge Curtis granted him permission to appeal on the third ground only. This was that the Judge’s credibility findings were flawed because he:
 - (i) failed to give weight to material matters, namely the internal and external consistency and the sufficiency of detail in the appellant’s account;
 - (ii) drew adverse credibility inferences from the lack of corroborative documentary evidence of his cousin’s death, in spite of country evidence that indicated that the such evidence would not have been readily available; and

(iii) placed undue weight on the appellant's failure to claim asylum in Italy or France, without taking into account his age and accepted mental ill health at the relevant time.

16. There was no Rule 24 response.

17. The matter then came before me for hearing at Field House. Both Ms Hasan and Ms Blackburn appeared by CVP.

Discussion

18. In deciding whether the Judge's decision involved the making of a material error of law, I have reminded myself of the principles set out in Ullah v Secretary of State for the Home Department [2024] EWCA Civ 201 [26] and Volpi & Anor v Volpi [2022] EWCA Civ 464 [2-4] and of the danger of "island-hopping", rather than looking at the evidence, and the reasoning, as a whole. See Fage UK Ltd & Anor v Chobani UK Ltd & Anor [2014] EWCA Civ 5 [114].

19. Having looked at the decision as a whole and with reference to these principles, I find that the Judge has materially erred in his assessment of the appellant's credibility.

20. His first error was to shape his credibility assessment entirely around the requirements of Para. 339L. He begins the section "Issues of Credibility" by treating Para. 339L as the mandatory framework for his decision because of the absence of corroborating evidence, as is indicated by his use of the word "therefore" [43]. He ends the section with the conclusion that, "I do not find that the appellant has met all the requirements of paragraph 339L", as if this resolves the credibility assessment.

21. The Judge appears, moreover, to have misunderstood Para. 339L. Although it requires a decision-maker to give an asylum applicant the benefit of the doubt if all of its requirements are met, it does not require them to reject their credibility if one of them is not. KS (benefit of the doubt) [2014] UKUT 00552 (IAC) [21].¹ This misunderstanding is clear from the fact that the Judge failed to give any weight in his ultimate credibility assessment to all of the credibility indicators that he had found were met. Once he identified that several of the requirements of Para. 339L were not met, there was no further reference to any of the positive indicators. Para. 339L has been treated as a mandatory and prescriptive checklist. This is not a permissible approach to credibility. KB & AH (credibility-structured approach) Pakistan [2017] UKUT 00491 (IAC) [32]. Credibility must always be assessed in the round, taking into account the indicators that weigh in favour of an appellant alongside those that weigh against them. KB & AH [33-36].

¹ The principles set out at Para. 339L reflect the requirements of Article 4(5) of the Qualification Directive and therefore had the force of law at the time the decision in KS was promulgated [84]. This is no longer the case, but Para. 339L remains part of the Immigration Rules.

22. The Judge further erred in his approach to the specific question of whether the appellant's credibility should be considered to be damaged by the absence of corroborative evidence. As the Court of Appeal has recently reiterated in MAH (Egypt) v Secretary of State for the Home Department [2023] EWCA Civ 216 [86], the lack of corroborative evidence should not be held to damage a person's credibility unless that evidence could have reasonably been obtained. The Judge appears to acknowledge that principle when he comments that "it would have been relatively straightforward" for the appellant to obtain evidence of his relationship to his cousin and of his cousin's death. Such evidence "ought to have been readily available" [60]. He repeats at [70] that the evidence was "obvious" and "would have been relatively straightforward to obtain."
23. I consider, however, that it was not reasonably open to the Judge on the evidence before him to find that the corroborating documents he faulted the appellant for not providing were readily available. He refers at [59-60] to "evidence of his relationship to [his cousin] G, a copy of his death certificate and perhaps hospital records if these existed", in order to "demonstrate that he had a cousin called G and th[at] G had been killed by gunshot wounds in 2021." Ms Blackburn urged me to read these paragraphs as faulting the appellant for not providing any sort of corroborative evidence, with the documents referred to by the Judge being only examples. On this reading, the appellant could have satisfied this credibility indicator by providing witness statements from his family or personal photographs, and these should have been obtainable because it was accepted that the appellant was in regular contact with his family. I consider that this is reading too much into what the Judge actually said. The Judge refers to specific official documents, and it is hard to see how family photographs or witness statements could have "demonstrate[d]" a biological relationship or a cause of death. Given that the appellant claimed that G had been killed by the authorities, and in the context of the detailed evidence of pervasive discrimination against Kurdish citizens by the Iranian state that was before the Judge, I consider that it was not reasonably open to the him to find that family status documents or a death certificate would have been readily available to the appellant.
24. Given these errors in the Judge's assessment of the appellant's credibility, I do not need to reach the issue of whether he also erred in finding that the appellant's credibility had been damaged by his failure to claim asylum in Italy or France.

Notice of Decision

25. The making of the decision of the First-tier Tribunal involved the making of a material error of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to section 12(2) (b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Row.

E. Ruddick

Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 November 2024