



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001204
First-tier Tribunal No:
PA/51633/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 17 July 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MAA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Wilson of the Refugee and Migrant Centre.
For the Respondent: Mr Lawson, a Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 16 July 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 the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant, a citizen of Iran of Kurdish ethnicity, appeals with permission a decision of First-tier Tribunal Judge Chapman ('the Judge'), promulgated on 5 February 2024, in which he dismissed the appeal on all grounds.
2. The Appellant claimed to have left Iran in 2020 when he was 16 years of age. He travelled through various unspecified countries before crossing the English

Channel by boat, arriving in the UK as an unaccompanied minor on 27 February 2021.

3. The Appellant claimed he is entitled to a grant of international protection because after his mother died his father remarried a younger woman who became his stepmother who made sexual advances to him. When he rejected her, she tore her clothes and ran to his father claiming the Appellant had sexually assaulted her. The Appellant went to the home of maternal uncle who hid him, where he claims he learned his father, as a matter of honour, wanted to kill him because of what happened as did his stepmother's brothers who are soldiers in the Islamic Revolutionary guard Corps (IRGC). The Appellant also claimed his father reported him to the Iranian authorities, accusing him of having joined the KDPI, resulting in a risk from his father, stepmother's brothers, and the Iranian authorities.
4. Having considered the documentary and oral evidence the Judge sets out findings of fact from [28] of the decision under challenge.
5. Having carefully analysed the Appellant's evidence, country information, and medical evidence, including the Appellant's claim that he was confused about what was happening, the Judge sets out his conclusions regarding credibility at [49] - [52] in the following terms:
 49. Having considered these factors individually and cumulatively, and in looking at the claim in the round, I do not find the Appellant's account of what happened in Iran to be credible even when having regard to the lower standard of proof. I find that he has not discharged the burden of proving that the events claimed occurred as claimed. In his submissions, Mr Toora accepted that there are inconsistencies in the Appellant's account but he submitted that they do not undermine the credibility of his core claim. For the reasons I have given, I do not agree.
 50. I have considered Dr Cabi's assessment of credibility and risk, but since these are based on an acceptance of the Appellant's account with which I do not agree, I cannot accept Dr Cabi's assessment.
 51. Finally, I do not consider the inconsistencies and difficulties in the account to be reasonably explained by the Appellant's young age.
 52. As a result, I do not find the Appellant to be at risk for the reasons claimed. I am not satisfied that he is at risk from his father or his stepmother's family as the potential victim of an honour crime, nor that he has come to the adverse attention of the authorities in Iran.
6. The Judge goes on to consider whether the Appellant will be at risk on return for other reasons from [53], concluding at [58 - 59]:
 58. I find therefore that the Appellant has failed to discharge the burden upon him of proving, even to the lower standard, that he would be considered in any other way than as a Kurd, who exited Iran illegally, and returned after failing in his attempt to claim asylum in the UK which motivated by economic reasons and in pursuit of a better life. These are not factors, which in themselves will put the Appellant at risk of further investigation, detention, persecution, or treatment contrary to Article 3.
 59. Accordingly, I dismiss his claim for asylum, and, for the same reasons, other protection. This includes Article 3 grounds which were not pursued on medical grounds in this appeal. Mr Toora pointed out in his submissions that there is a diagnosis but did not submit that the threshold for Article 3 claims has been met.
7. The Judge considers Article 8 ECHR from [60]. Having undertaken the necessary balancing exercise the Judge concludes that removal to Iran would not be unjustifiably harsh in all the circumstances, and that the Secretary of State had established that the legitimate aim of immigration control outweighs the Appellant's private life interests, leading to the appeal being dismissed on Article 8 grounds too.

8. The Appellant sought permission to appeal arguing that bar two issues identified by the Judge at [41], the rejection of the credibility grounds depends entirely on the findings of plausibility. The Appellant asserts that relying on plausibility findings and failing to give the Appellant the benefit of the doubt, particularly in view of his own age, has led the Judge to have materially erred in law.
9. Permission to appeal was refused by another judge of the First-tier Tribunal who stated the Judge did not err in law in considering the plausibility of the account as the passages cited in the grounds claim, as at the Judge considered plausibility in the context of the wider country information, and that plausibility was not the only basis on which the Judge rejected the account.
10. The Appellant renewed his application to the Upper Tribunal. Permission to appeal was granted by Upper Tribunal Judge Jackson on 25 April 2024, the operative part of the grant being in the following terms:

The grounds of appeal are that the First-tier Tribunal erred in law in making adverse credibility findings almost entirely on the basis of plausibility, impermissibly by placing itself in the position of the Appellant's family members to determine how they would act. There are two further peripheral issues of inconsistency which it is said should be discounted due to the Appellant's age.

The ground of appeal is arguable that the First-tier Tribunal erred by deciding credibility on primarily plausibility grounds based on assumptions of how particular family members would act; in circumstances where the claim was made by the Appellant as a minor and the risk on return was consistent with the background country evidence.

The First-tier Tribunal's decision does contain an arguable error of law capable of affecting the outcome of the appeal and permission to appeal is therefore granted.

Discussion and analysis

11. In his submissions Mr Wilson made specific reference to a number of paragraphs in the determination including [42], [46], [47] and [48], among others, to prove his point that the Judge had used plausibility to justify his adverse credibility findings.
12. In [42] the Judge found:
 42. The Appellant did provide a timeline of events after his mother's death with more clarity. He said that it was around a year after his mother died that his father was persuaded by family members to marry his stepmother to help look after them both. His stepmother was a younger woman in her twenties, whereas his father was in his fifties, and they were both reluctant to marry. He said that, before the marriage, his father looked after him well and that they had a good relationship. He said that the claimed incident occurred two months after the marriage. Although the Appellant claimed to not know that his stepmother's brothers were Pasdaran, this would have been known to his stepmother. I do not find it credible in these circumstances, that so soon after the marriage, the stepmother would have risked bringing dishonour to the family by acting as claimed. Further, in acting as claimed, she was also putting herself at risk of being the potential victim of honour crime, which I do not find credible.
13. The Judge's comment in relation to the alleged actions of the Appellant's stepmother have their foundation in the country evidence and expert report relating to the importance of honour in the Kurdish community in Iran, and the severe consequences if a person is deemed to bring dishonour upon a family member. The Judge's conclusion is that not only was he not satisfied the

stepmother would act in this way because of the risk of bringing dishonour to the family, but also because if she did, she would be putting herself at risk of being a potential victim of an honour crime and being killed. This has not been shown to be finding outside the range of these reasonably open to the Judge on the evidence.

14. At [46] the Judge writes:

46. The Appellant's account therefore remained that, after the incident, his stepmother tore her clothes and left the house to tell his father what had happened. In oral evidence, he explained that his father was at a part of the farm which was 10 minutes' walk away on a dirt footpath used by villagers to get to their farmland. He confirmed that both his father and stepmother had a mobile phone. I do not find it credible that his stepmother would have run in torn nightclothes along a footpath used by other villagers rather than use her phone to contact the Appellant's father to tell him what had happened. This again undermines the credibility of the Appellant's account.

15. The submission by Mr Wilson that the Appellant's evidence with regard to his stepmother's allegations is plausible, as it demonstrates that she was making a dramatic gesture in light of the Appellant's rejection, may be one possible explanation, but it is important to look at the facts as found by the Judge. The farm on which the appellant's father worked was a 10-minute walk from the family home along a dirt footpath which was also used by other male members of the village. The Appellant's claim is not that his stepmother dressed or ensured she was properly attired, but rather that she ran out in torn nightclothes along that footpath. The Appellant stated that his home area is in Gureh Shar in the Northwest area of Iran near the border. It is a traditional area where Islam is the dominant religion. Is it plausible that a woman who not did not genuinely face a real risk of harm would appear in public in nightclothes in a state of undress in an area which it would have been known was used by other males from the village, unless fleeing for her personal safety from an assailant which is not made out on the evidence. It is not made out the Judge's findings are outside the range of those reasonably open to the Judge.

16. At [47] Judge finds:

47. The Appellant's said he was confused about what had happened and so decided to go to his maternal uncle's house to tell his uncle what had happened and that his uncle then immediately caused him to go into hiding rather than contact his father to see what the problem was. I do not find it credible that the uncle would have done this without speaking to the Appellant's father first. I do not find it credible, that if the father had been told of this incident when it happened, he would have waited until much later to contact the uncle and, without hearing the Appellant's explanation, have decided to kill his son and report him to the authorities as a missing person and possibly having joined the KDPI, thus potentially adverse interest on himself as having possible connections to the opposition group.

17. I find there is merit in Mr Wilson's point in relation to part of this paragraph. If the Appellant told his uncle that his father was out to kill him the uncle's reaction may well have been to tell the Appellant to go into hiding initially, especially if he had not spoken to the Appellant's father himself. The Judge goes on, however, to find the Appellant lacks credibility in his claim his father wanted to kill him, to have reported the matter to the authorities and claiming he joined the KDPI, which may put the whole family at risk if the Iranian authorities thought there was a connection within the family to this group as found by the Judge, without having tried to ascertain from the Appellant directly or otherwise if the claim

being made was true. That is a finding within the range of those reasonably open to the Judge on the evidence.

18. At [48] the Judge found:
 48. Further, in the absence of an explanation from the Appellant do I find it credible that the Appellant's uncle had to hand the funds required to pay for an agent who was specifically instructed to bring the Appellant to the UK. I find it more likely than not that the Appellant's exit from Iran and his journey to the UK was pre-planned for economic reasons and to provide the Appellant with what was seen by him and his family as a better life in the UK. In this respect, I note in his medical records that there is reference to his wanting to be a professional footballer and to him playing football which I find may cast some light on why he came to the UK.
19. There is no evidence of enquiry having been made during the hearing as to the financial resources available to the Appellant's uncle, or family in general. The evidence shows they lived in a village near the border and had farmland. It is known that Kurds within that area are discriminated against by the authorities in Iran which may prevent economic development to the extent that they are able to accumulate considerable capital sums. The difficulty is that it is not clear if that issue was explored by the Judge. It is known that the cost of bringing an individual from Iran to the UK using the services of an agent can be considerable, but many do it. I find the Judge does speculate in relation to the first part of the paragraph, but not the second part in which the Judge finds it more likely than not the Appellant came to the UK as an economic migrant, for a better life in the UK. That has not been shown to be a finding outside the range of those reasonably open to the Judge on the evidence and is supported by adequate reasons.
20. As with any case being challenged on appeal it is important to read the determination as a whole. It is clear the Judge considered with the evidence with the required degree of anxious scrutiny. It is a well-structured determination in which the provision of underlined headings assists the reader in understanding the Judge's approach.
21. Mr Lawson made reference to [29] in his reply in which the Judge found:
 29. In assessing credibility, I have taken into account that the Appellant was a minor at the time of the events concerned, and that he was a minor when he gave his first statement and participated in the asylum interview. For this reason, I have not considered any minor inconsistencies between his account then and his account now to be significant. I note that the Respondent points out that he did not mention that his father had reported him as a KDPI member in his initial statement but that he now claims this to be the case. However, I note that he did refer to this in the interview when it was raised and so do I do not consider this to be a significant inconsistency.
22. The Judge clearly gave the Appellant the benefit of the doubt in light of his age and treated any minor inconsistencies between his early asylum interview and the oral evidence given with care, contrary to the claim in the grounds he did not.
23. The Judge clearly had regard to the medical evidence and to the country evidence. The Judge accepted from the country evidence that honour-based violence exists for adultery in Iran, particularly in the Kurdish community, which can be perpetrated against both men and women. That is likely to be the source of the Judge's later finding that it was implausible the Appellant's stepmother would have behaved in the manner she did as she herself would risk being the victim of an honour crime.
24. At [39] the Judge writes:

39. Having considered these factors, I find that the Appellant's account is consistent with the objective and expert evidence about the risks associated with 'Zina', and that it cannot be discounted on the grounds of it being implausible or inherently unlikely. However, Dr Cabi's opinions about risk to this Appellant are based on his acceptance of the credibility of the Appellant's account, to which I now turn.
25. The Judge specifically finds the account cannot be discounted on the grounds of being implausible or inherently unlikely but is accused precisely doing that when arriving at his adverse credibility findings.
26. Judge Sills who refused permission to appeal noted that the Judge's findings are based upon a number of issues in addition to those specifically referred to in the ground seeking permission to appeal. That is true. I refer to [41] in which the Judge records an unexplained inconsistency in the Appellant's evidence, [43], [44] in which the Judge refers to another evidential inconsistency and [49] in which the Judge writes:
49. Having considered these factors individually and cumulatively, and in looking at the claim in the round, I do not find the Appellant's account of what happened in Iran to be credible even when having regard to the lower standard of proof. I find that he has not discharged the burden of proving that the events claimed occurred as claimed. In his submissions, Mr Toora accepted that there are inconsistencies in the Appellant's account but he submitted that they do not undermine the credibility of his core claim. For the reasons I have given, I do not agree.
27. The claim in the ground seeking permission to appeal that *"apart from two peripheral issues of inconsistency (paragraph 41), which should be discounted due to the Appellant's age as the IJ does in paragraph 29, rejection of the appeal on credibility grounds depends entirely on the findings of plausibility"* has not been shown to be the case.
28. The Judge was required to consider the evidence from all sources with the required degree of anxious scrutiny, determine what weight could be attached to that evidence, make findings in relation to the evidence supported by adequate reasons, and arrive at conclusions based upon an application of the facts as found to the relevant legal provisions. That is what the Judge did. It is also important to note the Judge was considering the credibility of the claim in the context of the reality of the situation in Iran.
29. Guidance on the approach to be taken by appellate judges has been provided by the Court of Appeal in Volpi v Volpi [2022] EWCA Civ 462 @ [2] and Ullah v Secretary States the Home Department [2024] EWCA Civ 201 @26 which I have noted.
30. Having sat back and considered Mr Wilson and Mr Lawson's submissions, the pleadings, determination, and evidence as a whole, with the required degree of anxious scrutiny, I conclude the Appellant has failed to establish the Judge's decision is infected by legal error material to the decision to dismiss the appeal. It has not been shown to be a decision outside the range of those reasonably open to the Judge on the evidence.

Notice of Decision

31. No legal error material to the decision of the First-tier Tribunal is made out. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal

Case No: UI-2024-001204
First-tier Tribunal No: PA/51633/2023

Immigration and Asylum Chamber

16 July 2024