



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01270/2019

THE IMMIGRATION ACTS

Heard at Field House
On 21st August 2019

Decision & Reasons Promulgated
On 13th September 2019

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

MR S M

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Coleman, instructed by UK & Co Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judges Parkes and Plowright promulgated on 2nd May 2019. The appellant, a national of Iran of Kurdish ethnicity, claims to be of adverse interest to the Iranian Authorities because of suspected links to the PJAK (the Party for Free Life in Kurdistan). He asserts a range of errors in the determination of the First-tier Tribunal when dismissing his appeal.
2. As set out in the grant of permission large parts of the grounds were generalised and did not come close to identifying errors of law. The grant confirmed that the only focused assertions were contained in pages 3 to 4.

3. The grounds for permission advanced that the judge had failed to give adequate reasons and the approach adopted was unfair because the appellant had not been given the benefit of the doubt as per the UNHCR material should form part of the overall examination and had failed to apply the correct burden of proof. The Tribunal had failed to consider all of the evidence and had not given the evidence the relevant weight. It was submitted that the judge had failed to be fair by taking into consideration only the respondent's submission and the submitted bundle of documents included a detailed witness statement where the appellant had consistently explained the reaction of the regime and how the Iranian Authorities dealt with him and his family. This had not been addressed properly.
4. Paragraph 12 was criticised for only taking into account the respondent's submission. Paragraph 13 of the determination was disputed because the appellant had clearly explained how his family and he were involved in helping his brother who was a PJAK member and that the Iranian Authorities wanted to arrest him; accordingly the judge failed to take into consideration the appellant's evidence "perfectly and carefully, and unfairly/harshly has found A's evidence to be incredible. We submit that the IJ's (sic) finding is unsafe and unlawful".
5. The Tribunal had failed to be fair at paragraphs 14 and 15 by not taking into consideration the appellant's situation, particularly the witness statement and had only taken into account the respondent's submission.
6. The appellant asserted that the judge had failed to take into account the appellant's witness statement throughout the determination and from paragraph 13 onwards. At paragraph 18 the judge's findings (in relation to Section 8) was 'too harsh'.
7. There was criticism of paragraph 19 because the judge failed to ascribe appropriate weight to the circumstances of the case and the appellant's evidence clearly indicated why he had not been in contact with his family in Iran because his family would be at risk.
8. At paragraph 20 it was asserted the judges only took into account the refusal letter and not the appellant's detailed witness statement.
9. The grant of permission stated that it was arguable that the panel had failed to give consideration to the appellant's evidence as a whole, including in particular that contained within his appeal witness statement. Alternatively it was arguable that the panel had failed to give adequate reasons for finding that the additional information and explanations contained in the witness statement had been rejected.
10. Mr Coleman took me through the evidence in detail in order to set the context of the material before the First-tier Tribunal. He referred to the asylum interview and the "appeal statement" from the appellant dated 15th April 2019. In particular he stated that there were a number of reasons why the panel did not believe him, which included the lack of raiding the place of work, the brother's ability to visit unimpeded, the appellant's ability to evade arrest, the reaction of the Authorities and surveillance and the way the regime behaved. The overall evidence demonstrated the conclusions on the evidence were materially flawed. The determination was irrational and speculative. The appellant had stayed in a stable after his escape and

he had been at all times in the hand of an agent. Most of the points raised were not considered or engaged with.

11. There is no substance to the charge that the Tribunal only took into account the respondent's submissions or refusal letter and failed to address the appellant's own account. There is a freestanding assessment of the material submitted by the appellant and a judge does not have to refer to every piece of material submitted by the appellant. As held in *Budhathoki (reasons for decisions)* [2014] UKUT 00341, judges needed to resolve the key conflicts in evidence and explain in clear and brief terms their reasons for preferring one case to the other so parties could understand why they had lost.
12. The Tribunal did apply the correct burden and standard of proof which is evident at paragraphs 3 and 4 and a careful reading of the determination demonstrated that the judges directed themselves appropriately. There is no requirement in this instance to give the appellant, in accordance with the UNHCR guidelines, the benefit of the doubt. The Tribunal applied the relevant standard of proof when considering the evidence overall. Nor is there substance to the charge that the Tribunal only took into consideration the respondent's submissions or refusal letter. There is a freestanding assessment of the material submitted by the appellant.
13. At paragraph 12 of the determination there is a reference to the reasons for refusal letter because of the country background material incorporated into it. The assertion that the Tribunal failed to take into account the appellant's case is simply not made out. There were key difficulties with the account and which were not resolved even with Mr Coleman's careful references to the evidence. Paragraph 13 makes specific reference to the appellant's account.
14. Much was made of the appellant's contention that he went to work at different places each day in Bashmakh, which at paragraph 7 of his witness statement he described as a "very big area" and a "place that you can turn up any day you want and going there without knowing whether you will be hired for any work or not and by whom". ... "I never knew which warehouse would require my help" and "it could have been anywhere in Bashmakh". That, however was not quite the point that was being made by the Tribunal. As the appellant acknowledged in his witness statement, "the Authorities must be watching and controlling us". At paragraph 14 of its determination the Tribunal identified and reasoned that "it may not be the case that a watch was mounted for 24 hours a day, seven days a week, but if observations were made then the routines of the household and family would be known". The evident deduction was that the Authorities would have considered a simultaneous raid because they would have known the routines such as what time the appellant would, for example, have left the house. Further there must have been a point of hiring at Bashmakh, otherwise the employers and prospective employees would not know where to go to secure casual labour. It is correct that the appellant confirmed that he had no place of work but he must have attended a particular place in order to secure casual employment rather than wander the vast area in which he stated employment might follow after being secured. The crucial point is that the Authorities would have observed the behaviour of the appellant and his family and have been able, bearing in mind its sensitivities and sophisticated surveillance

techniques deployed (and as found by the Tribunal at 15) to detain the appellant along with his family in a simultaneous raid.

15. Mr Coleman took particular issue with paragraph 13 and the approach of the Tribunal to the treatment of the appellant and his mother. Mr Coleman submitted that had *HB (Kurds) Iran CG [2018] UKUT 00430 (IAC)* been followed properly, it would have underlined that the reaction of the Authorities would be unpredictable and the Tribunal misdirected itself in its approach. There was simply no way of knowing what the Authorities would do and the Tribunal's approach was mere speculation. However, as set out in *HB* and recorded in the decision the Authorities have a "hair trigger" approach to those suspected of involvement with Kurdish politics and that must extend to the family of a known PJAK activist such as the brother, and there was an overly sensitive and harsh reaction of the Iranian regime. The Tribunal did faithfully record the guidance in *HB* and as supported in the background evidence.

16. As set out in *HB*

(7) Kurds involved in Kurdish political groups or activity are at risk of arrest, prolonged detention and physical abuse by the Iranian authorities. Even Kurds expressing peaceful dissent or who speak out about Kurdish rights also face a real risk of persecution or Article 3 ill-treatment.

(8) Activities that can be perceived to be political by the Iranian authorities include social welfare and charitable activities on behalf of Kurds. Indeed, involvement with any organised activity on behalf of or in support of Kurds can be perceived as political and thus involve a risk of adverse attention by the Iranian authorities with the consequent risk of persecution or Article 3 ill-treatment.

(9) Even 'low-level' political activity, or activity that is perceived to be political, such as, by way of example only, mere possession of leaflets espousing or supporting Kurdish rights, if discovered, involves the same risk of persecution or Article 3 ill-treatment. Each case however, depends on its own facts and an assessment will need to be made as to the nature of the material possessed and how it would be likely to be viewed by the Iranian authorities in the context of the foregoing guidance.

(10) The Iranian authorities demonstrate what could be described as a 'hair-trigger' approach to those suspected of or perceived to be involved in Kurdish political activities or support for Kurdish rights. By 'hair-trigger' it means that the threshold for suspicion is low and the reaction of the authorities is reasonably likely to be extreme.

17. This was the context of assessing the reaction of the Iranian Authorities. It should be emphasised that it was the contrasting reaction of the authorities over time as described in the appellant's account that the Tribunal found not credible. The reaction of the Authorities was set out by the appellant himself and recorded by the Tribunal at 7 of the determination. It was his case that

"Shortly after his brother left home and joined the Peshmerga the appellant and his mother were asked to attend the offices of the Etelat and asked to persuade him to return. A second invitation took the same form and they were released without incident or conditions".

It is that account which the Tribunal factored into its assessment at 13 and found not credible when considering the reaction of the Authorities as explained in *HB* and the background material. As the Tribunal found, quite logically, “the conversations described by the appellant when they were asked to persuade their brother to return and (sic) are difficult to reconcile with the attitude of the Authorities in Iran”. The fact is that the appellant maintained that not once, but twice, he and his mother had been questioned by the Authorities and released without incident. It was open to the Tribunal to find that that was not believable bearing in mind the country guidance. This makes clear that the Tribunal did take into account the particular and individual circumstances of the appellant and the relevant context.

18. I have addressed the question of the appellant’s work and the Tribunal’s findings in relation to 14 and 15 and I do not find that anything turns on the Tribunal comments at paragraph 16.
19. Turning to paragraph 17 of the determination, Mr Coleman emphasised that the appellant had stayed in a stable, not with relatives as indicated by the Tribunal. However, the Tribunal at paragraph 17 stated “the ability of the appellant to remain with family members is surprising as it would be surprising if the Authorities did not look for someone who was wanted among the wider family group within the general area”. The appellant at question 94 of his asylum interview specifically stated that Ahmed was a relative of his brother-in-law. He would fall into the wider family group.
20. At question 127 of his asylum interview, the appellant confirmed that the stable was at Ahmed’s house where he stayed for more than a month. This clarifies that the appellant was in fact staying with a member of his wider family in the curtilage of that person’s home. The Tribunal cannot be criticised for its finding at paragraph 17.
21. Although it was noted that the appellant no longer has contact with the family, the Tribunal was in particular commenting on the treatment of the mother and the appellant himself prior to the claimed arrest of the mother and disappearance of the brother.
22. At paragraph 18 the Tribunal noted that the appellant did not claim asylum en route but found it “not a major point” although “we find that his failure to do so does undermine his claim to be in need of international protection”. This is criticised by Mr Coleman on the basis that the appellant had made it known that he was under the control of an agent throughout. In fact at question 144 of his asylum interview when asked why he did not claim asylum in Italy, the appellant replied “I was in control of the agent and I did not know I was in Italy.” Even if that was an interpretation mistake, the appellant was recorded in his asylum interview as being fingerprinted in Italy. This rather undermines the later assertion that he was under control of the agent all the time. Indeed he states at paragraph 12 of his witness statement dated 12th December 2018 that he was held in a police station for about an hour. He was not under the control of an agent at that point.
23. The determination specifically recorded that the only information which was key and relevant would be referred to. Indeed the central tenets of the appellant’s claim were addressed. I am not persuaded that the finding at 19 that he had not been in contact

with his family renders the determination unsafe. As the determination states, the fact that he had not been in contact did not have a bearing on the case.

24. At paragraph 20 the Tribunal made clear that it had regard to the observations in the refusal letter, applied the lower standard of proof but found the appellant's claim to be fundamentally undermined overall. The Tribunal also considered the question of whether he had left Iran illegally. It is evident that the Tribunal addressed and assessed the relevant evidence. Mere disagreement about the weight to be accorded to the evidence is a matter for the judge and should not be characterised as an error of law.
25. This is a succinct and concise determination which resolves the central issues and affords adequate reasoning. Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge, *Shizad (sufficiency of reasons: set aside)* [2013] UKUT 00085 (IAC).
26. As set out in *UT Sri Lanka and the Secretary of State for the Home Department* [2019] EWCA Civ 1095

'19. ... although "error of law" is widely defined, it is not the case that the UT is entitled to remake the decision of the FTT simply because it does not agree with it, or because it thinks it can produce a better one. Thus, the reasons given for considering there to be an error of law really matter. Baroness Hale put it in this way in *AH (Sudan) v Secretary of State for the Home Department* at [30]:

"Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently." '

27. Overall, I find there is no material error of law in this decision. The reasoning is adequate, to the point and sufficient. The decision will stand and the appeal remains dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Helen Rymington*

Date 11th September 2019

Upper Tribunal Judge Rymington