



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/03859/2013

THE IMMIGRATION ACTS

Heard at Field House
On 15 August 2013

Determination Sent
On 23 September 2013

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

MASTER DEAR GAZI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Blum, Counsel
For the Respondent: Mr C Avery, HOPO

DETERMINATION AND REASONS

1. The appellant is a citizen of Iran. He is of Kurdish ethnicity. He claimed asylum on 23 June 2012 when he was apprehended by Kent Police in the rear of a lorry and subsequently served with notice as an illegal entrant. He claimed his date of birth was 5 May 1997. As he did not provide any evidence to support his claimed age, he

was referred to Kent Social Services. They assessed his date of birth as 5 May 1995. His application for asylum was refused on 24 August 2012 without a right of appeal. However, due to his age, he was granted Discretionary leave to remain until 5 November 2012.

2. The appellant submitted an in time application for further leave to remain on 18 October 2012 which was refused on 5 December 2012. The appellant's appeal against the respondent's decision came before a judge of the First-tier Tribunal on 8 February 2013. The judge found that the respondent's decision was not in accordance with the law because the respondent had failed to give effect to the positive duty under section 55. She remitted the case back to the respondent.
3. On 11 April 2013 the respondent made a decision to refuse to grant the appellant further leave, and to refuse to vary leave to remain in the UK and to remove him by way of directions under s.47 of the Immigration and Nationality Act 2006. The reasons for the respondent's decision were set out in a letter dated 11 April 2013. It is his appeal against this decision that was dismissed by First-tier Tribunal Judge Meah on asylum grounds.
4. FTT Judge Meah allowed the appellant's appeal on Article 8 of the ECHR. The respondent has not challenged this decision.
5. The appellant was granted permission to appeal the judge's decision on the basis that the judge failed to make clear and reasoned findings on the core of the appellant's asylum claim, namely that his father was involved in Kurdish politics and was detained and, alternatively, that he would be at risk on return due to his profile of absence from Iran. After hearing Mr Blum's submissions, Mr Avery conceded that the judge made an arguable error of law by his failure to make clear and reasoned findings on the core of the appellant's asylum claim.
6. Mr Blum said that as the appellant did not give evidence at the hearing before the judge and the appeal proceeded by way of oral submissions only, there was no need to remit the matter to the First-tier Tribunal for re-hearing. I therefore heard submissions from both parties in order to determine the appellant's appeal.
7. The basis of the appellant's claim is that he is Kurdish. He was born and lived in Sena City. He was the only child of his parents. He told the respondent that he had never attended school and was unable to read or write, although he told the Social Services that he was able to read a few words in Kurdish Sorani and has a basic understanding of maths. From the age of 10 or 11 he started working for his father in his wholesale shop which was in a shopping centre in Ban Bashka. It was a big shop that sold cigarettes.
8. His father was a supporter of the Kurdish Party because he used to attend meetings and he also gave them money. He had been involved in politics for a long time. The appellant did not know which party his father was involved in. His father did not

attend any protests or marches. His father would attend meetings two or three times a month at the same place and he would attend with his father, but would wait outside. Alternatively, he would attend one or two meetings a month with his father. Alternatively, he was present at some meetings and heard them talking about the Democratic Party from sitting outside. Sometimes his father asked him to take letters to other people and sometimes he also gave him money to take once a month to a person called Jamali. His father told him these things were for the party and to be careful.

9. Two to three days before he left Iran his father was arrested at the family home early one evening. There was a knock at the door and his father answered. The appellant was in the kitchen at the time and did not see how many people arrived to take his father but he could see through a crack in the door that there were several men in uniforms and he believed they were police. He did not hear them say anything to his father. He saw his father being restrained and taken away. Alternatively, he did not remember when his father was arrested. Alternatively, he heard them saying they were arresting his father.
10. At this point his mother came into the kitchen and took him to a room in the yard. She told him not to say anything and covered him with some old blankets. He hid there for one or two hours until she told him that he could come out. His mother told him that the police had searched the house and taken his father away. They both had to leave the house. She took him to his paternal grandfather's house in Salwat village. He stayed there for two days. Alternatively, he stayed a week. After two days his mother told him that their neighbour Ursalan had told her that the police were looking for him. His mother told him that the reason why his father was arrested was because he was donating money to Kurdish parties. His mother took him to Salmas and from there he was passed to an agent to leave Iran.
11. Mr Blum adopted the grounds lodged by Mr Chirico as well as his skeleton argument dated 22 May 2013 and the skeleton argument prepared for the hearing on 8 February 2013.
12. Mr Avery adopted the submissions made by Ms A Bridger who was the Home Office Presenting Officer at the hearing before First-tier Tribunal Judge Meah on 22 May 2013. Mr Avery relied on the lengthy Reasons for Refusal Letter which he said set out the credibility issues which the Secretary of State said applied.
13. Ms Bridger had argued that the appellant's claim was vague at best and some major discrepancies had arisen in his evidence which meant that his claim could be deemed as being not credible. One of the discrepancies was the regularity of his father's attendance at the meetings; whether one or two a month or two or three times a month. I agree with Mr Blum that this was a minor error which did not undermine the appellant's account.

14. The other error relied on by respondent was when the appellant's father was arrested. In his witness statement the appellant said two or three days before he left Iran. The respondent challenged this at paragraph 45 of the RFRL stating that he had not provided further evidence of when his father was detained or where he was detained. In answer to question 91 asking him when his father's arrest happened, the appellant said "I don't know before I left." Counsel argued that "when" is a vague question and that no clarification was sought of this answer at interview. I accept that the question was vague and it produced a vague response from the appellant. However, considering that in his typed witness statement dated 23 July 2012, the appellant had been specific as to when his father was arrested, I would have expected him to give an equally specific response when he was interviewed two weeks later on 9 August 2012 about this issue. After all this was the reason he claimed to have left Iran. Furthermore, he had just turned 17 and therefore not that young and had arrived in the UK shortly after the claimed event. On consideration of the evidence I find that the appellant was not being truthful about the event that led him to leave Iran.
15. The appellant claims that his father was involved in Kurdish political activities. It was because of his activities, which consisted of attending meetings and funding the Kurdish party, that his father was arrested. He could not give the name of the political party his father belonged to. He claimed he had asked his father but his father told him he was too young to know about such matter. I accept Mr Avery's submission that although the appellant was a minor at the time of events, he was not very young at 17 and would have had a bigger appreciation of what was happening around him than he appears to have let on at the interview.
16. I can accept, if the appellant's evidence is credible, that he would have accompanied his father to the meetings and sometimes would be let in to the meetings or sometimes he would wait outside probably because they did not want him to hear or become involved in the discussions. I do not however accept the submission that the appellant had limited knowledge of and understanding of the matters which led to his being sent from Iran. In light of his evidence that he was sometimes let in to the meetings even though he was young, I find that the appellant would have had some knowledge and understanding of the political activity his father was involved in. I do not find that the appellant was as ignorant of his father's political activities as he claimed.
17. Mr Blum relied on paragraph 14 of Mr Chirico's submissions, which stated that it is common ground that those who are known, or suspected, by the government to be members or supporters or Kurdish separatist parties are likely to be at risk. He relied on the case of AB and the respondent's OGN which confirms at 3.12.15 that while the "pure" fact of Kurdish ethnic origins would not, without more, create a risk, the Iranian government "disproportionally targeted minority groups, including Kurds, for arbitrary arrests, prolonged detention and physical abuse." The appellant claimed that his mother had been told by the authorities two days after he was arrested that the reason for his arrest was that he had been donating money to

Kurdish causes. In light of the appellant's vague evidence about his father's political activities, I am unable to find that his father was either a member or supporter of a Kurdish separatist party. The appellant's evidence was that he was sent to give money to a particular person. He gave no evidence as to who this person was, whether this person was a member or supporter of a Kurdish separatist party. I am unable without more evidence to find that his father was indeed arrested by the Iranian government for the reason given by him.

18. The appellant left Iran because he claims his mother told him that their neighbour had said that the police were looking for him. This news appears to have led to a speedy departure from Iran. We are well aware that agents take a lot of money from families of appellants in order to take them abroad. The appellant told Social Services that he continued to work for his father until his arrest by the Iranian authorities and the forced closure of his business. In the circumstances I find that it is unlikely that the money used to pay the agent would have come from his father's shop. The speed with which the appellant was taken out of the country suggests that it must have been a planned departure. This finding undermines his claim that his father was arrested by the authorities as a result of which they were also looking for him as a person suspected of such involvement as claimed in the skeleton argument.
19. It was also argued on behalf of the appellant that the fact of his illegal departure from Iran, about which there is no dispute, is a factor augmenting the risk to the appellant as is the fact of a return from the UK. Further, that there has been a diplomatic rupture between Iran and the UK and there is no basis at all by which the appellant can either return voluntarily from the UK or be involuntarily removed from the UK.
20. In light of my finding that the appellant's departure was planned, I do not accept that he left Iran illegally. Whilst I accept that he entered the UK illegally, I do accept that he left Iran illegally. I do not accept that the submission a diplomatic rupture between Iran and the UK is a basis for finding that the appellant will be at risk of persecution on return to Iran for a Convention reason.
21. He has not presented a credible asylum claim and I find that the appellant is not likely to be persecuted on his return to Iran. His asylum appeal is dismissed.

Signed

Date

Upper Tribunal Judge Eshun