Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/04345/2013

THE IMMIGRATION ACTS

Heard at : Field House
On : 25th October 2013

Determination Sent
On : 30th October 2013

Before

Upper Tribunal Judge McKee

Between

R. R.
(anonymity direction continued)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Iain Palmer, instructed by Barnes, Harrild & Dyer, Solicitors
For the Respondent: Mr Tony Melvin of the Specialist Appeals Team

DETERMINATION AND REASONS

1. The appellant, Miss RR, a young Kurdish woman about 20 years old, landed at Stansted Airport on 14th March this year and claimed asylum. Within a very short time she had a screening interview ('SCR') and an asylum interview ('AIR'), followed by the issue of a 'Reasons for Refusal' Letter ('RFRL'). An appeal to the First-tier Tribunal against the consequent decision to remove her came before Judge Sweet

on 7th June 2013, when Miss RR was represented by Mr Palmer. The appeal was dismissed, but the grounds of appeal to the Upper Tribunal, settled by Mr Palmer, although unsuccessful initially, were thought on renewal to evince an arguable error of law, and permission was granted.

2. When the case came before me today, Mr Palmer relied on his grounds, which were strongly rebutted by Mr Melvin. In rejoinder, Mr Palmer argued persuasively that Judge Sweet had indeed erred in law, but in the end I did not agree. I am grateful to both representatives for setting out their positions so lucidly and succinctly.

3. Mr Palmer's principal ground is that the First-tier Tribunal did not, when considering the risk to Miss RR on return to Iran, factor in the involvement of her close family with the Komala Party. According to the appellant, her father was executed in 2008 for his oppositionist activity, while her brother met the same fate in 2012. Another brother sought asylum in this country in 2008, and although his claim was initially rejected, he won his appeal before the Asylum and Immigration Tribunal, and now enjoys refugee status. With such close relatives having incurred the wrath of the Iranian authorities, the appellant will be at real risk of serious ill-treatment on return, contends Mr Palmer, because of her connexion to them, regardless of whether she had any involvement with Komala herself.

4. The trouble with that contention, as Mr Melvin points out, is that the appellant never had any trouble from the Iranian authorities, except when they were looking for her father and her brother. According to the appellant, she and the rest of her family were detained and ill-treated in 2004 because of her father's political activities, and she was detained for another week in 2012 when the authorities were looking for her brother. Now that both these opponents are dead, she will not be of interest to the authorities on their account. Mr Palmer protests that Judge Sweet did not count in the appellant's favour the fact that her surviving brother was found credible by the AIT and has been recognised as a refugee, but again Mr Melvin insists that this does not mean that the appellant will be at risk because of her relatives' activities.

5. I agree with Mr Melvin. The appellant has three sisters in Iran, two of them adults, and she has not mentioned any problems incurred by them with the authorities. Nor did she herself have any trouble with the authorities, except when they were looking for her father and brother. She has never been targeted just because she is a relative of political activists. It was accordingly not an error of law for Judge Sweet not to make an explicit finding on whether the appellant would be at risk on return for this reason. He did take account of the 'country guidance' in *SB (risk on return – illegal exit) Iran CG* [2009] UKAIT 53 and *BA (demonstrators in Britain – risk on return) Iran CG* [2011] UKUT 36 (IAC), neither of which, as Mr Palmer frankly admits, specify the relatives of political opponents as a category of persons at risk on return.

6. Judge Sweet focused on whether the appellant had herself taken part in oppositionist activities. Her own account was that she had held back from Komala as long as her mother was alive, but when her mother passed away in January this year, she joined Komala in February, and began distributing leaflets. This did not come to the attention of the authorities, but shortly afterwards she heard that a friend of hers had been arrested, and that her own name had now become known to the authorities. This had caused her to flee to the United Kingdom in March.

7. Mr Palmer contends that Judge Sweet did not give adequate reasons for disbelieving this story, but it seems to me that he did do enough to support his conclusion that the appellant was "*a witness lacking credibility*." The only thing he was prepared to believe was that she hailed from Iran, and that was only because her brother had been found to hail from Iran. It was not credible that her brother had no idea that she was coming to this country to seek asylum. There was an inconsistency between her earlier account that she did not know whether she travelled here with any agents, and her later account that she travelled with two agents. Nor was it plausible that she travelled from Iran to the UK without any documentation at all, as she claimed. There was another inconsistency as to whether it was, or was not, her intention to be politically active in the United Kingdom. The appellant was illiterate and had lived all her life in a small village. That would explain why she did not know much about politics, but it would not explain why she suddenly became politically active and joined the Komala Party.

8. On that last point, Mr Palmer suggests that, belonging to a political family, the appellant might well want to join the Komala party, once she no longer had to avoid causing her mother anxiety. But the task at the 'error of law' stage is not to enumerate reasons which might have occurred to the judge, but did not, for accepting the appellant's account. Rather, the task is to assess whether it was rationally open to the judge not to accept the account, for the reasons which he gave. The matters which did cause the judge to doubt the appellant's story, listed in the previous paragraph, do seem to me sufficient to justify the judge's conclusion that the appellant is not "*likely to be perceived by the authorities as being associated with political activities*." From there, it is a logical step for the judge to find that "*unless the Appellant has been politically active, it is not likely that the Appellant would be at risk on return from persecution or prosecution*."

9. Credibility has always been a vexed question in the asylum jurisdiction. Often, it is weaknesses at the periphery of the account which undermine the centrepiece. That this has happened in the present case is not an error of law, and the First-tier determination must therefore stand.

DECISION

The appeal is dismissed.

Richard McKee
Judge of the Upper Tribunal

25th October 2013