



Upper Tribunal  
(Immigration and Asylum  
Chamber) Appeal  
Number: PA/08314/2016

**THE IMMIGRATION ACTS**

Heard at: Field House  
On: 2 October 2017

Decision and Reasons Promulgated  
On: 19 October 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

Y R

(ANONYMITY DIRECTION MADE)

Respondent

**Representation**

For the Appellant: Ms J Isherwood Senior Home Office Presenting Officer  
For the Respondent: Mr B Bundock, counsel (instructed by Elder Rahimi Solicitors)

**DECISION AND REASONS**

1. I shall refer to the appellant as “the secretary of state” and to the respondent as “the claimant”.
2. Unless and until a tribunal or court directs otherwise, the claimant 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 claimant and to the secretary of state. Failure to comply with this direction could lead to contempt of court proceedings.
3. The secretary of state appeals with permission against the decision of First-tier Tribunal Judge Devittie allowing the claimant's asylum appeal in a decision promulgated on 31 March 2017.

4. On 7 August 2017 First-tier Tribunal Judge Pickup granted the secretary of state permission to appeal. He stated that the decision failed to specifically address any of the credibility issues raised by the secretary of state, dismissing them collectively as insufficiently cogent as to undermine the core of the appellant's evidence. Nor did the decision address s.8 issues at all. It was also arguable that the secretary of state was deprived of a fair consideration of the reasons for refusal.
5. Ms Isherwood submitted that the Judge failed to give adequate reasons on material matters. The Judge failed to grapple in any specific way with the various credibility points raised by the secretary of state in her decision letter, which were made at the hearing.
6. At [8(ii)] the Judge stated that he had considered the credibility points that the secretary of state had raised against the claimant. He did not however consider that they are sufficiently cogent to undermine the core of the claimant's evidence.
7. She submitted that the Judge then dismissed the legitimate points raised in the reasons for refusal letter in a "general and cursory fashion." She referred to the claimant's assertion that his brother was politically active but when questioned knew virtually nothing about those activities as outlined at page 7 of the reasons for refusal. The secretary of state noted there that the claimant said he was suspected of supporting PJAK as his brother is politically active within this party. He was asked to provide more information about his brother's involvement in the party and stated that he only knew that he is working with Habz - (Interview record Q94). Given that this is the core aspect of his claim, it is reasonable to expect him to provide a detailed account in this regard. His failure to do so undermined his claim.
8. She submitted that there had been no proper engagement with this material consideration which went to the heart of the claimant's case.
9. Further, the secretary of state had also asserted that the claimant failed to make a timely claim and that his credibility was damaged under s.8(6) of the 2004 Act. No account was taken of that either.
10. Nor did the Judge make any finding regarding the claimant's failure to claim asylum in a safe third country even though it is clear that the claimant passed through several countries before arriving in the UK.
11. Despite recounting some of the evidence and the background materials, the actual findings and reasoning on matters of dispute between the parties by the Judge was inadequate.
12. She referred to the asylum interview at B13, Q30. The claimant was asked what he feared would happen to him were he to return to Iran. He stated that he does not know what would happen to him but he is sure and feels that his life would be in danger.
13. Ms Isherwood submitted that in the reasons for refusal the secretary of state set out the basis upon which it was not accepted that the claimant was accused of supporting the PJAK party. The Judge did not deal with the secretary's contention but 'simply stated' that the claimant's account is consistent with country background evidence.

14. He then 'simply stated' that having considered the credibility points that the secretary of state raised against the claimant, he did not consider that they are sufficiently cogent to undermine the core of his evidence; he had given a broadly consistent account throughout the asylum process and at the hearing; he was cross examined at some length. The Judge was satisfied that he remained consistent and gave a coherent, plausible and unblemished account of the circumstances that compelled him to flee the country – at [8(i)].
15. On behalf of the claimant, Mr Bundock, who did not represent the claimant at the First-tier Tribunal, submitted that there was no error of law. This appeal amounts to a reasons challenge.
16. He submitted that there were sufficient reasons for the key findings. The Upper Tribunal should not assume that the First-tier Judge has not considered a point. Further, the reasons must be 'adequate to the context'. There the facts are crucial.
17. He referred to the structure of the determination. The Judge set out in some detail the secretary of state's case at [3], including the reasons for refusal which included the claimant's explanations and assertions.
18. At [8] the Judge was satisfied upon a consideration of the evidence as a whole including the claimant's witness statement and oral evidence, that the claimant had established that "his evidence is reasonably likely to be true."
19. He stated that he has reached this conclusion "for the following reasons" which he then proceeded to set out at paragraphs [8 i]: The claimant's account is consistent with the country background evidence. It is accepted that he is from the northern Kurdish region of Iran. There has been renewed conflict between the Iranian Revolutionary Guard and Kurdish separatist groups in northern Iran. He referred to a recent news report concerning massive protests against human rights abuses in May 2016. There was also a substantial body of documentary evidence concerning the current situation in the northern province of Iran and in particular the claimant's home area.
20. He stated at [8 ii] that he has considered the credibility points that the secretary of state raised against the claimant. He did not consider that they are sufficiently cogent to undermine the core of the claimant's evidence. It was clear to him that the claimant has given a broadly consistent account throughout the asylum process and at the hearing. The claimant was cross-examined at some length and he was satisfied that the claimant remained consistent and gave a coherent, plausible and unblemished account of the circumstances compelling him to flee his country.
21. Mr Bundock accordingly submitted that the Judge has given adequate reasons for finding that the claimant's evidence is reasonably likely to be true [8(ii)].
22. With regard to the s.8 point he submitted that the secretary of state made a mistake in the refusal letter. There she stated that he failed to make a claim for asylum on arrival in the UK. He knowingly remained and worked in the UK illegally. He was arrested on 27 January 2016 by the Highways Agency. He only claimed asylum after he had been arrested.

23. However, as the claimant made it clear at paragraph 18 of his appeal statement, he had only just got out of a lorry after arriving in the UK when he encountered the police. He then immediately claimed asylum. He had not worked in the UK. The secretary of state has confused him with someone else.
24. In the immigration history set out by the secretary of state at paragraph 6 of the reasons for refusal the secretary of state asserted that the claimant claimed to have left Iran 7-8 days before being encountered by the Highways Agency on 27 January 2016. It is also confirmed that he claimed asylum on 27 January 2016.
25. His initial contact and asylum registration form shows that he was interviewed on 27 January 2016. There he stated at paragraph 3.3 that he left Iran 7-8 days ago. He was taken by lorry to Turkey where they stopped on two occasions at night. He does not know what country it was. Then he arrived in the UK.
26. Mr Bundock submitted that the reasons were sufficient when having regard to the specific context in the reasons for refusal.
27. He referred to the aspects of the appellant's case which were not accepted in the reasons for refusal from paragraph 20 onwards. The claimant did identify how the Etelat were aware that he helped his brother treat his wounds. He gave various reasons when interviewed as to why he became aware of this. It might have been because his phone was tapped, or that they were tracing his phone or that they had been to the village.
28. With regard to paragraph 23 of the reasons for refusal, Mr Bundock submitted that his answer to question 58 of the interview could not undermine his credibility. Nor can the explanation given by the appellant to question 57 damage his credibility as asserted in paragraph 24.
29. He submitted that paragraph 26 of the reasons for refusal is "pure nonsense." The claimant had given an explanation as to why helping his brother made him a suspect of supporting PJAK. He had stated that he had helped his brother cross the border.
30. In response, Ms Isherwood submitted that there was nothing in the background evidence produced about phone tapping. Nor was there any reasoning within the determination about this.

### **Assessment**

31. The First-tier Judge has given a very short decision consisting of nine paragraphs over five pages. He set out the secretary of state's case at paragraph [3]. He has identified the secretary of state's contention in the reasons why it was not accepted that the claimant was accused of supporting PJAK.
32. He has also had regard to the claimant's evidence. He noted that the claimant had been cross-examined. At [5] he set out in some detail what that the claimant stated in oral evidence about his brother's involvement in the PJAK for about six years. He had not shared with him any information regarding the details of his activities. His brother had told his friend that he was joining them. It was only when he was asked to assist his brother that he realised he was with the PJAK. His brother had not told

him about his involvement as people keep such matters a secret. He does not know why his brother's friend told him about his brother's involvement when his brother himself would not have wanted him to know about it.

33. After his brother received his injury he went to a nearby village and asked his father's friend to contact his family. It was then that the claimant was contacted. His father's friend came to the house and told him that his brother needed his help. When he went to his brother, he helped him bandage his wounds and he explained how he had sustained them.
34. It took him about two hours to attend to those wounds. He left his brother as soon as he had 'connected with' his colleagues. He then went to his uncle's who asked him if he had been working with the PJAK with his brother. He said that the authorities had visited his home because they wanted to inquire if he was collaborating with his brother.
35. The basis of the claimant's claim was that he was compelled to flee Iran when the authorities came looking for him after he had assisted his brother who had been injured.
36. The claimant has dealt with the credibility points raised by the secretary of state in his appeal statement. As noted, the Judge referred to the claimant's responses to the points raised in the refusal letter.
37. The secretary of state in her grounds contended that the claimant had asserted that his brother was politically active but when questioned about this he knew virtually nothing about the activities as referred to in the reasons for refusal. The secretary of state submitted that there was simply no proper engagement with this material consideration that went to the heart of his case.
38. However, the claimant had dealt with that in his appeal statement at paragraph 13. There he stated that his brother did not share any information with him about his PJAK activities. He had no wish to get involved with them. He helped O because the latter is his brother and not because he is a PJAK activist. He would have been put in danger to have information about his PJAK activities.
39. The Judge had proper regard at [4(iii)]to the claimant's assertions set out in his witness statement namely, that his brother had not shared with him any information regarding his activities in the PJAK. His brother directed him to go to a particular point where his colleagues collected him. He would not have been able to cross the border without his assistance. He had completed 15 months of military service and had no alternative but to abscond when the authorities identified him as anti-regime activist.
40. In his assessment the Judge identified the basis of his claim at [6]. He had regard to the country guidance case of SSH and HR (Illegal Exit: Failed Asylum Seeker) Iran CG [2016] UKUT 00308 (IAC).
41. There the Tribunal found that a person against whom there was no adverse interest could return to Iran safely even if they had left the country illegally. The Tribunal stated that it was not suggested that an individual faces risk on return on the sole basis of being Kurdish.

42. The Tribunal went on to find that it was however agreed that being Kurdish was relevant to how a returnee would be treated by the authorities. There was reference to the operational guidance note which referred to the government disproportionately targeting minority groups, including Kurds, for arbitrary arrest, prolonged detention and physical abuse. No examples had been provided of ill treatment of returnees with no relevant adverse interest factors other than their Kurdish ethnicity. However, the Tribunal accepted that it might be an exacerbating factor for a returnee otherwise of interest.
43. The Judge had regard at [8(i)] to the background country evidence. He considered the credibility points raised finding that the claimant had given a broadly consistent account throughout and had been cross examined at length and he remained consistent and gave a coherent, plausible and unblemished account of the circumstances compelling him to flee Iran.
44. I find that the Judge has had in mind the secretary of state's reasons for refusing the claimant's application for asylum. Those matters had been addressed by the claimant in his interview, his appeal statement and during his oral evidence. Although a short decision, the Judge has given a reasoned assessment of the claimant's account. His findings were available on the evidence presented.

#### **Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of any material error on a point of law. The decision shall accordingly stand.

Anonymity direction continued.

Signed

Date 16 October 2017

Deputy Upper Tribunal Judge C R Mailer