



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/10410/2016

THE IMMIGRATION ACTS

**Heard at Newport (Columbus House)
On 16 June 2017**

**Decision & Reasons
Promulgated
On 22 June 2017**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**M R
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Bayoumi instructed by Asylum Justice
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

- 1.** Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or Court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. The appellant is a citizen of Iran. He arrived in the United Kingdom on 31 May 2011 and was arrested having been encountered by the UK authorities leaving a lorry. On 1 June 2011, the appellant claimed asylum. The basis of his claim was that his father was involved with the Komala Party in Iran. In March 2011, the authorities had raided a shop run by his father and another man. They were arrested although the appellant, who worked there too, avoided arrest. He left Iran two weeks later. He claimed that his father and the other man were later executed by the Iranian authorities and that he was wanted by the authorities.
3. On 14 September 2016, the Secretary of State refused the appellant's claim for asylum, humanitarian protection and under Art 8 of the ECHR.

The Appeal to the First-tier Tribunal

4. The appellant appealed to the First-tier Tribunal. Judge Fowell, in rejecting the appellant's appeal on all grounds, concluded that the appellant had failed to establish that his father was a member of a political party and had been executed. The appellant was not, therefore, at risk on return on account of his past history and also would not be at risk as a failed asylum seeker applying SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC).
5. The appellant sought permission to appeal to the Upper Tribunal on two grounds. First, the judge had erred in law in assessing the evidence, in particular relying upon inconsistencies in the appellant's account. Secondly, the judge had been wrong to take into account, applying the case of TK (Burundi) v SSHD [2009] EWCA Civ 40, that the appellant had failed to produce documentary evidence of his father's claimed execution and membership of the Komala party, in particular by making the assumption that the executions would be reported in the public domain.
6. Initially, the First-tier Tribunal refused permission to appeal. On renewal, the Upper Tribunal (UTJ Chalkley) granted the appellant permission to appeal on the second ground but refused permission to appeal on the first ground.
7. On 5 April 2017, the Secretary of State filed a rule 24 response seeking to uphold the judge's decision.

Discussion

8. Ms Bayoumi, who represented the appellant, acknowledged that the only ground of appeal was ground 2. She sought to rely upon the pleaded ground and drew my attention to the evidence that the appellant's legal representatives had sought confirmation of his father's execution unsuccessfully. She acknowledged, however, that it was the appellant's own evidence that his father's execution had been reported in the TV news and newspaper reports which were publicly available.

- 9.** The evidence before the judge, given by the appellant himself, concerning reports of his father's execution and what efforts were made to obtain supporting documentation is set out in paras 20-22 of the determination as follows:

- "20. He was asked how [his aunt] and her family found out about his father's execution and he said that they knew through the TV news and newspaper reports. There was, he agreed, publically available information about such executions: 'if they execute anyone, they tell everyone, and they do not give back the body.'
21. This led to an exploration both of why he had not mentioned this before and why he had not obtained a copy of any of these public announcements. He said that for a long time he was unable to make contact with his family, and only recently made contact again; then that his family in Iran could not do anything because they were afraid that someone was monitoring him.
22. Asked if he had tried to get reports off the internet, he said that his solicitor had tried to contact the Komala Party, who gave them a number in Paris, and they in turn gave them a number in Iraq, but the solicitor was not happy to go ahead with the call to Iraq. (This appeared to be a reference to emails in the bundle regarding attempts to establish whether the appellant's father was a member of the Komala party.) He personally had not searched on the internet as he was not very familiar with it. He conceded that he had a mobile phone, that he used it to go on Facebook and things like that but did not know how to search for things. He only knows a little English. His former girlfriend had helped him to open the Facebook account."

- 10.** Having cited the case of TK (Burundi) at para 40 of his determination, the judge went on to deal with the absence of supporting evidence at paras 41-43 as follows:

- "41. I bear in mind the appellant's age, and that he was about 16 at the time of these events, but he was rather older when he claims to have been told of his father's death, and it is a simple question of whether the information is true or false, not whether he has properly understood or remembered events. He has also had a long time to try to get hold of this information, and only recently have his solicitors made the limited attempts described about to confirm his account of membership. The fact of the executions themselves seems to have gone entirely unexplored.
42. The most significant feature, it seems to me, is that the appellant has not himself made any effort to find out any information about his father's death. I cannot accept, given that he was able, with help, to open a Facebook account and use it, that he could not either from his own knowledge or by enlisting the help of others, have made some personal attempt to find out details of his father's death and how it was reported. Even if natural curiosity did not lead him to do so, as I feel sure it would, his own asylum appeal has long depended on establishing this fact. I therefore find as a fact that the appellant's father, and his uncles, have not been executed.
43. This is central to the appellant's account. Shorn of that aspect, everything collapses. It must follow that in all probability his father and relatives are still alive and living in Iran, but in any event, having put

forward this false account of his father's death, I cannot accept his account as credible on other matters."

11. As Ms Bayoumi accepted, contrary to what is said in the grounds, the judge did not make an assumption that his father's execution would be reported in the public domain. Rather, it was the appellant's own evidence that it had been reported and this was publicly available as that was the basis upon which he said that his family had found out about his father's execution.

12. In TK (Burundi) the Court of Appeal recognised that the absence of independent supporting evidence could, where it would be ordinarily available, be relevant to assessing the credibility of an individual's account. At [20], Thomas LJ (as he then was) said this:

"The importance of the evidence that emerged in this Court is to demonstrate how important it is in cases of this kind for independent supporting evidence to be provided where it would ordinarily be available; that where there is no credible explanation for the failure to provide the supporting evidence it can be a very strong pointer that the account being given is not credible."

13. Here, the judge considered the appellant's evidence concerning the efforts made by his (then) legal representatives to obtain evidence both of his father's execution and also his father's membership of the Komala Party. But, as the judge noted, the "most significant feature" was that the appellant himself had made no effort to find out any information about his father's death despite his use of the internet, including opening a Facebook account. In my judgment, Judge Fowell was entitled to take into account that the appellant had made no effort himself to obtain that supporting documentation.

14. In addition, the judge was entitled to take into account that, despite the attempt by the appellant's previous legal representatives to obtain evidence about his father's membership of the Komala Party, they had not been fully followed through which "suggested some lack of willingness by his solicitors to press those enquiries". The judge said this at paras 35-37.

"35. The Home Office's Country Information and Guidance report on Kurdish political groups, at paragraph 9.4.1 (quoted in the refusal letter at paragraph 24) indicated, on the basis of a report from the Danish Refugee Council in 2013, that whether the appellant's father had been a member of the Komala SKHKI, the Komala KZK or the Komala Party of Iranian Kurdistan, letters of recommendation could be solicited and sent to the relevant immigration authorities. Paragraph 9.2.1 explains that the Komala SKHKI is the communist grouping.

36. This evidence has still not been obtained, despite the emails in the appellant's bundle, showing attempts to follow this up. These comprise one sent as recently as 19 December 2016 to info@pdki.org, asking for details and, I note, stating 'We are instructed that there were press reports of the execution.' Another email later that day was sent to a different group in the same terms. The PDKI responded promptly, referring them to the international office in Paris and giving a phone number. This was met with a query that this seemed to be an Iraqi

number and asking whether it went to the Paris office. There the flow of communications start and finish. The appellant's own evidence suggested some lack of willingness by his solicitors to press these enquiries, but whatever the reason no evidence has been produced.

37. This is itself a significant failure, given that this was the main issue identified in the refusal letter. ...”

15. In addition, the judge identified inconsistencies in the evidence before him which, although challenged in the first ground, stand since permission to appeal was refused on that ground.

16. I am satisfied that the judge's reasons for rejecting the appellant's account of his father's involvement with the Komala Party and his execution were sufficient and adequate and legally sustainable. There is no other challenge to the judge's decision and his findings were plainly open to him on the evidence and were not irrational or otherwise unlawful.

Decision

17. For the above reasons, the First-tier Tribunal did not err in law in dismissing the appellant's appeal on all grounds. The First-tier Tribunal's decision stands.

18. Accordingly, the appellant's appeal to the Upper Tribunal is dismissed.

Signed

A Grubb
Judge of the Upper Tribunal

Date: 21 June 2017