



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/03123/2017

**THE IMMIGRATION ACTS**

Heard at Glasgow  
On 15 May 2018

Decision & Reasons Promulgated  
On 29 May 2018

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

DANA [J]  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms J McCallum, Solicitor, Latta & Co Solicitors  
For the Respondent: Mr A Govan, Senior Presenting Officer

**DECISION AND REASONS**

1. The appellant who is a national of Iran where he was born in January 1980 and is of Kurdish ethnicity has been granted permission to appeal the decision of First-tier Tribunal Judge Clough who for reasons given in his decision dated 10 November 2017 dismissed the appeal on all grounds against the Secretary of State's decision dated 13 March 2017 refusing the appellant's protection claim. This claim had been

on the basis of involvement with PJAK in Iran and activities the appellant had carried out in the Kurdish region of Iraq in January 2006.

2. The appellant had left Iran in 2005 and claimed asylum in Holland but before resolution of that claim he came to the United Kingdom and was returned to Holland by the UK authorities but rather than waiting there he travelled to Iraq which he left in November 2015 and travelled to France via Turkey. He remained in France for about nine months and then came to the United Kingdom concealed in a lorry until he was encountered by the police on a motorway near Glasgow on 20 September 2016. His claim to asylum was made the following day.
3. The judge did not find credible the appellant's reasons for leaving Iran and in short order dismissed the appeal.
4. There are four grounds of challenge:
  - (i) No mention is made of an expert report by Dr Rebwar Fata which was included in the fourth bundle of evidence.
  - (ii) Five bundles had been lodged on behalf of the appellant and the Tribunal had failed to consider three of those bundles, one of which included the expert report. It was not clear which of the two bundles the Tribunal had considered and which it had not.
  - (iii) The Tribunal had erroneously considered that the appellant had given two different histories in his substantive interview and oral evidence. In the former he had described a scene when authorities came looking for him (in Iran). Based on the appellant's representative's notes at the oral hearing after cross-examination there is no discrepancy.
  - (iv) The Tribunal had failed to address the appellant's activities in Iraq.
5. At the hearing Mr Govan conceded error of law by the First-tier Tribunal on the basis of the failure by the judge to have regard to the account of the appellant's activities in Iraq and all of the evidence including the report by Dr Fata, matters identified in grounds (i) and (ii) above. As to ground (iii) Mr Govan conceded the discrepancy identified by the judge was not clear.
6. His confusion is understandable. At [21] the judge observed:

"21. On the day the authorities came he ran and hid in a wooded area but said the patrol stopped at his family house. He realised they had come to arrest him so he ran further away. He ran to the farm area and hid. He did not return to the family home but hid two farms away."

Before reaching his conclusions the judge observed at [24]:

"24. The Appellant gave a different history in his oral evidence. When the cars came (with the authorities) he was in his house. His home was in the village not on

their farm. He was in front of the house and could see cars approaching. He ran through the house and out of the back door because he realised they were looking for him. He did not return to the house. The men came to the house. The Appellant's mother came to his hiding place. He left Iran the same day ... "

7. Ground (iii) explains the matter in some detail as follows:

- "8. At paragraphs 21, 22 and 24 the tribunal has found that the Appellant has given two different histories in his substantive interview and his oral evidence. Reference is made to the Appellant's asylum interview transcript at Q82-88, where he describes the scene when the authorities came looking for him. Reference is then made to our representative's notes from the oral hearing where the Appellant answers questions posed by the Home Office Presenting Officer about the same scene (both excerpts enclosed). It is submitted that there is no discrepancy between the two accounts. It is submitted that, taking into account interpretation anomalies, the accounts are broadly the same. It is respectfully submitted that this Appellant has not made any material change to his account.
9. The conclusion reached by the tribunal in terms of the facts here is inaccurate and has led the Tribunal to make a negative credibility finding. This amounts to an error of law. Given the broad consistency of evidence and bearing in mind the low standard of proof in asylum cases, it is submitted that the tribunal has made a material error of law."

In his conclusions the judge explained at [28] (relevant to this issue):

- "28. ... The Appellant's evidence concerning his activities in his home village was evasive as to the details. While the claimed incidents took place in 2005 I would have expected him to have been able to give a clear chronological detailed history. As it was he was evasive as to the details of how he first saw the authorities coming to the village. His first explanation in his asylum interview was that he was standing at his house gate in the village and saw a vehicle approaching. As such a vehicle approaching meant they were coming to arrest someone. The Appellant left into a wooded area at the back of his house. He assumed they were coming to arrest him after he saw them stop at his home. After he learned they had come for him he did not return home. His mother told him they were looking for him ... "

The record of interview again relevant to the issue is as follows:

"Q83: How do you know this?

A: Back home when you see official patrol, people are terrified of them as they often arrest people for no reasons (explain how you know spies informed on you). So what happened I was standing with a friend in house gate when I saw a patrol, this mean whenever the patrols are more that two come, they have an order to arrest someone. When I saw them, my family home is in a hill area, when I saw them come I went into hiding, on different occasions when they come I would go into hiding to avoid problem with them.

Q84. So what was different this time?

A: When they came around the family home, I started running. Around back there is a wooden area I ran through that wooden area and hide myself there. When I saw them the patrols stopped at the family home so I realised straight away to arrest me, so I started running even further to my farm area.

Q85: If the wooden area was sufficient to hide you, how could you see them stop at your family home?

A: It is very thick orchard of trees, you would not be able see. So if you are in the wooden area you could see out but people outside could not see.

Q86: Why run to your farming area, surely the authorities would look for you there if you are not at home?

A: That farm is a mountain area and cars - vehicles would not easily get there. I only stayed for a short period over there."

8. The appellant's representative's notes of the exchange at hearing have been provided:

"Is that the same position regarding your memory of people coming to the farm?

I have said it was just 2 people, more or less, when I got to know them personally.

Are you talking about the two who came and spoke about the pol party to you?

Yes at first we met and later we had political discussions.

You said you stayed on a farm in 2005 did you work there?

Yes, it was ours and we farmed the land.

You mean family farm?

Yes my father's and the family's

And those who came and spoke about the pol party, where were they from?

They were from the village and the area.

So had you known them beforehand?

Yes, they were from our area and we knew each other before that.

How did you know each other?

In the same way I met people here, when you are in a place for a period of time you get to know people. It was a small area.

So not friends from school?

No.

Trying to understand the farm and the village and the area. How big?

I don't know how many metres...about an acre. But I don't know exactly I am guessing roughly.

How far was the village from the farm?

15-20 mins walking

Was your farm the next set of houses?

Some of the areas were farms and trees and some parts houses.

You spoke about being told there were spies?

In most places there are informers.

Why you say spies do you mean informers?

Yes they work for the Iranian regime

How would they know what you were doing if you were on a farm in a remote place?

I am not saying I am 100% sure they were but they might have been otherwise how would they know to come to my house.

What time?

I don't remember exactly but it was the afternoon.

So it would have been light?

Yes it was round about then.

Was it light?

Yes it was before the evening.

Was it easy to see?

Yes

How could they not see you?

When they came I could see they were coming in cars as the village sits slightly higher. Whenever government cars come it would be to take people for the government. All young men would get afraid and hide.

But on this occasion you say they came to the farm was the farm on a hill?

When the cars came I was in my home.

On the farm?

No, 20 mins

So your home is not on the farm?

No, it is in the village, 20 mins away.

If you were in your house, how could you see the cars?

I was in front of the house with a friend and we could see the car approaching.

You talked about hiding in an orchard, is that not the type of place they would search?

I ran through the house, out of the back door in to woods area, all trees.

Repeats Q

I ran away as soon as I realised they were coming. I left suddenly, maybe they did search many places. I was very fast. They come to the house and they go. They don't say for too long in case PJAK attack them.

You said you never went back to your home is that correct?

Yes I ran away.

But you spoke to your mother is that correct?

Yes."

9. It is difficult to understand why the judge considered the appellant had been evasive on this aspect of the evidence.
10. As to ground (iv) Mr Govan readily accepted also that there was consideration by the judge of this aspect of the appellant's claim. Again the grounds addressed this aspect in detail:

"10. At paragraph 15 of the determination the tribunal asserts that the Appellant's claim is only based on his involvement with PJAK in Iran. It is submitted that a material part of the Appellant's fear of returning to Iran rests on his extensive political activity in Iraqi Kurdistan. It is submitted that this has been overlooked by the tribunal. It is submitted that the tribunal has not considered the evidence in respect of his political activity in Iraqi Kurdistan which gives rise to a fear of returning to Iraq and also to Iran.

11. At paragraph 13 of the determination the tribunal makes "*no findings as to the credibility of the Appellant's claimed history in northern Iraq because the respondent does not intend to return him there, rather to his home country of Iran.*"

12. It is submitted that the Appellant's claimed history in northern Iraq is central to his case as he fears returning to Iran because of his very public political activities in Iraq. It is submitted that the tribunal has failed to resolve a material fact in issue.

13. It is submitted that the tribunal's failure to address both material parts of the Appellant's claimed fear amounts to a material error of law."

11. In my view Mr Govan was correct to accept that this ground had been made out. With the consent of the parties I set aside the decision of the First-tier Tribunal and remit this case to the First-tier Tribunal for its further consideration in the light of the extent of findings which need to be made.

#### NOTICE OF DECISION

The decision of the First-tier Tribunal is set aside for error of law and the appeal is remitted to the First-tier Tribunal for the decision to be remade.

Signed

Date 25 May 2018

UTJ DAWSON

Upper Tribunal Judge Dawson