



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11098/2017

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 9th July 2018

Decision & Reasons Promulgated
On 18th July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

PP
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Ceesay of Immigration Advice Service

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Malik (the judge) of the First-tier Tribunal (the FtT) promulgated on 18th December 2017.
2. The Appellant is an Iranian citizen born in 1997. He applied for asylum on 11th July 2017 on the basis of his political opinion, that being his support for the KDPI in Iran.

3. The Respondent refused the application on 16th October 2017 and the Appellant appealed to the FtT.
4. The judge heard evidence from the Appellant and found him to be an incredible witness. The judge did not believe the Appellant's account and did not believe that he would be at risk if returned to Iran. The appeal was dismissed on all grounds.
5. The Appellant applied for permission to appeal to the Upper Tribunal. In summary, it was contended that the judge had erred in making adverse credibility findings. Reliance was placed upon KB and AH (credibility - structured approach) Pakistan [2017] UKUT 00491 (IAC) and HK [2006] EWCA Civ 1037. The judge was criticised for concluding at paragraph 32 that the Appellant "has fabricated the core of his claim to form what I find to be a false asylum claim, for the reasons given below". It was contended that the judge had speculated in making findings, had failed to provide adequate reasons, and had ignored material evidence.
6. Permission to appeal was initially refused by Judge Saffer of the FtT who found that the grounds amounted to a disagreement with findings made by the judge but did not disclose a material error of law. The application for permission was renewed, and Upper Tribunal Judge Kebede granted permission to appeal in the following terms;

"Arguably the judge failed to make any clear finding as to whether or not she accepted the Appellant's claim to have been detained in 2016 and there is, accordingly, some arguable merit in the assertion in the grounds at [25] that that impacted upon her assessment of risk on return. There is also arguable merit in the assertion in the grounds that the judge's adverse findings were based solely upon her view of what was plausible. All grounds are arguable".
7. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. It was contended that the judge directed herself appropriately and provided a detailed and thorough determination, and gave full and sustainable reasons for not accepting the Appellant's account.
8. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision must be set aside.

The Upper Tribunal Hearing

9. Mr Ceesay relied upon the grounds contained within the application for permission to appeal.
10. Mr Bates relied upon the rule 24 response. It was submitted that the judge had taken into account all material evidence and provided reasons for findings. The judge had considered the appropriate case law. It was submitted that the judge had considered the Appellant's case at its highest and had not erred in law.
11. In response, Mr Ceesay pointed out that the Appellant had made Facebook postings, and even if those postings were made in bad faith, which was not accepted, that was irrelevant because the postings would come to the attention of the Iranian authorities which would put the Appellant at risk. Mr Ceesay submitted that the Appellant had

a profile in Iran which would bring him to the adverse attention of the authorities if he returned, as he had previously been detained.

My Conclusions and Reasons

12. In considering an appeal, an FtT Judge must make findings and provide reasons for those findings, so that the party to the appeal who has lost, can understand why the appeal was lost. In my view the judge in this case has fulfilled that obligation.
13. What is clear from reading the FtT decision is that the judge did not believe the Appellant. The nature of the challenge is that the judge has not provided reasons for findings made, and has not taken into account all the evidence, and has speculated rather than making findings based on evidence.
14. I do not find that the judge has materially erred in law for the following reasons.
15. It is not suggested that HK is authority for suggesting that a judge must believe everything which is asserted by an Appellant. That decision does not state that a judge cannot consider credibility and plausibility. The decision does give guidance to confirm that decision makers must not consider risk based on their own perceptions of reasonability. If a story seems inherently unlikely this does not mean that it is untrue, and the ingredients of the story and the story as a whole have to be considered against available country evidence, and expert evidence if there is any, and other factors such as consistency, and other factual evidence where there is any.
16. The findings made by the judge commence at paragraph 30 in which the judge confirms having looked at the evidence in the round, and at paragraph 31 the judge finds that the Appellant is an Iranian national, which was accepted by the Respondent. At paragraph 32 the judge records that the account lacks credibility and finds that the Appellant would not be at risk and thereafter gives reasons.
17. At paragraph 33 the judge deals with the core of the Appellant's account, which is that his uncle asked the Appellant and the Appellant's cousin (the uncle's son) to smuggle two KDPI members across the border. The judge finds this to be lacking in credibility on the basis that the uncle would have known that the men were KDPI members, and the uncle was therefore requesting his own son and the Appellant to undertake an act, which would have placed them at risk of detention and possibly death if apprehended by the authorities. The Appellant's case was that his uncle did not tell him that the men were KDPI. The judge found that there was no reasonable explanation as to why the Appellant's uncle would have placed the Appellant at such risk, and also placed his son at such risk.
18. I find no error of law in the judge's conclusion that this was not credible. I do not find that this is a case of a UK judge re-characterising the nature of the risk based on her own perceptions of reasonability. This is a case where the judge is entitled to conclude that no reasonable explanation has been given for the uncle putting his own son and the Appellant at such risk. The finding of incredibility was open to the judge to make on that evidence.
19. At paragraph 34, which is also the subject of challenge from the Appellant, the judge makes findings on the claim that there was an ambush and the two KDPI men were

involved in a gunfight with six armed Pasdaran. The judge finds it incredible that the Appellant was able to escape to a neighbouring village, and finds it incredible that the Appellant was able to stay in a neighbouring village without the Pasdaran searching for him. The point is that the judge did not accept that the Appellant was in fact escorting two KDPI men, and therefore the gunfight did not take place.

20. Paragraph 35 is also challenged in which the judge does not accept that days after the incident, the Appellant was able to speak freely to his uncle, although the uncle had told the Appellant that his cousin had been detained and there was a risk that the cousin would give the Appellant's name and blame him for everything. The judge found it reasonable to conclude that if the authorities had detained the cousin, the uncle would also have been implicated in the incident and apprehended. That in my view is a finding open to the judge to make. I do not find that this is speculation. The judge must make findings upon evidence that is contested. If the cousin had been detained, then it is reasonable to find that his father, the Appellant's uncle, would be questioned and possibly implicated in helping the KDPI. It was the uncle who had allegedly arranged for the KDPI men to cross the border. The judge was entitled to question why it would be safe for the uncle to remain in Iran but necessary for arrangements to be made for the Appellant to leave.
21. I do not accept that the judge has erred in assessing credibility. Findings have been made and sustainable reasons have been given for those findings. The judge has not failed to consider material evidence.
22. Paragraph 36 contains the conclusion by the judge in relation to section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. The judge finds the Appellant had ample opportunity to seek protection in Italy and France. The judge takes into account the Appellant's claim that he did not do so because he was under the control of an agent. The judge rejects that explanation, finding it reasonably likely that agents would be willing to take less risk and have less expense by depositing the Appellant in one of those safe countries, rather than travelling further to the UK. That is a finding open to the judge to make. It was open to the judge to conclude that the Appellant did not claim asylum in a safe country, because he had no fear of return to Iran, but wished to travel to the UK for reasons other than safety.
23. At paragraphs 37-38, the judge considers the Appellant's claim to be at risk because of Facebook posts that he has made since arriving in the UK. The judge notes that the Appellant has throughout his claim, contended that he is illiterate and that his Kurdish friends in the UK have made the posts on his behalf. The judge was entitled to note that there was no evidence from the friends to support this claim and it was open to the judge to find that the Appellant would not be able to use Facebook without the ability to read.
24. It was also open to the judge to note that the Appellant was not aware if his Facebook account was private or public, as this is relevant as if his intention was to express his freedom of speech and support for the KDPI, he should have known, by discussing it with his friends, whether the account was public or private.

25. It is pertinent that the judge finds at paragraph 38 that evidence was not submitted to show, to the lower standard of proof, what had been posted had come to the attention of the Iranian regime or was likely to do so. Again, my view is that this is a relevant finding, and one open to the judge to make.
26. With reference to detention, my view is that the judge accepts the Appellant was detained because at paragraph 39, the judge makes reference to the Appellant being released, which indicates that he was of no interest to the authorities. The judge was entitled to note that the Appellant had in fact given different accounts as to why he was detained. In answer to question 5.4 of his screening interview he explained that he had been arrested the previous year because he had illegal goods and that he was detained for one week. However, in his witness statement which was prepared in November 2017 (the screening interview was in July 2017), the Appellant claims that he was detained because he was accused of being in the KDPI.
27. I therefore conclude that the judge did accept that the Appellant had been detained by the authorities, but not because he was suspected of being involved with the KDPI, and that he was released from that detention without any criminal charge, or any further action from the authorities.
28. The judge was therefore entitled when considering risk on return, and in considering SSH and HR Iran CG [2016] UKUT 00308 (IAC) to conclude that the Iranian authorities had no adverse interest in the Appellant, and that he would not be at risk on return because he had left Iran illegally, and was a failed asylum seeker.
29. In conclusion, I find that the grounds upon which permission to appeal was granted, disclose a disagreement with the findings made by the judge, but do not disclose a material error of law.

Notice of Decision

The decision of the FtT does not disclose a material error of law. I do not set aside the decision. The appeal is dismissed.

Anonymity

The FtT made an anonymity direction because the Appellant had made a claim for international protection. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the Appellant or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings. This direction is made pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date 9th July 2018

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date 9th July 2018

Deputy Upper Tribunal Judge M A Hall