Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01068/2019

THE IMMIGRATION ACTS

Heard at North Shields (Kings Court)	**Decision & Reasons Promulgated**
On 19 July 2019	**On 22 August 2019**

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

SA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: In person
For the Respondent: Mr P Stainthorpe, Senior Presenting Officer

DECISION AND REASONS

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008
Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him 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.

1. The appellant, who is a national of Iran, appeals with permission, the decision of First-tier Tribunal Judge M Wilson. For reasons given in his decision dated 15 April 2019, the judge dismissed the appellant's appeal against the Secretary of State's decision dated 22 January 2019 refusing to grant asylum and humanitarian protection. The basis of the appellant's claim is that he fled Iran because he was threatened with forced conversion by the Pasdaran from being a Sunni to a Shia Muslim. He is of Kurdish ethnicity. There was no dispute as to the appellant's origins or that he was a Sunni Muslim.

2. The respondent did not accept the appellant's account of his difficulties with the Pasdaran and the judge came to the same conclusion. At [9] he explained:

> "9. I find the appellant's claim that the Pasdaran in Iran attempted to force him to convert his religion to Shia Muslim from his born-into faith of Sunni Muslim was inconsistent throughout; indeed, so erratic and unreliable was his account that there was little in it that I could believe. I also found him to be an evasive witness during the course of his oral evidence, this necessitating the repetition of numerous questions because he chose to answer them by referring to matters about which he was not asked. At one point I was constrained to intervene in the proceedings to remind him of the solemn promise he made at the outset of the hearing that he would speak the truth in answer to all questions put to him in his evidence. I was also satisfied that his failure to address questions was not due to any misunderstanding as between him and the interpreter, since at the outset of the hearing they each confirmed that they understood one another and they seemed to me to do so throughout the hearing. Nonetheless, I did check with the interpreter as to whether in his professional judgment there were or might have been problems of understanding or misunderstanding between him and the and the appellant. He gave me his assurance that there were not, and confirmed that they freely conversed without difficulty."

3. This passage is followed by a detailed survey of the evidence that is interspersed with the judge's reasons for disbelieving the appellant culminating in a finding at [21], as follows:

> "21. <u>My assessment of the appellant's account and asylum claim</u>. I do not believe any part of the appellant's claimed chronicle of events leading up to his departure from Iran for the United Kingdom. I am satisfied that he gave conflicting accounts about all aspects of his claim, including the threats he allegedly received in Iran and as to who made them; this part of his account was riddled with speculation and inconsistency. He was likewise inconsistent about never personally having been threatened, about his father only having been threatened, then claiming that the whole family was threatened. He was likewise inconsistent as to there being a single threat, or otherwise, and inconsistent about his father's alleged disappearance, ranging from him going out to work one day never to return, to his mother witnessing the Pasdaran in the act of kidnapping him. He provided a shifting account about when

> the alleged threats were made and as to when it was he left Iran, and an account about why he secured a passport before he left the country that cast grave doubt upon his claim to have fled Iran in fear of his life. In addition, he concealed information from the respondent about which countries he passed through on his way to the United Kingdom, only revealing in his oral evidence that he spent time in Italy, but giving an incredible account as to how this information came to light. I find that irrespective of any other considerations, his actions in this matter further damaged under statute his already damaged credibility. Simply put, I do not believe a word of his account, I am satisfied that his persecution claim was cooked-up and fabricated and that it has no merit."

4. Thereafter the judge directed himself in relation to two country guidance decisions relevant to the appellant's case, being *SSH and HR (illegal exit: failed asylum seeker) Iran CG* [2016] UKUT 308 and *HB (Kurds) Iran CG* [2018] UKUT 430. The judge then explained why he did not consider the appellant qualified for humanitarian protection. The judge also set out an Article 8 analysis and concluded that interference with the appellant's private life was proportionate and furthermore considered the case with reference to Article 3. With further reference to *HB (Kurds) Iran CG* he concluded that this ground was not made out.

5. The appellant is the author of the grounds of challenge. With reference to the judge's observations in the decision based on the appellant's performance at the hearing and cross-examination, it is argued that the judge had made no assessment of the possible causes such as the lack of education or mental illness. Accordingly, the appellant contends that he had not received a fair hearing. The paragraph in question was as follows:

> "16. Continuing his line of questioning, the respondent's representative put to the appellant a fourth time that he had given different versions of what happened to his father, including in his witness statement where he said that his mother witnessed his father being kidnapped. He asked the appellant whether this was or was not true. The appellant replied that he could not remember, but he then denied having stated his father was kidnapped. The respondent's representative reminded him that he had put it in his witness statement, a witness statement that he signed as true only a month ago and which he adopted as part of his oral evidence. It was at this point that I intervened to remind the appellant of the promise he gave at the outset of the hearing that he would speak the truth in his evidence. He again agreed that he would do so. I asked the respondent's representative to continue. He asked the appellant why he stated in his witness statement that his mother had witnessed his father's kidnapping. The appellant replied that he did not know why, but his mother knew that his father had been threatened. The respondent's representative asked the appellant whether he wrote his own witness statement, to which he replied that his mother knew this. I formed the opinion from these exchanges that the appellant was simply not answering the questions asked

> of him. I formed the opinion that his evidence was so fitful and changeable that it could not be relied upon as the truth."

6. In granting permission to appeal First-tier Tribunal Judge Keane extended time and considered that the judge had "… arguably acted irrationally or unfairly and arguably pre-judged the issue of the appellant's credibility when paragraphs 9 and 16 his decision (as cited above) are considered.

7. The grounds of challenge were drafted it appears without help form a legal representative in which the appellant raises as an explanation for the problems in giving the evidence a failure by the judge to assess possible causes such as a "lack of education of mental illness". It is contented that the appellant had not been given a fair hearing.

8. The appellant was unrepresented and assisted by a Kurdish Sorani interpreter. He was satisfied that he understood the appellant with whom I had an exchange as to the nature of the hearing and why his appeal had been dismissed. I referred also to the basis on which permission to appeal had been granted. I asked him if there was any medical evidence that he was suffering from a mental illness. The appellant explained that he had been to see a doctor in Scotland although he could not remember when. He had done so to tell the doctor that he could not sleep and that he forgot things easily and was very forgetful. This had taken place before the hearing. He had asked the doctor to provide a report and medicine. The appellant was given the latter. He had also asked for someone to support him mentally and told that he would be sent a letter. The appellant confirmed that he had told his "lawyers" about this but that he had also told his solicitors.

9. As to whether he had been to school in Iran, the appellant explained that he was uneducated and that he could not read. As to the judge's decision, the appellant affirmed that he had told the truth and did not understand why the case had been refused. He was unaware who had prepared the grounds of challenge but thought maybe his solicitors had.

10. By way of submissions, Mr Stainthorpe explained that the appellant had arrived in the United Kingdom in February 2018 and that his hearing had been a year later. He had been represented by a solicitor during the hearing and there was no evidence that the appellant suffered from anything that would undermine his evidence. No issues had been raised at the hearing on this aspect. As to the observations by FtTJ Keane in granting permission, Mr Stainthorpe responded that the judge had recorded throughout the evidence he had heard and there was nothing unfair in the judge reminding the appellant to tell the truth. The decision revealed that the judge had also checked the position with the interpreter.

11. I reminded the appellant at the end of those submissions which had been translated that the position of the Secretary of State was that there had been no unfairness. The judge had not made a mistake and I asked the

appellant if there was anything he wished to add to what he had said already. His response was that he insisted he had told the truth.

12. There was no evidence before the judge of the appellant suffering from any mental health issues. The appellant was represented by counsel and there is no indication in the decision of any intervention based on the points raised in the grounds. The FtT is a specialist one which is accustomed to hearing evidence in circumstances where an appellant may have limited education. The judge was clearly alive to the potential issue of comprehension in the light of the enquiries made that are recorded in paragraph [9] cited above. There is no reason to suppose that the judge had made up his mind about the appellant's credibility prior to his intervention recorded in [9]. As will be seen from this paragraph, which is cited above, the judge also checked with the interpreter to ensure that the appellant understood what was being said.

13. Turning to the judge's reasons for rejecting the appellant's credibility the judge was entitled to note the inconsistencies relating to the core of the account in paragraph [12] and the further inconsistency is that he considered emerged from a reading of the interviews of the appellant as explained in paragraph [13].

14. Other inconsistencies are addressed in paragraph [14] including, in my judgment, a key aspect at [15] as follows:

> "The appellant claimed that his father disappeared, this as disclosed at this asylum interview in answer to question 59. He stated that he went missing ten days before the appellant and his mother left Iran. In answer to questions 65-66 his father simply went out to the farm and never came back. However, at paragraph 33 of his witness statement he gave a completely different account. He claimed that his mother witnessed his father being kidnapped by the Pasdaran. At the hearing the respondent's representative put the account discrepancy to him, asking him which version of the same matter was true. The appellant replied that his father went out to work one day but did not return. The question was repeated, this time the appellant replied that his mother saw the Pasdaran and stated that they had threatened his father before. The question was repeated a third time. He replied that his father did not return."

15. Paragraphs [16] to [19] continue with a record of the appellant's oral testimony and the judge's findings as a result. Aspects of the appellant's journey to the United Kingdom were addressed in [18] and [19] leading to a conclusion at [20]:

> "I find that the above exchanges provide ample illustration of the appellant inventing or adapting his evidence as he went along, depending upon the prevailing direction of the questions. I find his evidence in this matter, in common with other areas of his account, inconsistent, contradictory and completely lacking in credibility."

16. In my judgment the judge's determination reveals a careful analysis of all the evidence and conclusions on the appellant's credibility which were

open to him. I am not satisfied that he erred on the basis of a challenge on which permission has been granted. I am satisfied that the judge gave legally correct reasons for his conclusion that the appellant based on the findings reached would not be at risk on return simply by virtue of his Kurdish ethnicity alone. The judge also considered humanitarian protection and Article 3. Here too I am not persuaded that there is any error of approach by the judge and cite in particular the penultimate paragraph [32]:

> "In making my decision I have reminded myself of *HB (Kurds) Iran CG*, to which I have above referred. Here, it was held inter alia that whilst Kurds in Iran face a level of discrimination the evidence does not support a contention that such discrimination is, in general, at such a level as to amount to persecution or article 3 ill-treatment. However, to the Iranian authorities' suspicions and sensitivity to possible Kurdish political activity, those of Kurdish ethnicity are regarded with even greater suspicion than hitherto and are reasonably likely to be subjected to heightened scrutiny on return to Iran. This said, the mere fact of being a returnee of Kurdish ethnicity with or without a valid passport, even if combined with illegal exit, does not create a risk of persecution or article 3 ill-treatment. In noting this I am also satisfied that in the appeal before me the appellant does not fall within any of the risk categories in *HB* the Upper Tribunal identified, not least because I am satisfied that his claim in (sic) was fabricated in its entirety."

17. In my judgment the judge did not stray into error in any aspect of his decision or that there had been procedural unfairness. This appeal is dismissed.

Signed Date 20 August 2019

UTJ Dawson
Upper Tribunal Judge Dawson