



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03532/2018**

THE IMMIGRATION ACTS

**Heard at Bradford
On 17 May 2019**

**Decision and Reasons
Promulgated
On 03 June 2019**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Khan (Counsel)

For the Respondent: Mr M Diwnycz (Home Office Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal, brought with the permission of a Judge of the Upper Tribunal, from a decision of the First-tier Tribunal (the Tribunal) which it made on 26 October 2018 following a hearing of 23 October 2018 and which it sent to the parties on 16 November 2018. The Tribunal's decision was to dismiss the claimant's appeal against a decision of the Secretary of State of 25 February 2018, to refuse grant him international protection.

2. I have decided to grant the claimant anonymity. Anonymity was granted by the Tribunal and it does seem to me that it is appropriate to continue that grant.

3. Shorn of all but the essential detail, the claimant's account of the events said to underpin his claim to be entitled to international protection may be summarised as follows: He is a national of Iran, of Kurdish ethnicity and he was born on 4 May 1997. His father was a Peshmerga. He lived in the Sardasht area of Iran and started to support a pro-Kurdish oppositionist party by delivering leaflets. But in due course he received a letter from the Etellaat asking him to attend their offices. His uncle advised him not to attend because he was aware of two other persons who had received a similar invitation and who had subsequently gone missing. Instead, fearing the authorities and or those associated with them, the claimant fled Iran with the assistance of his uncle. He says he was taken to an airport where he boarded a plane for the United Kingdom (UK). He also says that he will be persecuted or subjected to serious harm by the authorities or by groups associated with the authorities if he is to be returned to Iran.

4. The Secretary of State disbelieved the claimant and so did the Tribunal. The Tribunal, essentially, thought he had provided inconsistent evidence with respect to the claimed leafleting; thought he given only vague information regarding his claimed involvement with the oppositionist party; thought the information he had given as to how he had been recruited by the party conflicted with background country material; and thought he had given an unconvincing account of his claimed journey to the UK. In seeking permission to appeal to the Upper Tribunal it was argued that the Tribunal had had regard to background country material relating to a different oppositionist party to that which the claimant had claimed to have been involved with (ground one); had breached the "Surendran guidelines" by taking a point concerning what it thought to be the vagueness of key aspects of his account without putting its concerns (ground two); and in failing to make any finding as to his "political opinion per se" notwithstanding its disbelief of the detail of the account and in also failing to take account of his families claimed previous involvement with the oppositionist party prior to rejecting the appellants own claim to have had such involvement.

5. The granting judge made an unlimited grant of permission to appeal but clearly thought the most arguable contention was that concerning the claimed confusion on the part of the Tribunal with respect to the party the claimant had said he belonged to. Permission having been granted the case was listed for an oral hearing before the Upper Tribunal (before me) so that consideration could be given to the question of whether or not the Tribunal had erred in law and, if it had, what should flow from that. Representation at that hearing was as stated above and I am grateful to each representative.

6. Ms Khan pursued with vigour the various points which had been made in the grounds of appeal. Mr Diwnycz accepted there had been some confusion (which he thought might have been caused by what had been said in the Secretary of States written decision) regarding the specific party which the

claimant had claimed to be a member of. He suggested that such might have the Tribunal into error. He did not formally concede but made it clear he did not wish to defend the decision of the Tribunal. In truth, he came as close to conceding without actually using such a word as it is possible to do.

7. The Upper Tribunal is not bound by even a clear concession made in terms by a party. But it is difficult to disregard what, to my mind, effectively amounted to one. A considered stance taken by a representative is not something that should be simply ignored. Mr Diwnycz is a Senior Home Office Presenting Officer and in the circumstances, I have attached some weight to his deliberate stance in not seeking to defend the Tribunal's decision. I do not know if, had the case been argued differently or if a different stance had been taken on behalf of the Secretary of State, I would have reached the same or a different view. But I have decided in the circumstances as set out above that the Tribunal did make an error of law which might have impacted the outcome of the appeal. I have decided, therefore, to set aside the Tribunal's decision.

8. There is more than one oppositionist party in Iran. The acronyms used for some of them in this case have proved rather confusing. I agree with Mr Diwnycz that what was said by the Secretary of State in his written decision of 25 February 2018 did not necessarily clarify matters in the way that it could have done. But there is a party which appears to be most commonly known as or referred to as PDKI although other acronyms are sometimes used for that party. I shall from now on simply refer to it as the "original party". There is another oppositionist party which appears to be commonly referred to as the KDP-I (though there may be different acronyms for that too) which is an offshoot of the original party. I shall call it the "offshoot party".

9. The Secretary of State, in his written decision, thought that the claimant's credibility had been damaged by his confusing the two parties with each other. Whether that is so or not is something which will in due course, be assessed by another Tribunal. But by the time the matter was before the Tribunal the claimant had attempted, on my reading (though the way it is put in the witness statement of 28 March 2018 is confusing) to indicate that he had been involved with the offshoot party and not the original party. So, whether that was true or not, that was his position to the Tribunal.

10. I accept the Tribunal did not appreciate that attempt at clarification though that may be because it was given in a way which itself might have lacked clarity. I accept that the background country material it relied upon in concluding that the claimant had given an implausible account as to how he came to be recruited, was concerned with the original party rather than the offshoot party. I have very considerable sympathy with the Tribunal because, as I say, I do not think matters were stated as clearly as they could have been by the Secretary of State. Nor, in fact, do I think that matters had been stated as clearly as they could have been by or on behalf of the claimant either. But nevertheless, bearing in mind Mr Diwnycz's conciliatory stance, I have decided that the Tribunal did err in considering background country material which related to the wrong party and that it wrongly applied that material to the claimant's account as to how he was recruited.

11. Of course, as indicated above, the Tribunal had also found other reasons to disbelieve the claimant. Some of those have been the subject of further challenge but I have not found any such challenges to be persuasive. In particular, I do not accept that the Tribunal was required to send some sort of signal as to its concerns prior to concluding that the claimant had given a vague account of his claimed political activity. The Surendran guidelines do suggest that if a new point is to be taken by the Tribunal in the absence of the representative for the Secretary of State, that should be put. But in my view the Tribunal was not taking a new point at all. It is true that vagueness which concerned it had not been expressed as a specific concern in the Secretary of State's decision letter. But the Secretary of State had disbelieved the account, the claimant was represented before the Tribunal, it was for the claimant to present an account concerning sufficient detail and in those circumstances the Tribunal was, in my judgement, entitled (though it did not have to) to take an adverse point with respect to vagueness without sending such a signal. To argue otherwise simply takes the relevant part of the Surendran guidelines much too far

12. Nevertheless, I am not wholly satisfied that had the Tribunal not erred in applying the background material relating to the wrong party, it would inevitably have reached the same conclusion as to the claimant's veracity. In the circumstances (and really by consent) I have decided to set aside the Tribunal's decision on that basis.

13. Ms Khan sought remittal. Mr Diwnycz did not urge to me take a different course. So, I have decided to remit. There will, therefore, be a rehearing of the appeal before a differently constituted tribunal where all matters of fact and law will be considered afresh. Perhaps it might assist if the parties, in order to avoid further confusion, dispense with the acronyms referred to above and simply refer to the original party and the offshoot party as I have done, but that is up to them.

14. My having decided to remit I am statutorily obligated to give directions for the remaking of the decision. But I do not need to give detailed ones. Accordingly, I simply direct that there be a complete rehearing before a differently constituted First-tier Tribunal (a different judge). Any other directions are best made by the First-tier Tribunal itself.

Decision

The decision of the First-tier Tribunal involved the making of an error of law and is set aside. Further, the case is remitted to the First-tier Tribunal for a complete rehearing.

The First-tier Tribunal granted the claimant anonymity. I continue that grant pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Accordingly, no report of these proceedings shall name or otherwise identify the claimant or any member of his family. This grant applies to all parties to the proceedings. Failure to comply may lead to contempt of court proceedings.

Signed

Dated 28 May 2019

MR Hemingway

Judge of the Upper Tribunal