



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10804/2018**

THE IMMIGRATION ACTS

**Heard at Bradford
On 15 March 2019**

**Decision & Reasons
Promulgated
On 9 April 2019**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

**S
(ANONYMITY DIRECTED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Pratt (Solicitor)

For the Respondent: Mr McVeety (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This the claimant's appeal to the Upper Tribunal, brought with the permission of a judge of the First-tier Tribunal, from a decision of the First-tier Tribunal (the tribunal) to dismiss his appeal against a decision of the Secretary of State of 23 August 2018, refusing to grant him international protection. The tribunal made its decision on 13 October 2018 following a hearing of 11 October 2018 and then sent it on 30 October 2018.

2. Shorn of all but the essential details the background circumstances are as follows:

The claimant is a male national of Iran and was born on 8 June 1990. He is of Kurdish ethnicity. He claims that he became involved with a small oppositionist group which called itself the Rohiz Dissident Group. He says that shortly after joining the group he and his friend a man I shall call H, had been caught putting up Kurdish flags in public places. This, he says, led to H being shot. The claimant, though, was able to escape. His (that is the claimant's) father was subsequently arrested by the Iranian authorities but released shortly afterwards. The claimant, fearful the authorities would apprehend and harm him, exited Iran and embarked upon a journey which, ultimately led him to the United Kingdom (UK). He says that he entered the UK illegally on 22 January 2018. He then sought international protection. The Secretary of State refused the claim because he did not believe the claimant had given a truthful or accurate account of events. It was accepted that he is Iranian and it seems to have been accepted (though I am not sure this is anywhere expressly stated on behalf of the Secretary of State) that he is Kurdish. It was that refusal which ultimately led to the appeal before the tribunal.

3. The tribunal, like the Secretary of State, disbelieved the claimant's account. It set out the account of events he had offered in a passage running from paragraph 27 to 36 of its written reasons of 13 October 2018. Then, from paragraph 37 to 44, it explained why it did not believe it. One of its credibility concerns related to the claimant's assertion that shortly after the shooting incident his had been arrested but had nevertheless then been released very shortly afterwards. The tribunal thought that what had been said in a section of an expert report prepared by Dr Kakhki (an acknowledged expert) meant that that part of the account was not true. The tribunal explained its reasoning as to that discrete aspect of the case in this way:

"39. I have carefully read the section in the expert report entitled "Family Arrests Policy" and conclude that it renders the Appellant's account not credible that his father was arrested and that he was released shortly afterwards on the same day as the incriminating material was found hidden in the Appellant's own bedroom. This account is at odds with paragraphs 53 to 57. There is no evidence before me that the Iranian Courts have made any specific Order against the Appellant's family or any individual member of his family. In my judgement, the Appellant's account that anti-regime flags and other incriminating material are said to have been found in the Appellant's family home is wholly inconsistent with the Appellant's claim that the authorities released his father as early as they did without discovering the Appellant's whereabouts.

40. If, as claimed by the Appellant, [H] had given up the names and details of the members of the Rohiz Group prior to his death those details would have included his own father. The Ettela'at, would have, been aware that the Appellant's friend's father was involved in the dissident group and they would, in my judgement, have been highly likely to conclude that the Appellant's father was also involved. On his own account the two families have been friends for a very long time. In my judgement, the sophisticated and informal network of the Iranian

security forces would have quickly discovered the connection between the two families resulting in them not readily accepting any account from the Appellant's father that he was not involved in the dissident groups activities and would not have released him as claimed".

4. The tribunal then looked at what the claimant had said he had done after H's apprehension by the authorities. It thought he had said that he had gone to a maternal uncle's house. However, it thought that if that were true the Appellant would have been discovered by the authorities because the Iranian authorities would have raided that maternal uncle's home. The tribunal said this:

"41. Additionally, given the extremely sophisticated nature of the Ettela'at's information gathering systems I do not find it credible that the Appellant's maternal uncle's home would not have been raided and searched if they knew of the Appellant's identity and involvement with the dissident group due to [H] giving them the Appellant's details prior to dying shortly after being shot".

5. To complete its credibility assessment the tribunal then expressed disbelief at the claimant's contention that he and H had on 5 separate occasions replaced Iranian flags with dissident flags. That is because the tribunal thought if they had been doing so in a relatively small area that would have led to the authorities simply watching sites where flags were located in order to find the culprits. So, runs the argument, the claimant and H would not have behaved in that way at all. It would have been too risky to do so.

6. It was the tribunal's disbelief of the account which caused it to dismiss the appeal. The dismissal of the appeal was not the end of the matter, however, because permission to appeal to the Upper Tribunal was sought and obtained. The grounds included contentions that the expert report did not preclude the possibility of early release of the claimant's father and that the claimant had not said that he had gone to a maternal uncles' house.

7. Permission to appeal was granted. So, the matter was listed for an oral hearing before the Upper Tribunal (before me) so that consideration could be given as to whether 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. As it turned out, as a result of a conciliatory stand taken by Mr McVeety, the hearing was quite short. He did not actually concede that the tribunal's decision contained errors of law but he did accept that the claimant had never asserted that he had fled to a maternal uncle's home and he also accepted that what Dr Kakhki had to say in his report regarding the arrest of the claimant's father was neutral rather than damaging to the claimant's account, with respect to the early release of the father. Mr McVeety added he observed he was "able to see merit in the grounds".

8. As may be seen from the above summary, the tribunal have taken three adverse credibility points against the claimant. One of those, of course, was based on what it thought was his claim that he had fled to a maternal uncle's house. The tribunal's reasoning was that the authorities in Iran are so sophisticated with respect to their detection procedures that they would have discovered the location of the maternal uncle's home and would have raided it

on the basis that there was a possibility the claimant had been taking shelter with a family member. The assertion of the behalf claimant, by way of reminder, is that he had never said he had gone to his maternal uncle's home at all.

9. I have looked closely at the evidence about this which was before the tribunal. At paragraph 14 of the claimant's witness statement of 25 September 2018, he says that after the incident which led to the shooting of H, he had realised that it would not be safe for him to go home "so I decided to go my friend [name of friend] house". He went on to explain that that person was a close friend of his and that he lived in a nearby village. In looking at the tribunal's handwritten record of proceedings (commendably legible) it is recorded that he told the tribunal that he did go to that particular friend's house. It is recorded that he added "my friend's house was twenty-five minutes motorbike ride away from where [H] was shot". I can find nothing in the paperwork in front of me which suggests that the claimant did say he had gone to a maternal uncle's house.

10. I have concluded, in light of the above, that the tribunal did make what having regard to pressure of work was an understandable mistake of fact. The question is whether that has translated into an error in law given that the mistake may have contributed to the tribunal's adverse credibility conclusions. I can certainly see the logic in saying that the Iranian authorities would have or might have sought to apprehend the claimant by raiding the homes of family members or at least any family members who happened to live close by. If they knew his identity and wanted him badly enough that would be an obvious thing to do. I have asked myself whether the same can said be about close friends. However, it seems to me whilst assiduous enquiries made by the authorities might well lead to the rapid identification of locally based family members, the same cannot necessarily be said about locally based friends. I think, speaking generally, that the authorities would probably find family links as opposed to friendship links, more speedily and readily ascertainable. So, I have concluded that the tribunal's credibility point (which would have been a cogent one if the claimant had to gone to his maternal uncle's place) loses force once it is realised that his account was to the effect that he had gone to a friend's house. That does remove one plank from the adverse credibility case built by the tribunal.

11. There is then the issue concerning the speedy arrest and then the speedy release of the father. The tribunal thought that that part of the account was inconsistent with what was indicated by Dr Kakhki in a passage from paragraph 53 to paragraph 57 of his expert report. On my reading what is said therein is that the authorities do frequently arrest family members of those suspected of political oppositionist activity. It is said that there is in Iran a legal basis for the making of such arrests and for subsequent questioning. Dr Kakhki expresses the view that it is plausible that the Iranian authorities would have arrested the claimant's father. But I do not detect anything in that section of the report which suggests it is implausible that he would be released with a degree of rapidity thereafter. As such, it seems to me on a fair reading of that passage, what is said by Dr Kakhki is, with respect to the prospect of an early release of the father, simply neutral. Mr McVeety agrees with that and, in truth I do not

think the passages in the report can viably be read any other way. That does create a difficulty because it is apparent from what the tribunal had to say at paragraph 39 of its written reasons (set out above) that it did rely upon what its interpretation of what was said in Dr Kakhki's report when deciding that the account of the early release was implausible. It does seem to me though, that in the circumstances of this particular case and given what was likely to be substantial concern on the part of the authorities regarding the putting up of anti-regime flags, a case could well have been made for the implausibility of early release irrespective of the content of the expert report. But since the tribunal clearly did rely upon the expert report for at least part of its reasoning regarding that particular credibility concern I am not able to say, if it had not done so, that it would inevitably have arrived at the same view.

12. I would conclude, therefore, that with respect to its credibility assessment the tribunal has erred through making a relevant mistake of fact and through misconstruing the contents of the expert report and that those errors have significantly influenced its adverse credibility findings. I do think, notwithstanding a protest in the written grounds, that the tribunal's reasoning as to the flag issue has force. But I am not satisfied that that, on its own, is capable of sustaining the adverse credibility findings. In these circumstances I have concluded, and I have not been seriously urged to take a different view, that the tribunal did err in law in a way which was material in that the errors I have identified could (I do not say would) have led to a different conclusion.

13. In the above circumstance I have decided that the most appropriate course of action is remittal. That is because, since I have concluded that the credibility assessment is not sustainable, I am not able to preserve any of the tribunals findings and conclusions. Matters must, therefore, commence entirely afresh. There will need to be fresh fact finding and that task is best undertaken by the First-tier Tribunal as the expert fact-finding body. There will, therefore, be a complete rehearing of the appeal by a differently constituted tribunal.

14. I have set out, below, some brief directions as I am statutorily required to do.

Directions for the Rehearing

- A. There will be a complete rehearing of the appeal before a differently constituted tribunal to that which decided the appeal on 13 October 2018.
- B. The rehearing shall take place at the Bradford Hearing Centre.
- C. The claimant shall have the benefit of a Kurdish Sorani speaking interpreter at the rehearing.
- D. These directions maybe amended or supplemented at any time by any salaried judge of the First-tier Tribunal.

Decision

The tribunal's decision involves the making an error of law and be set aside. Further, the case is remitted for a complete rehearing before a differently reconstituted tribunal.

Anonymity

I grant the claimant anonymity. Accordingly, no report of these proceedings shall identify him or any member of his family. This applies to each party to these proceedings. Failure to comply may lead to contempt of court proceedings.

Signed:

Dated: 4 April 2019

Upper Tribunal Judge Hemingway