



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/01588/2019(P)

**THE IMMIGRATION ACTS**

Decision under Rule 34  
Without a hearing  
25<sup>th</sup> August 2020

Decision & Reasons Promulgated  
On 27<sup>th</sup> August 2020

Before

UPPER TRIBUNAL JUDGE COKER

Between

ZM  
(ANONYMITY ORDER MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**DETERMINATION AND REASONS (P)**

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant in this determination identified as ZM. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. FtT Judge Andrew dismissed ZM's appeal against the refusal of his international protection and human rights claim for reasons set out in a decision promulgated on 26<sup>th</sup> November 2019. Permission to appeal was granted by UTJ Lane on 10<sup>th</sup> March 2020, 2020. Directions for the further conduct of the appeal were sent on 12<sup>th</sup> June 2020 and, in the

circumstances surrounding COVID 19, provision was made for the question of whether there was an error of law and if so whether the decision of the FtT Judge should be set aside to be determined on the papers.

2. Both parties made written submissions. Despite being directed to state whether they objected to a decision being taken on the papers, the appellant's representatives did not express a view. The respondent stated she had no objection to a decision being taken on the papers.
3. I am satisfied that the submissions made on behalf of the appellant and the respondent together with the papers before me<sup>1</sup> are sufficient to enable me to be able to take a decision on whether there is an error of law in the decision of the FtT and if so whether the decision should be set aside, on the papers and without hearing oral submissions.

#### FtT Decision

4. ZM is an Iranian Kurd. The FtT judge accepted that smuggling activities took place across the Iran/Iraq border. She identified that the question to be asked was whether the appellant took part in such smuggling activities and if so, was he intercepted by Etelaat. The judge accepted the appellant's account of being involved in smuggling and that he had carried illegal goods and on about four occasions, material for his friend H across the border. She further found:

19. However, was he ambushed on a night in August 2015 as he claims? I do not find there is any great inconsistency in the Appellant's claims that he was caught by the authorities and managed to escape and that he was at the end of the group and managed to run off. The fact remains that if he is credible the Iranian authorities stopped the group, so the group was 'caught' but as he was at the back the appellant managed to run away. I see no inconsistency in this.

20. However what concerns me in relation to the Appellant's claim is that he ran to the house of his maternal uncle. There are however inconsistencies in his claims which are highlighted in the refusal letter at paragraph 49. These inconsistencies have not been addressed by the Appellant either in his evidence [or] rebuttal statement which appears at pages 11 to 13 of the Appellant's bundle.

21. Further, it is the appellant's claim that he remained at his uncle's house for five days before leaving Iran. (Question 100 AIR) given that the Iranian forces are well-organised I am satisfied that there is a reasonable likelihood they would have been able to trace the Appellant to his uncle's home within that period of five days. The fact that they

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<sup>1</sup> (a) the respondent's bundle; (b) the bundle and supplementary bundle filed on behalf of the appellant for the hearing before the FtT on 21<sup>st</sup> November 2019; (c) bundle filed on behalf of the appellant for the hearing before FtT Judge Maka on 25<sup>th</sup> April 2019 (that decision was set aside and remitted to the FtT *de novo*; (d) the decision of FtT Judge Andrew; (f) The application for permission to appeal; and (g) the grant of permission to appeal.

did not do so leads me to find that the Appellant's claims are not credible.

22. Further the Appellant claims that the authorities visited his home but, at questions 95 of the AIR, none of his family were arrested. The Appellant then goes on in the AIR to suggest that his uncle had not talked to him about arrest. However, the Appellant was clear in his first answer. I am satisfied that had the authorities been looking for the Appellant as he claims, then it is reasonably likely that his father would have been detained by the authorities and questioned as to the Appellant's whereabouts.
23. The Appellant also told me in evidence that it was his uncle who paid for his journey to the United Kingdom. I asked him what his uncle did, and he told me that he was a shepherd who herds sheep. He also said that his uncle had 'a high standard of living'. The Appellant did not know how much his journey to the United Kingdom cost but based on the evidence as to his uncle's means – he was a shepherd who herded sheep, I am satisfied there is no reasonable likelihood the Appellant's uncle would have been able to arrange funds within such a short period of time to allow for the Appellant's flight from Iran.
24. In addition to this the Appellant claims he has had no contact at all with any members of his family since he left Iran. Once again, I consider that there is a reasonable likelihood that, having spent a considerable amount of money to send the Appellant to the United Kingdom, his uncle would wish to know of his safe arrival. The Appellant thought his uncle would obtain the information from the agent but, of course, the agent could have told his uncle anything. I am satisfied there is a reasonable likelihood he would have wanted to hear direct from the Appellant as to his safe arrival.
25. All this leads me to find that even if the Appellant's occupation in Iran was a smuggler he had not been intercepted and was wanted by the Iranian authorities.
26. Further I do not find that the Iranian authorities will consider that the Appellant has any political profile on return to Iran. I accept that at question 62 of the AIR he claims he discussed the regime with H.... At question 63 the Appellant confirms that he is not a supporter of any political party in Iran: 'No I had only known Mr H'.
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32. I am aware of the guidance in HB (Kurds) Iran CG [2018] UKUT 430 (IAC). I note at paragraph 71(x) the Iranian authorities demonstrate what can only be described as a 'hair trigger' approach to those suspected or perceived to be involved in Kurdish political activities or support for Kurdish rights. This means that the threshold for suspicion is low and the reaction of the authorities is likely to be extreme.
33. I accept, as did the respondent, that the Appellant is a Kurd. I do not accept his reasons for leaving Iran. I accept he would be scrutinised very carefully by the authorities on return to Iran but for the reasons I have given above, I do not find that the Appellant has proved, even to the lower standard that he faces a risk of harm in Iran.

## Error of law

## Ground 1

5. The appellant submits the FtT Judge incorrectly raised the burden upon the appellant as requiring a political profile contrary to HB(Iran); submitting that “merely speaking out for Kurdish rights or even charitable events” was sufficient given the ‘hair-trigger’ approach of the Iranian authorities. The appellant submitted that the judge failed to consider whether there was a reasonable likelihood that under scrutiny the appellant would disclose matters that would cross the threshold.
6. The appellant’s evidence was that he was not a supporter of any political party. His evidence of conversations with H was limited; there was no evidence that H was known to the Iranian authorities or that he had had any problems with the authorities. There was no evidence the appellant had been speaking out on Kurdish Rights other than the Facebook evidence, which was not supported by copies of the Facebook entries and was only introduced in oral evidence – taking the appellant’s representatives by surprise. It was not apparent that the appellant knew what he had posted in any event, even if there were a Facebook account. The appellant has not joined any groups and has not attended any demonstrations. The judge’s finding that the appellant would be scrutinised carefully on return, but he was not such as to be perceived to be in any way active or at risk of serious harm was a finding that was plainly open to her on the evidence before her. That the judge described this is a political profile could perhaps have been more specific, but it is plain that there was nothing in the appellant’s account which could have led to any perception of anti-authority activity. The judge has not elevated the requirement to that of political profile but has used those words generically to describe anything that could led to such a perception on the part of the authorities.

## Grounds 2 and 3

7. The appellant submits that the evidence has not been considered and assessed in the round but rather as a sequential assessment and thus legally flawed. He submits that the judge formed an opinion and then sought evidence to bolster that view rather than considering the evidence first, relying on the last sentence of paragraph 21. The appellant also submits the judge failed to assess whether the appellant had been consistent to a reasonable degree and had relied upon inconsistencies which was insufficient to impugn the appellant’s credibility.
8. The judge refers to paragraph 49<sup>2</sup> of the reasons for refusal letter and the failure of the appellant to address these inconsistencies. The judge

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<sup>2</sup> “As previously stated. You claim that you ran to your uncle’s home following your escape from the Iranian authorities. You claim that you ran to his house because it was closer to the location you were ambushed from (WS paragraph 8). However in your substantive interview, you claim that you ran to a village called Hanga Zhal, with a fellow smuggler who also escaped the ambush, named Hemin (AIR Q83, 85). From this

identifies the consistent elements of the appellant's account including those that are supported by the background country material. It is plain the judge has given a wide appreciation to the appellant of the evidence that was before him. But the judge was entitled to identify the inconsistencies and lack of explanation in reaching her conclusions. The fact that part of an account is consistent both internally and with external material does not mean that an account is credible to the lower standard of proof.

9. The judge properly took account of all the factors. Although she refers in paragraph 21 to inconsistencies leading to her to doubt the credibility of the account, it is plain, when read that paragraph is read in context that she is referring to the appellant's claim that he ran to his uncle's house (or not). In the decision as a whole that the judge has identified all the material upon which she has based her decision. That those matters are written sequentially does not undermine the totality of the findings. The unexplained inconsistencies in the account are such that the judge reached findings that were open to her.

#### Ground 4

10. The appellant submits that the judge has made findings based upon her own perception of the normal course of events and speculated unlawfully as to the possibility of particular events happening.
11. The judge considered the appellant's evidence in the context of the country evidence. It is not speculation, taking into account the 'hair-trigger' approach of the authorities, for her to conclude that he would have been traced to his uncle's home or that his father would have been detained. Nor is it speculation to conclude that having spent such a comparably large sum of money, the uncle would wish to hear from the appellant that the money had actually been spent as provided for.

#### **Conclusion**

12. Although the judge in paragraph 21 states that the evidence led her to conclude a lack of credibility, it is plain, from a reading of the decision as a whole that she did in fact consider all of the evidence. The reference in paragraph 21 was not based on a small or insignificant element of evidence and was specific to part of the evidence.
13. The findings of the judge were open to her on the evidence. There is no error of law in the findings such that the decision is set aside to be remade. The appeal is dismissed.

#### Conclusions:

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village you claim you were driven to your uncle's home in Balisan (AIR Q85). It is considered that you have provided an inconsistent account of where you went following the ambush by the authorities. This casts further doubt on the credibility of your claim."

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision; the decision of the FtT judge dismissing the appeal stands.

Anonymity

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

*Jane Coker*  
Upper Tribunal Judge Coker

Date 24 August 2020

