Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11152/2019

THE IMMIGRATION ACTS

Heard at Bradford via Skype	**Decision & Reasons Promulgated**
On 5 August 2020	**On 17 August 2020**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

AR
(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Kumar
For the Respondent: Mr I Jarvis

ERROR OF LAW FINDING AND REASONS

1. On 12 March 2020 First-tier Tribunal Judge Ford ('the Judge') dismissed the appellant's appeal on protection and human rights grounds.
2. Permission to appeal was granted by First-tier Tribunal Judge Keane on 20 April 2020 in the following terms:

> For the reasons mentioned in the grounds the Judge's decision contained arguable errors of law but for which the outcome of the appeal might have been different.

> First, in condemning the appellant's accounts as to what became of his passport and identity card as "incredible" (paragraph 22 of the decision). The Judge arguably was rejecting the appellant's account "out of hand". 2nd, the Judge arguably perpetrated a mistake of fact in finding that there was no letter on the file from a Mr Hamadi who was supportive of the appeal in circumstances where in fact the letter was to be found at page 65 of the appellant's appeal documents. 3rd, the Judge arguably had regard to an irrelevant consideration in finding at paragraph 29 of the decision as it would be reasonable to expect the appellant, during a period of residence in the United Kingdom as long as 11 years, to produce additional information or evidence concerning his claimed nationality. It was arguably not a part of the judge's function required the appellant to present evidence. Fourth, the judge rejected "out of hand" the appellant's claim to have been illiterate upon his arrival in the United Kingdom (paragraph 30 of the decision). Such a finding was arguably Draconian was not supported by any or adequate reasons. The application for permission is granted.

Background

3. The appellant claimed to be a citizen of Iran born on 10 May 1990. He arrived in the United Kingdom in October 2009 and claimed asylum. The claim was refused and an appeal against the respondent's decision unsuccessful. The appellant became appeal rights exhausted on 27 January 2010 but was not removed from the United Kingdom and made an application for indefinite leave to remain on 5 July 2018 which was refused on 31 October 2018. On 30 August 2019, the appellant made further submissions in respect of his protection claim which was refused on 28 October 2019, the appeal against which came before Judge Ford.
4. The Judge sets out the correct legal self-direction in relation to the burden and standard of proof between [2 – 6] and the nature of the appellant's claim from [7 – 14]. The Judge was aware of the appellant's claim to be an Iranian Kurd from Khanmawa village in Kermanshah province in Iran.
5. The Judge notes an earlier decision by First-tier Tribunal Judge McGavin, which was promulgated on 11 January 2010, between [15 – 18]. It is noted Judge McGavin did not find the appellant to be credible. At [18] Judge Ford writes:

> 18. Judge McGavin was not satisfied that the appellant was an Iranian national because he was unable to name an Iranian newspaper or radio station, and airport in Iran, or and Iranian mobile phone company. Even if he was an illiterate shepherd, the fact he had not picked up any of this information from his girlfriend who he said was the daughter of an influential man in Etelatt further undermined the appellant's credibility. Judge McGavin noted that the appellant had failed to claim asylum in France where he was fingerprinted on 4 occasions shortly before he had arrived in the UK.

6. The Judge in addition to the documentary evidence had the benefit of seeing and hearing the appellant give oral evidence.
7. The Judge records at [28] that the respondent accepted that if the appellant can show that he is an Iranian national he will be at real risk of persecution in Iran by reason of his ethnicity and political opinion due to his Facebook activity.
8. The Judge, in relation to the protection claim, writes at [29 – 38]:

29. I do not find it credible even to the lower standard of proof that the appellant is an Iranian national. The appellant has known that his nationality was in dispute since the time his initial asylum claim was refused in 2009. He has had 11 years to produce additional information or evidence concerning his nationality. He indicated he could produce documents including a summons and arrest warrant but he has not produced them. He has been in touch with his family since December 2009. He only started his Facebook posts in April 2019. His political involvement with the Kurdish cause in the UK has been limited and recent. I could see no credible reason why he had failed to produce any further evidence regarding his nationality prior to 2009.

30. I find the Appellant's credibility is further undermined because I find he is not illiterate. The Appellant claims to have become literate in the English language that was wholly new to him when he arrived, with only 3 months tuition in the UK and no previous education. This is not credible. While he may have become familiar with spoken English I do not accept even to the lower standard of proof that he is told the truth about his own literacy and I do not accept that if he was unable to read or write in any language when he arrived he is now able to read and write in English.

31. It has consistently stated that he is personally responsible for the Facebook posts on his Facebook account. These are in 2 different languages, English being one of them. I do not accept even to the lower standard of proof that the appellant has been able from a background of illiteracy, to not only learn to read and write in English, but to read and write in a 2nd language. I find that this appellant has not told the truth about his level of literacy when he arrived in the UK and has sought to present a false picture of himself as an illiterate Shepherd when he must in reality, have had a basic level of schooling.

32. It follows from this finding that the appellant can be expected to have a basic knowledge of Iranian affairs including geography, history, culture and literature. He has given no indication that he has familiarity with Iranian affairs. The appellant's Kurdish ethnicity is a factor I have considered in my credibility assessment, but I do not accepted that as a literate Iranian Kurd the appellant cannot be expected to have even the most basic knowledge of life in Iran.

33. At the appeal hearing he was inconsistent about where he left his ID card and his passport saying that he had lost them, that he had left them with his family in Iran and that his family had lost them. In his witness statement at paragraph 5 be said "I do not know what has happened to my ID documents, it would be too dangerous for anyone to send me even if they did have it because of my relationship with the girlfriend. I did not know the national anthem of Iran as it was in Farsi, I cannot read or write or speak Farsi".

34. Even as a shepherd, I find it more probable than not that the appellant would be able to demonstrate a reasonable knowledge of life in Iran that he singularly failed to demonstrate. Reviewing all of the evidence before me, I am not satisfied even to the lower standard of proof at this appellant is a national of Iran.

35. I agree with Judge McGavin's findings as to the credibility of the appellant's claim to have been involved in an illicit relationship with the daughter of a senior individual in Etelatt. The appellant has not adduced any further evidence on this issue. I do not accept that the appellant is the subject of an arrest warrant in Iran due to an illicit relationship that he had with the daughter of an Etellat official or for any other reason. I do not accept that the

Iranian authorities are interested in this appellant because I do not accept that he is Iranian.

36. I am confined in this appeal to looking at the article 8 issues on the basis of the appellant private life only. The appellant has been living in the UK now for over 10 years. He was appeal rights exhausted on 27 January 2010 in relation to his protection claim and he failed to leave the UK. It took another 8 years before he made any further applications regularise his stay.

37. It is only in the last 2 years that the appellant has engaged in visible sur plus activities on Facebook and in protests outside the Iranian Embassy. I find that he has done so in an attempt to fabricate another asylum claim because I find that he is not an Iranian Kurd and he has no genuine interest in protesting against the Iranian regime. It is more probable than not that the appellant is an Iraqi Kurd. He has not disclosed any reason why he might be at real risk of persecution in Iraq.

38. The appellant's appeal on Article 2 and 3 and his humanitarian protection grounds fail for the same credibility reasons.

9. The Judge finds the respondent's decision proportionate to any interference with a protected article 8 right at [39].

The Appellants Grounds

10. The appellant relies on 9 grounds of appeal, alleging (1) that the Judge applied a higher standard of proof at [22] in relation to finding the appellant had slightly changed his account in relation to his ID card, (2) that the Judge erred in fact in relation to the letter from Mr Hamadi, (3) the Judge erred in fact in finding the appellant was not illiterate, (4) that the Judge mixes two different facts of the appellant's case, (5) the Judge applied a higher standard of proof at [34] by reference to the phrase 'more probable than not' which it is claimed is an application of the civil standard which is also said to be present at [37], (6) fails to consider credibility of the appellant's account correctly due to the failure to consider evidence of Mr Mohammadi, (7) fails to consider the appellant's Facebook profile, (8) fails to consider internal relocation, and, (9) fails to consider relevant country guidance case law.

Error of law

11. Paragraph [22] of the impugned decision contains no findings by the Judge. This paragraph is within that part of the Judge's decision headed 'The Appeal Hearing' in which she is recording the evidence given by the appellant. It is accepted the Judge has recorded "In cross-examination he altered his account slightly and said that his family had kept his passport and ID card and when he contacted them they said they had lost them". This is no more than the Judge recording what had occurred during the course of the oral evidence. No arguable legal error arises.
12. Ground 2, in relation to a letter from Mr Halliday confirms the Judge's observations at [24] in this respect are factually correct. This is not a

finding but, again, the Judge recording the appellant had stated he was to provide a letter from a friend Mr Hamadi to evidence his nationality but that he had failed to do. The Judges Record of Proceedings records the appellant being asked in cross-examination why he had not produced a letter from Mr Hamadi that he had stated he would provide to confirm his nationality to which he replied "I handed it to my solicitor". The Judge also records that Mr Chahal, the representatives on the day, checked the file but there was no trace of such a letter and advised the Judge he was certain the appellant did hand it in. The appellant was then asked how he knew Mr Hamadi, to which he gave a reply, indicating there was no confusion in relation to whom this passage of the evidence related.

13. In the grounds of appeal the appellant submits there was no Mr Hamadi, which was not the claim before the Judge, and that this should have been a reference to Mr Ashraf Mohammadi. It is claimed there was a letter from this individual in the appellant's bundle with a translation at [67]. That letter, which is handwritten, states:

> To whom it may concern
>
> Date: 21/02/2020
>
> I would like to support [AR] D.O.B 10/5/1990 as my friend known him from 2010 he is from Iran country and we meet each other many times as I am Iranian nationality and we are each other's with many thanks.
>
> My details…….

14. The grounds also assert that in any event the Judge had evidence from Mr Majid and that the Judge well knows that it is difficult for anyone to send documents to someone who is outspoken on social media.

15. The reality of this ground is that it is no more than disagreement with the weight the Judge gave the evidence that was properly considered. The Judge clearly considered all the evidence with the required degree of anxious scrutiny and it is not been made out the Judge gave inappropriate weight to any aspect of the evidence. Mr Kumar submitted there were a number of letters from individuals in contact with the appellant on various dates. Whilst that may be so that was not the issue before the Judge. It is not disputed the appellant has been in the United Kingdom for a considerable period of time and it is feasible that during this time he may have met the named individuals on regular occasions. What is disputed as the appellant's claim to be an Iranian national. When assessing the weight to be given to the letters provided the Judge was entitled to note that none of the authors of those letters attended to give oral evidence and the subject themselves to cross-examination. The documents are handwritten letters the translation of which shows very similar wording used. They are not in the form of a proper witness statement contains no declaration of truth. The weight that could be given to such documents is therefore limited when compared against the evidence

to which the Judge could wait including the core finding of Judge McGavin at [14] of her determination promulgated on 11 January 2010 shortly after the appellant's arrival in the United Kingdom and the appellant's knowledge of his home state would be, one assumes, relatively fresh in his mind. In that paragraph Judge McGavin found:

> 14. The Respondent disputes the Appellant's nationality for the reasons stated in paragraph 13 to 20 of the "reasons for refusal" letter (R1.F4-5). The Appellant's whole explanation for his failure to know the basic things about Iran, detailed by the Respondent, is that he did not attend school and is unable to read so is unable to read newspapers or books, and had not travelled outwith his home province (A1. Para 14). However, I do not find that a credible explanation for his stating that his home province of Kermanshah was in the south of Iran when it is in the west of Iran. It also does not credibly explain the Appellant's statement that his province was not near a border with any other country when, being in the extreme west of Iran, the province borders Iraq. Nor does it explain the fact he was only able to name one of four provinces neighbouring Kermanshah. These are all facts about the immediate living environment in which the Appellant claims to have lived all of his life which I would expect an adult person, even if he was illiterate, to know because he had lived and worked in that area, for all of that time. Similarly, it is not a credible that the Appellant did not know the name of the nearest school to his home, when his sister, who did attend school, must have attended it. He claimed that his parents had a farm and that they sold the produce at the local market. Where people are gathered together, there is the exchange of news, and even if the Appellant was unable to read a newspaper, it is not credible that he had not heard the name of any newspapers in Iran. Energy is also something which everyone requires and the Appellant has failed to credibly explain how it is that he did not know the names of any energy providing company in Iran. Similarly, if he had attended a local market, it is not credible that he would not be aware that other languages other than that spoken in his home, were being spoken and as to what languages they were. I also find it not credible that a young man, who knew that military service was compulsory, would not know what age it became compulsory. It was not credible that the Appellant gave as an explanation for his failure to attend school, the fact that he would be unable to speak Kurdish and would have to speak Farsi which he did not know, when his sister, on his account, was not prevented from attending school because she would be unable to speak Kurdish (A1. Paras 11-12). In his witness statement, the Appellant states "I have little documentation because as a Kurd I did not go to school as we have to speak Farsi and could not speak Kurdish". However, this does not credibly explain his complete lack of any Iranian documentation whatsoever. I was not directed to any country evidence to indicate that it was likely or credible for a person in the Appellant's claim circumstances to have no evidence of his identity. The Appellant did not know the name of the Iranian national anthem. I do not find this credible, because even if the Appellant had not attended school, his sister with whom he lived, had attended school and it is likely that he would have learned things from her that she had learned. The name of the national anthem is just a basic piece of knowledge as a school child would be taught. For the foregoing reasons, I find that the Appellant has failed to show that he is Iranian.

16. Ground 3 suggests the Judge erred in law in finding the appellant not illiterate on the basis the appellant entered the United Kingdom in 2009 and that it was perfectly plausible that during the 11 years that he has been in the United Kingdom he would have learned the English language. It is argued the Judge gave no consideration to the applicable timeframe. It is plausible that a person who has been in the United Kingdom for as long as the appellant will have acquired language skills demonstrated before the Judge. It is plausible that the appellant will also have mastered the skills required to use various

social media platforms, including Facebook, which appears to be the medium of choice for many asylum seekers making a claim for international protection based upon their sur plus activities. The Judge's findings in this respect are however supported by the findings of Judge McGavin who did not find the appellant's explanation given in support of his claim not to have attended school to be credible. Even if the Judge had erred on this point it is not been made out that any such error will be material.

17. Ground 4 refers against the appellant only becoming literate when he entered the United Kingdom prior to which, when he was in Iran was illiterate, and would have required knowledge from school to understand the history, geography, politics, etc in Iran. The assertion the Judge makes these matters up does not establish arguable legal error as it was clear the appellant demonstrated no knowledge of matters which it would have been reasonable to expect him to have some knowledge of had his claim to be an Iranian national been credible. The grounds of appeal referred to the Respondent accepting the appellant answered a number of questions correctly at [13] RFRL, 1. Mr Kumar was asked what this particular reference was to confirmed it was to the reasons for refusal letter dated 28 October 2019 which is that the challenge before the Judge. That submission is not correct. [13] of the reasons for refusal letter challenge before the Judge states "below is a consideration of the protection-based submissions that have not previously been considered". There is nothing in that paragraph recording any acceptance by the Respondent the appellant having answered a number of questions correctly. The grounds set out at [11 (b) – (i) what appear to be the details which it is said the appellant correctly identified. It is more likely than not that the reference in the grounds of appeal is to the original refusal letter this dated 10 November 2009 which is that considered by a Judge McGavin and in relation to which the appellant was found not to have sufficient knowledge of key issues sufficient to establish his claimed nationality. It is wholly inappropriate to attempt to effectively go behind the decision of Judge McGavin on the basis of evidence that was properly considered and taken into account by her in her decision against which there was no successful ongoing challenge.

18. The assertion the Judge applied a higher standard of proof fails to demonstrate arguable legal error. It is necessary to read this decision as a whole to establish the Judge's thinking and reasoning rather than to cherry pick occasional phrases and try to build them into a valid argument. Such an approach has been criticised by the Senior Courts. Whilst the Judge uses the phrase "more probable than not" on a couple of occasions it is clear that the Judge, having set out the correct legal self-direction that in a protection appeal it is the lower standard of proof that is applicable applied the standard, applied the standard as evidenced by the first line of [29] of the decision under challenge. It is not made out the Judge applied the civil standard when assessing whether the appellant had discharged the burden upon him

to show an entitlement to a grant of international protection or otherwise.

19. Ground 6 suggests the Judge did not properly consider credibility, but this claim has no arguable merit. The Judge does not give a wrong name in relation to the evidence from Mr Mohammadi. It is clear from a reading of the determination that all the material that was provided was considered by the Judge. The claim the evidence was not considered sufficiently enough is no more than disagreement with the finding. Adequate reasons are given to support the Judges strong believe that the appellant's lack of knowledge relating to his home country, and lack of supporting evidence for his claim upon which due weight may be given, indicated he was not an Iranian national. The Judge was not required to set out findings in relation to each and every aspect of the evidence provided that material was properly considered as it was in this appeal.
20. Ground 7 has no arguable merit. The Judge did consider the appellant's Facebook account but as the core finding is that the appellant is not Iranian no arguable error arises in the Judge not considering whether he would face a real risk on return to Iran as a result of his Facebook profile.
21. Ground 8 has no arguable merit as the Judge did not find the appellant is an Iranian national. Accordingly, there was no need to consider whether he was at risk in his home area of Iran or whether he could internally relocate within Iran if he were.
22. Ground 9 asserts the Judge failed to consider the relevant country guidance case law but does not specify which case law is relevant. On the facts as found that relating to Iran is, arguably, not.
23. The grounds amount to no more than a quarrel with findings made by the Judge, disagreement with the weight the Judge gave to certain aspects of evidence, and a repeat of the appellant's claim that he is an Iranian national. The finding of the Judge, in line with that of Judge Gavin, is that the appellant is not an Iranian national and had not proved that he was to the lower standard applicable to protection appeals. It has not been shown this is a finding outside the range of those reasonably available to the Judge on the evidence.

Decision

24. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

25. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

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

Signed.....
Upper Tribunal Judge Hanson

Dated the 6 August 2020