Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01975/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12 January 2018	**On 15 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW

Between

MR BK
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S Walker, Counsel instructed by J D Spicer Zeb Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. 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 original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

2. The appellant is a national of Iran whose date of birth is [ ] 1996. The appellant claims to have arrived in the United Kingdom on 22 August 2016 and claimed asylum on 23 August 2016. He claims he left Iran on 7 October 2015, was fingerprinted twice on his journey, latterly in France on 1 December 2015. He did not claim asylum in Greece or France and travelled from France to the UK clandestinely. On 23 August 2016 he had an initial screening interview and his asylum interview was held on 23 January 2017. The basis of his claim is that the Iranian authorities suspect him of supporting the KDPI

3. The respondent refused the appellant's claim for asylum on 9 February 2017. The appellant appealed to the First-tier Tribunal against the respondent's decision.

The appeal to the First-tier Tribunal

4. In a decision promulgated on 24 July 2017 First-tier Tribunal Judge Wylie dismissed the appellant's appeal. The Tribunal did not accept that the appellant's evidence that he was sought by Ettela'at due to his political activities. The Tribunal did not find the appellant to be a witness of truth and was not satisfied that the appellant would be at risk of serious harm on return to Iran.

5. The appellant applied for permission to appeal against the First-tier Tribunal's decision. On 23 October 2017 First-tier Tribunal Judge Saffer granted the appellant permission to appeal.

The hearing before the Upper Tribunal

Submissions

6. A skeleton argument was submitted at the hearing and the arguments were amplified by Ms Walker in oral submissions. Ground 1 sets out that the Tribunal's approach to the documentary evidence amounted to a material error of law. In relation to this ground of appeal the appellant's case is that the letter from the KDPI forms the starting point of the First-tier Tribunal Judge's reasoning. It is submitted that the letter was considered in isolation rather than considering it in then context of the appellant's account and the objective evidence as set out in **Ahmed (Tanveer) (documents unreliable and forged) [2002] UKIAT 439**. At paragraph 65 the judge finds that the letter is not reliable – this is her first finding.

7. Ms Walker submitted that the letter forms the focal point of the First-tier Tribunal's decision. This was only one piece of evidence which arrived late. There were four points to consider regarding the letter. The country information guidance as to how such letters should be retrieved was referred to by the judge. The procedure as set out at paragraph 7.4.1 is very consistent with what occurred in this case. She referred to the guidance and submitted that the only distinction is that the document was

faxed to the appellant's legal representatives rather than the Home Office as set out in the guidance. The appellant did not realise that it should go to the Home Office. The appellant set out his representative's fax number on the letter.

8. The second point was that the judge at paragraph 63 set out that no one knew of the appellant's involvement except his cousin which goes against the evidence given by the appellant. At paragraph 44 of his witness statement the appellant gave an explanation as to how his name was known, four men knew his name. The person he approached was known through his cousin which suggests that the cousin was an integral part of the contact to obtain the letter and that the appellant's name and identification was known at that point.

9. The third point at paragraph 64 of the decision that the judge failed to consider the documentary evidence in total. There was the fax number of the solicitors in the letter to the KDPI and the letter was sent back by fax as indicated on the top of that letter. The appellant gave evidence to that effect. Those three factors taken together are sufficient to demonstrate that the correct procedure was followed and that the appellant's details would have been known by the KDPI. Even if the judge placed no weight on the letter the appellant's case could still be made out.

10. Ground 2 asserts that at no point does the judge deal with the substance of the case and has failed to give adequate reasons. There were only two inconsistencies identified by the judge, namely the arrest warrant and the letter. Those two factors on their own fall far short of being sufficient to say that the appellant's evidence should not be believed. There was a lack of reasoning as to how the judge had arrived at the decision in paragraph 67.

11. At paragraph 66 the judge states that there had been an arrest warrant she would have expected him to declare it at an early stage in his claim. The appellant has given a consistent account that the Iranian authorities are interested in him. In his asylum interview at q37 the appellant made it clear the authorities had raided his house and at 86 said he feared arrest by the authorities. The judge has unfairly focused on a semantic point.

12. At paragraph 68 the judge simply adopts wholesale the Home Office submissions. The judge did not engage with the evidence of the appellant. She referred to the appellant's evidence of the men bringing materials from Iraq to Iran which would be a good reason as to why the meetings took place in Iran. The judge failed also to consider the appellant's case, that he had never asked where the meetings were as his job was simply to arrange a place for the meetings. With regard to the judge's comment that there seems no reason why the KDPI would arrange meetings between Iraqis and Iranians in Iran rather than in the safety of Iraq no allowance is made for the fact that such matters are beyond the knowledge of UK decision makers. The appellant was not asked in cross-

examination how the two men were able to pass from Iraq to Iran. There are many possible reasons why this may have been the case.

13. With regard to the judge's statement that there seems no reason why the appellant could not have fled to his wife and other family in Iraq the judge ignored the appellant's answer which was that he would not have rights in Iraq, would not be allowed to enter or to stay and the authorities might find it easier to find him across the border. It is submitted that Iraq is clearly not deemed a safe country for asylum purposes and so it is a fundamentally flawed approach to expect an asylum seeker to have sought refuge there.

14. Ground 111 assets that the judge has failed to make adequate findings of fact. The appellant gave a detailed account of his experiences in his asylum interview and in his other evidence. The appellant has been completely consistent throughout with regard to his account of what happened in Iran. The decision simply does not engage with the appellant's core account of his experiences. The judge did not consider the account in the round and does not state any reasons for not believing the appellant's account.

15. Mr Walker submitted that the judge was clearly aware of the correct approach to the documentary evidence setting out evidence setting out at paragraphs 52 and 53 the principles in **Tanveer Ahmed** and **Karanakaran v SSHD [2000] EWCA Civ 11.** The judge finds at paragraphs 63 and 64 that there is no receiving fax number on the document which is accurate. There was no translation of the letter sent to Paris. The interpreter gave a rough translation. At paragraph 63 the judge was entitled to consider that the letter did not mention the appellant's cousin at all and that the only way that the KDPI would be aware of the appellant was through his connections with his cousin who was a member of KDPI. The fax number for the solicitors was incorrect as it omitted the last digit so it is not clear how the document could have been faxed to them.

16. At 7.4.1 of the guidance it makes it absolutely clear that the document will never be sent to an appellant in person. The fact that it went to his legal representatives (if that is in fact correct given the judge's concern that there was no receiving fax number and the fax sent had an incorrect number on it) makes no difference because the document, according to the guidance, would only ever be faxed to the asylum administration in the country in question. The KDPI in Paris would be well aware of the UK's Home Office fax number. The findings on the judge on the lack of provenance were open to the judge on the evidence before her at the hearing. The previous hearing was adjourned specifically to obtain this evidence.

17. In reply Ms Walker submitted that the fact that the letter did not mention the cousin is not conclusive because there were two ways in which the KDPI could have known about the appellant's cousin outside of the letter.

The two letters make it clear where they came from. It was confirmed in the hearing that the document was received by the legal representative. It is difficult to see what the inconsistency is or that are being referred to at paragraphs 62 to 67. It does not clearly state what they are.

Discussion

18. The judge set out the appellant's case from paragraphs 15 to 30. These paragraphs are fairly detailed and set out the elements of the appellant's account. At paragraph 52 in relation to documentary evidence the judge indicated that she had applied the guidance in **Tanveer Ahmed**, that she must look at the documents in the round together with the rest of the evidence and that the burden of demonstrating the reliability of the documents rests on the appellant. At paragraph 53 the judge set out that in making findings of fact she must consider the evidence in the round referring to **Karanakaran v SSHD [2000] EWCA Civ 11** and that throughout the assessment she must apply the lower standard of proof.

19. At paragraph 55 the judge commenced consideration of the appellant's evidence.

20. She set out in paragraphs 59 to 61 the appellant's account of obtaining the membership letter and his attempts to obtain a letter from the main office in Kurdistan.

21. At paragraph 62 the judge set out:

> "62. There are inconsistencies in the appellant's evidence. Having regard to the Country Information and Guidance, section 7, the organisation has members, sympathisers and friends. Verification carried out by the KDPI through the Paris office, ask the party headquarters in KRI to investigate, and then the Paris office issues a letter of recommendation.
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> 63. Given his evidence that no-one knew of his involvement except his cousin and the four persons at the meetings, it is difficult to understand how the party in KRI would be able to identify him as a supporter, without his cousin's details being provided. The letter requesting the information (in the rough translation the Tribunal was given by the interpreter) did not mention the cousin at all.
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> 64. There is nothing on the document to show where this letter was sent, nor anything to show where the letter headed KDPI with the Paris address was sent.
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> 65. In the absence of such information, and as the procedure is not as set out in the Country Information and Guidance, I give this letter little weight. I do not accept that this letter is reliable evidence supporting the appellant's case."

22. I do not accept that the judge's approach to this evidence was flawed. I also do not accept that the judge considered this evidence in isolation or as the starting point. In fact the first issue the judge, at paras 55-57, set

out was the interview evidence regarding the arrest warrant. The analysis of the membership letter must be read in the context of the proceedings. The appeal was adjourned part heard in order for this document to be obtained. This is a document obtained considerably late in the day. The judge set out in some detail the problems with the provenance of the document and why she attached little weight to it. I do not consider that this is a decision where the judge has reached findings with regard to the document in isolation when the decision is considered as a whole.

23. The judge referred to the screening interview and the appellant's answer to the question if he had any additional documents that he might have. The answer was "my membership, a letter of support for the opposition party". The judge at [56] noted that the appellant did not say that there was an arrest warrant outstanding, having described the problem as his being as a supporter of the Kurdish Democratic Party and that the government had found out. At [57] the judge noted that he did not say there was an arrest warrant in his asylum interview and that the first mention of this was in his witness statement signed on 15 March 2017. The judge noted that under cross-examination when asked what he meant by 'I have my membership' he denied that he had said this.

24. The judge then made findings on the arrest warrant issue:

> "66. Had there been a warrant outstanding for his arrest, I would have expected him to have declared this at an early stage in his asylum claim, rather than in the statement prepared for the appeal hearing.
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> 67. With these inconsistencies, I do not accept the appellant's evidence that he was sought by Ettela'at due to political activities."

25. It is clear at paragraph 67 what the inconsistencies were that the judge was referring to. There were numerous inconsistencies regarding the provenance of the membership document and failure to mention an arrest warrant in interview. The judge was not focused on a semantic point. A reference to the Iranian authorities being interested in him does not give rise to an inference that there is an arrest warrant.

26. However, I have concerns with the judge's findings below:

> "68. I agree with the submissions of Ms Ellis that there seems no reason why the PDKI would arrange meetings between Iraqis and Iranians in Iran, rather than in the safety of Iraq. The appellant had said that his cousin could not enter Iran because of his membership of KDPI, but gave no explanation how the other two Iraqi men were able to do so."

27. It was argued before me that there are many possible reasons why meetings may have been held in Iran. The judge records at paragraph 20 the appellant's evidence of the men bringing materials from Iraq to Iran which would be a good reason as to why the meetings took place in Iran. It was argued that the appellant was not asked in cross-examination how the

two men were able to pass from Iraq to Iran. It does not appear from the decision that the appellant was asked to explain these matters. They appear be relevant to and form part of the basis for the judge's rejection of the appellant's account.

28. The judge considered:

> "69. Further, there seems no reason why the appellant, if in fear of Ettela'at, did not cross the border to the safety of Iraq, where he could join his wife and other family members rather than make the expensive, lengthy and difficult journey to the United Kingdom."

29. The appellant's grounds argue that the judge ignored the appellant's explanation which was that he would not have rights in Iraq, would not be allowed to enter or to stay and the authorities might find it easier to find him across the border. Whilst the judge might have rejected those assertions she does not appear to have taken the explanation into consideration at all in finding that there is no reason why the appellant could not go to Iraq. This might not go to the core of the judge's rejection of the appellant's account but it could well have been a further factor the judge took into account in assessing credibility.

30. Given the requirement for anxious scrutiny of asylum claims I am not confident that the judge has engaged sufficiently with the appellant's account and whilst she might have rejected his explanations it is not clear that they have been considered.

31. I find that there is a material error of law in the First-tier Tribunal decision. I set that decision aside pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 ('TCEA').

32. I considered whether or not I could re-make the decision myself. I considered the Practice Statement concerning transfer of proceedings. I am satisfied that the nature and extent of judicial fact finding that is necessary in order for the decision in the appeal to be re-made is such, having regard to the overriding objective, that it is appropriate to remit the matter to the First-tier Tribunal.

33. I considered whether any findings could be preserved. I do not consider that it would be feasible to do so. I remit the case to the First-tier Tribunal for the case to be heard de-novo at the First-tier Tribunal at Hatton Cross before any judge other than Judge Wylie pursuant to section 12(2)(b) and 12(3)(a) of the TCEA. A new hearing will be fixed at the next available date.

Notice of Decision

There was a material error of law in the First-tier Tribunal decision. The decision is set aside. The case is remitted to the First-tier Tribunal at Hatton Cross

before any judge other than Judge Wylie pursuant to section 12(2)(b) and 12(3)(a) of the TCEA.

Signed P M Ramshaw Date 18 February 2018

Deputy Upper Tribunal Judge Ramshaw