



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01020/2019

THE IMMIGRATION ACTS

Heard at Manchester CJC
On 13 September 2019

Decision & Reasons Promulgated
On 23 September 2019

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

IS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Shea, Counsel

For the Respondent: Mr Tan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant has appealed against a decision of the First-tier Tribunal ('FtT') promulgated on 3 May 2019, dismissing his appeal on asylum and human rights grounds. As the appellant has made a claim for international protection I have made an anonymity direction.

Background

2. The appellant is a citizen of Iran who claimed asylum in the United Kingdom in October 2017. He is of Kurdish ethnicity and has not been to school but worked as a farmer in Iran.
3. He claimed that he was introduced to the Komala Party and delivered leaflets and flags for that party but was caught on CCTV. The authorities attempted to arrest him but he was warned and left Iran before they were able to find him. He has claimed that because of his role in the Komala Party, including distributing leaflets, he will be executed if he returns to Iran. That asylum claim was refused by the respondent in a decision dated 27 January 2019 against which the appellant appealed to the FtT.

FtT decision

4. At a hearing on 9 April 2019 the appellant's appeal was heard by FtT Judge Chamberlain. He was represented by solicitors at that hearing. In a carefully drafted decision the FtT set out in considerable detail the appellant's claim for asylum and the respondent's decision before turning to its findings of credibility and fact from paragraph 29 onwards. It is clear that this is a case that turned entirely on the credibility of the appellant's claim. If accepted, he was entitled to refugee status bearing in mind the country guidance on the manner in which the Iranian authorities react to those who are involved in even the smallest of ways in political parties furthering the Kurdish cause. The FtT's decision therefore focused mostly upon the appellant's credibility. At [30] the FtT said this:-

"I did not find the appellant to be an honest or credible witness. He was evasive when cross-examined. Simple questions had to be put to him more than once. His evidence was not consistent with respect to core elements of his claim, in particular his evidence of delivering leaflets in support of the Komala Party. I find that the appellant's evidence cannot be relied upon."

5. The FtT then went on to provide three main reasons for finding the appellant's evidence to be incredible. First, the FtT considered that the evidence provided as to the circumstances surrounding the night that the appellant leafletted were unreliable. The FtT referred to the appellant being asked how many houses and flats he delivered leaflets to. The FtT records that the appellant had first said "a lot", and when asked to give a rough estimate he said around 500 to 1,000. The FtT was concerned with this evidence and said this at [31]:-

"There is a significant difference between 500 and 1,000, especially in the context of doing door-to-door deliveries. I find that the appellant's failure to give a satisfactory answer as to the amount of houses to which he delivered damages his credibility. This is especially the case given that in

his asylum interview the appellant said that it took two to three hours Q63.”

In addition to this, the FtT was concerned that the appellant provided unreliable evidence as to who carried the leaflets and flags and whether it was him or his friend (see paragraph 32).

6. The second issue of concern related to the appellant’s claim that he was caught on CCTV after taking off his balaclava. The FtT examined the appellant’s evidence in detail and very carefully on this issue from paragraphs 33 to 40 . The FtT’s conclusions are set out at [40] as follows:-

“I find it lacks credibility that the appellant and Ali chose to remove their balaclavas at all. This is especially the case given that, on the appellant’s own evidence, Ali would not need to have removed his balaclava in order to smoke. His evidence as to why he needed to remove his balaclava to breathe also lacked credibility. I find there is no reasonable likelihood that the appellant’s account is true. I find that there is no reasonable likelihood that he delivered Komala leaflets and flags in Mariwan wearing a balaclava which he subsequently took off outside a bank, in front of CCTV cameras.”

7. The third issue that was of concern to the FtT related to the failure to provide any evidence from the Komala Party in the UK in support of the appellant’s claim. The FtT then concluded that there was no reasonable degree of likelihood that an arrest warrant was issued for the appellant given that it was not accepted that the appellant carried out the activities that were said to give rise to the issue of the arrest warrant. The asylum appeal was dismissed for those reasons.
8. The FtT also addressed the appellant’s account on an alternative footing based on the country guidance evidence. The FtT concluded at paragraphs 49 to 52 that although the appellant may have left Iran illegally and was of Kurdish ethnicity, the country guidance made it clear that his completed lack of credible political activity was such that he would not be at risk upon return.
9. The FtT then dealt with Article 8. I do not need to refer to those findings because the grounds of appeal before me have been limited to asylum.

Appeal to the Upper Tribunal (UT)

10. The appellant drafted the grounds of appeal himself and said the following:-

“I would like to state as follows: in relation to paragraph 31, the Immigration Judge raised some credibility issues based on my answers during cross-examination.

I was asked how long the road. I couldn't answer because I was unable to check the length of the road. Regarding the answer for 500-1,000 houses, unfortunately this is my figure of speech. I personally didn't count the houses and when I expressed the above figure I have given this figure as the way we speak. I am not an academic person, therefore, I was unable to answer accurately.

The Immigration Judge relied on SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC). However, he failed to address HB (Kurds) Iran CG [2018] UKUT ...".

11. FtT Judge Bird granted permission to appeal in a decision dated 28 June 2019 and observed the following:-

"3. The appellant seeks permission on the grounds that the judge raised credibility issues in relation to the answers he gave during cross-examination. It is alleged that the judge failed to understand that his answer was a figure of speech and was not meant to imply an exact distance but an approximation. Further the judge failed to take into account the fact that he was not an academic person.

4. It is arguable that the judge failed to engage with the appellant's answer in the proper cultural context in requiring an exact answer as in the western context. The judge has made findings for which inadequate reasons have been given. An arguable error of law has been made in the assessment of the evidence."

12. In a Rule 24 notice dated 16 July 2019 the respondent said this:-

"The grounds do not take account of nor argue against the numerous credibility findings contained within [31]-[48] on issues that go to the core of the claim. The FtTJ makes reasoned findings and rejects the evidence as both inconsistent and lacking in credibility on matters such as CCTV, the use of balaclavas, the absence of political activity in the UK, inconsistent evidence in relation to the alleged arrest warrant, and failing to claim in France. When viewed holistically the core aspects of the appellant's claim have been rejected for good reason. The grounds seek to argue that the FtTJ failed to take into account or understand that the evidence of the appellant at [31] was an approximation of the length of the street. It is submitted that this does not negate from the primary finding that the appellant had given an unsatisfactory account of how many houses he had delivered leaflets to rather than the length of the street. Notwithstanding any potential misunderstanding (which is not accepted), given the remainder of the unchallenged findings it cannot be considered material as to the outcome of the appeal."

Hearing

13. At the hearing before me the appellant was represented by Mr Shea. He relied upon the reasons provided by Judge Bird for finding the FtT's factual findings to be arguably deficient. He drew my attention to inappropriate weight being given to the appellant's evidence that he delivered leaflets to around 500 to 1,000 houses and invited me to allow the appeal.
14. Mr Tan relied upon the respondent's Rule 24 notice and invited me to dismiss the appeal.

Error of law discussion

15. In my judgement the findings that the FtT made regarding the appellant's credibility are adequately reasoned and carefully drafted. The FtT reminded itself that it needed to consider all the evidence in the round in the light of the appellant's circumstances and the country situation generally (see paragraph 29) and properly directed itself to the low standard of proof. At paragraph 6 the FtT said this:-

"The standard of proof required of an appellant is a low one, to a reasonable degree of likelihood, recognising the difficulty so often faced by appellants in proving their case. This standard applies to both past and current circumstances, and also to establishing the future risk in the country to which they will be returned."

16. There is nothing to indicate that the FtT was unaware of the appellant's educational background and the need to bear that in mind when employing the low standard of proof.
17. The FtT's concerns as to the appellant's evidence that he estimated that he delivered leaflets to 500 to 1,000 houses must be seen in context and the paragraph in which that is referred to must be read alongside the other paragraphs that deal with that issue. The FtT was entitled to observe that there is a significant difference between 500 and 1,000 in the context of doing door-to-door deliveries. The FtT was also entitled to note that it took the appellant two to three hours to do the deliveries. The FtT was also entitled to be concerned that the appellant was unable to give reliable evidence as to who carried the 1,000 flags and leaflets on this occasion. Although the appellant has said 500 to 1,000 was a figure of speech, the FtT was aware that the appellant was simply offering an estimate. It is clear that the FtT was not expecting an exact or specific number but was expecting a rough estimate. In the context in which the leafletting was said to have occurred, it seems that the appellant was unable to give any reliable estimate beyond "a lot" and beyond the very wide difference between 500 to 1,000. When that is read together with the other concerns regarding the appellant's leafletting, the FtT was entitled to attach some weight to that answer. Weight, of course, is a matter for the FtT who

heard evidence from the appellant and would have considered all of that evidence in the round.

18. In my judgement there has been no failure to take into account the appellant's educational background or to appreciate that the appellant came from a particular cultural context.
19. As I have already indicated, in my judgement the FtT was not expecting an exact answer. In the circumstances of this case, the FTT was entitled to expect a reliable estimate. After all, this incident formed the very heart of the appellant's asylum claim.
20. Judge Bird also observed that the FtT provided inadequate reasons for its findings: I disagree. The findings are detailed and comprehensive. They span paragraphs 31 to 53. These address a discrete incident, that is the incident that caused the appellant to leave Iran. Those findings are very full indeed and, as I have already said, carefully drafted.
21. Although the grounds of appeal do not make the submission and neither did Mr Shea, I note that at [41] the FtT drew adverse inferences from the appellant's failure to provide supporting evidence from the Komala Party. It is well-recognised that corroboration is not necessary in asylum claims. However, this is not a case where the FtT was requiring corroboration from sources in Iran, rather the FtT was expressing concern that the appellant could have accessed the Komala Party in the UK to provide a supporting letter and did not. Mr Shea was therefore correct not to seek to amend the grounds to raise any point as to that, in the particular circumstances of this case.
22. Mr Shea did not make any submissions on the second ground of appeal raised by the appellant himself relating to the country guidance case in HB. Judge Bird also did not refer to that decision. The reason for that is straightforward. HB makes it clear that those Kurds who have engaged in even the smallest political activity or might be imputed to have engaged in such activities will be at risk. However, the findings of fact that I have upheld are that this appellant engaged in no political activity at all and therefore HB would not have assisted him.
23. For those reasons I find that the decision of the FtT does not contain any material error of law.

Notice of decision

24. The FtT decision does not contain a material error of law and is not set aside.

Direction regarding anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed: *UTJ Plimmer*

Date: 19 September 2019

Upper Tribunal Judge Plimmer