



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/01941/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 11 July 2017**

**Decision &  
Promulgated  
On 26 July 2017**      **Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**HS  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr. K. Gayle, Elder Rahimi Solicitors (London)  
For the Respondent: Mr. C. Avery, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Wylie, promulgated on 28 April 2017, in which she dismissed the Appellant's appeal against the Respondent's decision to refuse to grant asylum.

2. As this is an asylum application I make an anonymity direction.
3. Permission to appeal was granted as follows:

“It seems to me that, for present purposes, the crucial paragraphs of the decision under consideration are paragraphs 46 to 52 - through those paragraphs the judge explained her reasons for rejecting the appellant’s core claims (as to an association with one “Hoshang” and others associated with/involved with the Komala group).

As per the grounds (paragraphs 3 to 5), I consider it arguable that the reasoning in the paragraphs 46 to 52 just referred to is flawed - to the extent that a material error of law might be found at the next stage.”

4. The Appellant attended the hearing. I heard submissions from both representatives following which I reserved my decision.

### **Submissions**

5. Mr. Gayle submitted that the judge had placed significant weight on the background evidence. She had found that there was a discrepancy between the Appellant’s evidence and this background evidence insofar as he met up with friends who were in the Komala group. I was referred to the joint report from the Danish Refugee Council and Danish Immigration Service entitled “Iranian Kurds” (the “Danish Report”) (K23 of the Appellant’s bundle). At paragraph 3.1.1 the party organisation of Komala SKHKI is set out. The judge had quoted from this in the decision [46]. In particular, I was referred to the fact that it states that Komala members in Iran are either individuals having no connection to other members and reporting directly to Komala SKHKI in KRI, or they are organised in cells where each cell comprises three to five members.
6. I was referred by Mr. Gayle to paragraph 3.3.1 of the report (K28). This is entitled “Party organisation of Komala Party of Iranian Kurdistan”. This states that “In small towns, members and sympathizers know of one another but this is not the case in bigger cities.”
7. Mr. Gayle submitted that, as stated in the grounds, the Tribunal had accepted that the Appellant came from a small town and therefore the Appellant’s account was wholly consistent with the country evidence. Mr. Gayle further submitted that the core issue was that the judge found it implausible that the Appellant had given funds to Komala, but the background evidence showed that this was not implausible. The Appellant was a supporter of Kurdish rights and had never claimed to have a great deal of interest in politics. It was not implausible that he would give a donation to a group sympathising with Kurdish rights.
8. In relation to paragraphs [49] and [50] it was submitted that there was a significant gap between the interview and the hearing. The interview took

place in July 2016 and the hearing in March 2017. The incidence of contact may have changed during that period but this was not something to which the judge had referred. In relation to paragraph [51] the Appellant had been told he was at risk and there was no need for him to ask for more detail. He had to flee. It was unsustainable that his evidence had been vague. It was not relevant what rank of Ettela'at the neighbour held. It was well-known that Ettela'at was a secretive organisation.

9. In relation to the lack of contact with his brother, the decision did not contain much detail of the evidence that had been given of contact with his brother. The key was that the Appellant had fled while being actively sought. Communications with Iran were routinely monitored.
10. In response, Mr. Avery submitted that he struggled to see anything of substance in the primary grounds. In relation to the Danish Report the Appellant had not been specific about to which branch of Komala he was referring. The report stated that in small areas members of Komala tended to know who each other were. However, it was clear on reading the rest of paragraph 3.3.1 that their activities were kept secret.
11. There was no substantial difference between the evidence and the findings. Komala was a highly secretive organisation and it was not consistent that members would discuss it openly in a coffee shop. I was referred to paragraph 23 of the Reasons for Refusal Letter, where further evidence as to the nature of Komala was set out.
12. In relation to the other alleged errors, these were merely disagreements with the findings of the judge. The Appellant had not provided much evidence. The decision did not involve the making of a material error of law.
13. In response Mr. Gayle submitted that the Appellant had stated that he did not know anything about the activities of Komala. I was referred to Q33 and Q34 of his asylum interview. He submitted that the Appellant did not know about Komala's activities but he just knew that his friends were raising money for the party. It was understandable that the party would seek donations from sympathisers. The judge had found it implausible on the basis of the background evidence, but this was wrong.
14. The decision was unsafe. The Appellant had not embellished his claim either in relation to his knowledge of Komala or the activities of Komala. In relation to the assertion that the grounds were a mere disagreement with the findings of the judge, on the correct standard of proof, reasonable likelihood, the Appellant's account was reasonably likely.

### **Error of Law Decision**

15. I have carefully considered the background evidence to which the judge has referred as found in the Danish Report. I find that the Appellant, as

acknowledged by Mr. Gayle, did not specify which wing or branch of Komala his friends were involved with.

16. Paragraphs [45] to [47] of the decision are as follows:

“The appellant stated that he became aware that Hoshang was a member of Komala in May or June 2015, during discussion with him and two other friends who he met in the coffee shop”. [45]

“This is not consistent with the objective evidence that Komala members in Iran are either individuals having no connection to other members, or organised in a cell of three to five members. Members are not allowed to get together in groups of more than two or three members. As well as members there are sympathisers of the organisation, who listen to the party’s radio programmes, watch Komala TV, and engage in collective activities. The sympathisers usually do not know who the members are as members never present themselves as such. Members keep their party affiliation secret even with regards to their own family members.” [46]

“Given the secrecy, I do not accept that Hoshang, if a member of Komala, would discuss his affiliation and membership with friends in a coffee shop, such that the owner of the coffee shop and other customers would be aware of his membership, as well as the Appellant.” [47]

17. In relation to the evidence cited by the judge at [46], this is taken from two paragraphs of the Danish Report. Paragraph 3.1.1 entitled “Party organisation of Komala SKHKI” states:

*“Regarding the party’s mode of organization in Iran, Ebrahim Alizadeh, General Secretary of the Kurdistan Organization of the Communist Party of Iran, Komala (Komala, SKHKI) explained that Komala members in Iran are either individuals having no connection to other members and reporting directly to Komala SKHKI in KRI, or they are organized in cells where each cell comprises three to five members.”*

*“The sympathizers and the members come into contact and are acquainted with one another through different collective activities. The sympathizers usually do not know who members are as the members never present themselves as such. However, through these collective activities, the members get to know the best and the most active persons among sympathizers. Later on, the members will establish closer connections with these sympathizers encouraging them to become engaged in organized party activities including establishing parallel cells.”*

*“Ebrahim Alizadeh (Komala, SKHKI) informed the delegation that Komala SKHKI does not allow its members in Iran to get together in groups of more than two to three persons.”*

18. At paragraph 3.3.1 “Party organization of Komala Party of Iranian Kurdistan” the report states:

*“Siamak Modarresi, Head of Political Bureau, Komala Party of Iranian Kurdistan, informed the delegation that the party has a clandestine organization inside Iran consisting of active members who secretly carry out activities either in cells or in related clandestine NGO. In addition, there are a larger number of sympathizers who are not organized in cells.*

*Siamak Modarresi, Komala Party of Iranian Kurdistan, stated that there is little or no contact between the members and the sympathizers. In small towns, members and sympathizers know of one another but this is not the case in bigger cities. The members keep their party affiliation secret even with regards to their own family members.”*

19. I find that the judge has quoted from both of these paragraphs of the Danish Report in [46]. She has merged together the evidence in these two paragraphs, which relate to different branches of Komala. She has not included all of the information set out in those two paragraphs but has selected parts of each paragraph.
20. Taken as a whole, parts of the background evidence are not inconsistent with the Appellant’s evidence. It was accepted that the Appellant came from a village ten kilometres away from Baneh. He does not come from a city. In 3.3.1 it states “In small towns, members and sympathizers know of one another”. This evidence has not been cited in [46]. It is therefore not inconsistent that, as a sympathiser living in a village, he knew who members of Komala were.
21. Neither is the Appellant’s evidence as accepted by the judge inconsistent with paragraph 3.1.1 where it states that the Komala SKHKI “does not allow its members in Iran to get together in groups of more than two to three persons”. The Appellant’s evidence is that three of his friends were members of Komala. He has not referred to there being a gathering of more than three of them. At Q60 he refers to discussions “amongst the four of us” but as the Appellant is not a member of Komala, there is nothing inconsistent in this evidence.
22. The judge states that the Appellant said that he became aware that Hoshang was a member during discussion with him and other two friends who he met in the coffee shop. Given that it was stated in the Danish Report that members and sympathisers would know of one another in small towns, it is not inconsistent that the owner of the coffee shop and other customers would be aware of Hoshang’s membership. The Appellant’s evidence at his asylum interview when asked why they would discuss Komala in the coffee shop is that the table where they would sit “was separate from the other tables” (Q74). He also gave evidence that it would only be “once a week, or once every four days” (Q61).

23. I find that the background evidence shows that, in smaller towns, members and sympathisers of Komala would know who each other were. The judge has found in [46], when setting out some of the background evidence, that this would not be the case. I find that the fact that the Appellant was aware of Hoshang being a member is not implausible or inconsistent with the background evidence. I find that this is a material error of law as it casts doubt on the whole credibility findings.
24. In relation to the Appellant's knowledge of Komala, at his interview he was asked what the level of involvement of his friends was with Komala (Q32). He replied "As far as I know, they were actively working for Komala party, but I didn't know much about their activity." At Q33 he was asked whether he knew "anything at all about how they were actively working for Komala or what their activities / duties involved". He replied: "No, I don't know much about their activity, but I knew they were working for Komala." At Q34 he was asked again: "So you did not know what their duties involved, correct?" His answer is recorded as: "I knew they were getting money from people for Komala, but because I didn't have an interest in involvement in politics, I didn't want to ask them too much about what they were doing."
25. He states in response to Q35 that all he knew was that they were collecting money for the party because he had been asked to give money a few times for the party. At Q44 he again stated that he did not have much knowledge about Komala.
26. The Appellant has never claimed to have a great interest in politics. At [48] the judge states:

"The appellant said that he gave a donation when asked by Hoshang, but had very little information what the money would be used for, or where it would be sent. I do not accept that someone such as the appellant with little interest in politics would give a fairly substantial financial donation without some enquiry into how it would be used, or even to which of the two distinct wings of Komala the donation would be given."
27. I find that there is nothing implausible about an organisation such as Komala seeking donations from sympathisers. The Appellant has never claimed to have been that interested in politics, but he has claimed to have an interest in Kurdish rights (Q45, Q57, Q69). I do not find that the fact that the Appellant did not know what the money would be used for casts doubt on his claim to have given money to Komala, given the aims of Komala, and the stated interest of the Appellant in Kurdish rights.
28. Further, at [48] the judge states that there are two distinct wings of Komala although she has made no distinction between them at [46]. However, the background evidence indicates that there are three wings. In the Danish Report it refers to Komala SKHKI, Komala KZK and the Komala Party of Iranian Kurdistan.

29. In relation to [49] and [50], the judge has not considered the gap of time between the interview and hearing, and whether this could explain the apparent inconsistency in the evidence. In relation to [51] and [52], given that the Appellant had been told by somebody in Ettela'at that his life was in danger, the judge has not explained why the rank or status of that person is relevant. Neither has she explained why she would have expected the Appellant to be more specific about the enquiries made about him. The Appellant's claim was that he was told to leave Iran as his life was in danger.
30. I find that the decision involves the making of material errors of law in relation to the credibility findings. The judge has been selective in the parts of the background evidence cited [46], and the Appellant's evidence is not inconsistent with the background evidence when properly considered.
31. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the First-tier Tribunal. Given the nature and extent of the fact-finding necessary to enable this appeal to be remade, having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

### **Notice of Decision**

32. The decision of the First-tier Tribunal involves the making of a material error of law and I set the decision aside.
33. The appeal is remitted to the First-tier Tribunal to be re-heard.
34. The appeal is not to be heard by Judge Wylie.

### **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  
Deputy Upper Tribunal Judge Chamberlain

Date 25 July 2017

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