Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/01974/2016**

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 21 April 2017	**On 3 May 2017**

Before

UPPER TRIBUNAL JUDGE CHALKLEY

Between

MZ

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Rory O'Ryan of Counsel, instructed by Greater Manchester Immigration Aid Unit
For the Respondent: Mrs Abonie

REASONS FOR FINDING AN ERROR OF LAW

1. The appellant is an Iranian citizen who was born on 1 September, 1985. He left Iran illegally and travelled on foot to Turkey where he remained for two days. He then left Turkey by lorry and travelled to an unknown country. Four lorries later he eventually arrived in the United Kingdom after some fifteen or seventeen days and he claimed asylum on 25 August, 2015.

2. The appellant applied for asylum, but his application was refused in a letter dated 11 February, 2016 and he appealed that decision to the First-

tier Tribunal. His appeal was heard in Manchester on 9 November, 2016 by First-tier Tribunal Judge J J Maxwell.

3. The judge's findings appear to start at paragraph 28 of the determination. There, the judge quotes an extract from a report on Iranian Kurds compiled by the Danish Refugee Council and published in September, 2013.

4. The appellant had, during his first asylum interview, been asked about his membership of the KDPI and between questions 131 and 151 the appellant explained that he became a member, but did not have any membership card, he simply issued a photograph to a friend of his and had been told that once two members of the KDPI recommend a candidate five or six months later you become a member. He described himself as being a low profile member in Iran and described the aims of the KDPI. He confirmed that he had not undertaken any military activity in Iran and did not undergo any physical test before he joined.

5. In paragraph 29 of the determination the judge makes an adverse finding of credibility against the appellant, because the passage the judge quotes in Paragraph 28 does not suggest that the form of recruitment described in it is limited to those who are joining in the Kurdish Region of Iraq or otherwise outside the Iranian borders. However, Mr O'Ryan has pointed out to me that in fact other extracts from the Danish Refugee Council Report very clearly do confirm that the answers given by the appellant are correct and that the passage in question relates only to those who join the KDPI in Iraq. He referred me to the fourth paragraph under section 1.2 on page 13 of the report, where reference is made to the KDPI having camps in Iraq. He referred me to the last paragraph of section 1.2 at the top of page 15 where reference was made to an agreement being signed with the Iranian government stipulating that parties should stop their attempts of sending members to Iran, in return for which the Iranian government would stop the bombardment of party camps in KRI. He referred me also to paragraph 7 under the heading 1.3.2 on page 18. This quoted a spokesman saying that most asylum seekers in Europe claiming to have conducted activities for the KDPI are sympathisers and if a party sympathiser in Iran faces danger he may go to the KRI occasionally such sympathiser facing danger in Iran may be advised to go to Europe instead since going to the camp in KRI may reveal his connection to the party.

6. Next Mr O'Ryan referred me to the second and third full paragraphs on page 31. In the second paragraph the spokesman explained that there were different types of membership within the KDPI, all predicated on the basis that a member will receive a training course and possibly will remain in the camp for many years. The spokesman went on to describe that a person can become a member of the KDPI and take on responsibilities in different countries so that a Kurd from Iran can become a member even if he is in Denmark.

7. I noticed that another spokesman explained that the KDPI have a wide variety of members in Iran and that in order to be recruited into the KDPI

in Iran there are filters which a person has to go through and the process is long. A person will be under close scrutiny for between six months and a year before he or she can join a secret cell. Having joined a cell the person will carry out activities corresponding to his or her qualifications. A professor or student might be assigned to educational activities and teach people how the regime works and what the KDPI's policies are. Others may contribute arranging protests and demonstrations.

8. Mr O'Ryan suggested that the judge had erred in finding that the appellant's account of recruitment does not accord with the known methodology of recruitment. A careful reading of the whole report and consideration of section 2.1.3 in context clearly shows that what is discussed in the quotation referred to by the judge ,relates to the recruitment of members in Iraq, not in Iran.

9. For the respondent the Presenting Officer suggested that the judge had directed himself correctly and that his findings in respect of the appellant's claimed recruitment to the KDPI were ones which were open to him on the basis of the report.

10. Mr O'Ryan had drawn my attention to the first paragraph on page 26, where an Iranian scholar specialising in ethnic minorities in Iran explained that a large part of the party's organisation is outside Iran and that the party's organisational presence in Iran is rather rudimentary. He drew my attention to the first four paragraphs on page 32 where according to a reporter, if a person in Iran wanted to become a member of the KDPI he may contact his local party cell and ask for it. The source did not wish to go further into details on recruitment of party members in Iran because of the party's security precautions.

11. Next Mr O'Ryan referred me to evidence in the appellant's bundle which comprised a letter purporting to come from the KDPI Paris office confirming that the appellant is a member of the party and that because of oppression exercise by him against the regime, he has been forced to leave Iranian Kurdistan. The document, which follows at page 15, appears to confirm that the letter in question was sent by facsimile from the Paris office of the KDPI.

12. For the respondent the Presenting Officer suggested that while the letter may in fact originate from the Paris office of the KDPI, it may not have been sent by an official. She referred me to paragraph 2.1.5 of the Danish Report at the bottom of page 32 which explained that when the representation in Paris is requested to verify whether a person is a party member or sympathiser, it will ask the party's headquarters in Khoysanjak Camp in IRI to investigate the case. Upon receiving an answer from Khoysanjak the representation in Paris will issue a letter of recommendation. In that letter in addition to the name of the person in question it is stated in French whether the recommended person is a KDPI member or sympathiser. The letter of recommendation signed by the KDPI's representative in Paris will be sent by fax directly to the asylum administration in the country in question. It will never be handed to the

recommended person himself. If the asylum administration requests the original letter the KDPI representation in Paris will send the letter by post directly to that asylum administration. In the event that the letter of recommendation is sent from another KDPI representative or elsewhere KDPI in Paris cannot take responsibility. The KDPI's representative in Paris added that if an asylum court needs a KDPI testimony in an asylum case, it is the KDPI's representation in Paris that should appoint possible witnesses in such cases.

13. Mrs Abonie had pointed out that the letter in question had not been sent to the asylum administration in the United Kingdom. It had been sent to representatives acting on behalf of the appellant and the judge was therefore correct in doubting its authenticity.

14. Mr O'Ryan's next challenge was in relation to the finding at paragraph 33. There the judge noted that according to the appellant's account there was not the slightest prospect the police officers who he claimed observed him and his colleague flyposting, actually identified him. It was at night and at best the officers were several hundred metres away from him and he then ran instantly into the darkness. The judge questions how he was subsequently identified with sufficient precision to enable a raid to take place on his home address, mounted within hours and refers to the fact that it must have been that the appellant's colleague must have been captured and informed on the appellant but there was no evidence to suggest that was the case. Mr O'Ryan pointed out that it would have been impossible for the appellant to have explained how the police subsequently raided his house and it might well be that his fellow KDPI sympathiser was captured and identified the appellant.

15. The next challenge was in respect of the judge's finding at paragraph 34, where the claimed treatment of the appellant's family upon discovery of further anti-regime documentation at the appellant's home was not in accordance with the background material and he thought that was a significant inconsistency. However, the background material comprised in the Danish Report did not suggest that the members of the appellant's family were always harassed and mistreated. On page 21 of the Danish Report, it speaks of how the regime treats families of someone who is caught with a flyer. The report speaks of the regime sometimes detaining a family member and interrogating them and then releasing them or possibly holding one of the family members in detention. Further on in the report reference is made to people sometimes being put under pressure from the Iranian government and of course there is no means by which the appellant could know whether that may not have happened in his case because he has not been in touch with his family. Finally, Mr O'Ryan suggested that the judge had failed to take into account parts of the appellant's evidence drawn to his attention, which were consistent with the country information. Specifically these were KDPI celebrations and commemorative occasions. Four of them were drawn to his attention but the judge made no reference to this evidence and failed to make any findings of fact in relation to the appellant's knowledge of these matters.

16. Mrs Abonie pointed out that the report did not say that family members were arrested, but it does suggest that they will be harassed. She submitted that the judge had made clear findings having carefully examined the evidence and those findings were open to him to make. She asked me to uphold the determination.

17. **I have concluded that this is a determination which cannot stand.** The first adverse credibility finding is at paragraph 29 and is based on one quotation from an 84 page report prepared by the Danish Refugee Council. It is clear why the judge fell into error in quoting this paragraph. The Home Office had been relying on the paragraph for asserting that the appellant could not be a member of the KDPI because he had not undergone physical tests and not participated in social events. However it is clear to me that from the report the paragraph in question deals with the recruitment of KDPI members **in Iraq**, not the recruitment of KDPI members in **Kurdish Iran**.

18. Had the judge (and the Home Office) carefully read the report, that would have been obvious to him (and to them). The judge then went on in paragraph 30 of his determination to refer to what the report said about letters emanating from Paris and applying *Tanveer Ahmed v Secretary of State for the Home Department* [2002] UKAIT 00439* did not accept the letter as having any evidential value. That was a further error of law. As *Tanveer Ahmed* makes perfectly clear, the question of a document's evidential value should be assessed **after credibility findings have been made** but in this determination the only credibility finding that was made is one which was unsafe because it relied on a failure to consider all the background material. The finding at paragraph 33 is also unsafe. The judge suggests that it would have required K to have been captured and informed on the appellant if the events which the appellant claims transpired had actually taken place. However simply because there is no evidence to suggest that K was arrested does not mean necessarily that he was not. As to the treatment of the appellant's family, again I believe that the judge has simply not paid sufficient attention to the Danish Refugee Council Report.

19. I have concluded therefore that **I must set aside the whole of the judge's determination.** I have considered whether this matter should be retained in the Upper Tribunal or be remitted to the First-tier Tribunal. Unfortunately, those representing the appellant did not make clear to the Tribunal that an interpreter would be required until 24 hours ago. As a result, I am not able to proceed to hear the appeal afresh myself today. I have concluded that it would in all the circumstances be heard very much quicker if the matter were to be remitted to the First-tier Tribunal. A Farsi interpreter would be required and I would respectfully suggest that at least three hours should be allowed for the hearing of the appeal.

Richard Chalkley

A Judge of the Upper Tribunal
Date 30 April 2017