Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09363/2016

THE IMMIGRATION ACTS

Heard at: Manchester	**Decision & Reason Promulgated**
On: 6th December 2017	**On: 11th December 2017**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

SM
(anonymity direction made)

Appellant

And

The Secretary of State for the Home Department

Respondent

For the Appellant: Ms Evans, Waddell Taylor Bryan Solicitors
For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iran, born in 1994. He appeals with permission[1] against the decision of the First-tier Tribunal (Judge O'Brien) to dismiss his appeal on human rights and protection grounds.

[1] Permission granted on the 24th July 2017 by Upper Tribunal Judge Rintoul

Background and Decision of the First-tier Tribunal

2. When he claimed asylum on the 10th March 2016 the Appellant asserted that he has a well-founded fear of persecution in Iran for reasons of his political opinion, namely association with the banned Kurdish militant group 'PJAK' ('Free Life Party of Kurdistan'). In particular, he claimed that he had sheltered an injured PJAK *peshmerga* and that this had come to the attention of the Iranian security services who had raided his home, and in his absence arrested his mother and sister. The Respondent did not find the claim to be plausible, questioning how the Iranian authorities could possibly have known that the injured fighter was in the Appellant's house. She further noted that the Appellant had been unable to identify where the PJAK headquarters are. Protection was refused.

3. The Appellant pursued an appeal to the First-tier Tribunal, which came before Judge O'Brien on the 11th January 2017. The Appellant gave live evidence. The Tribunal attached little weight to the fact that the Appellant had not mentioned that PKAJ are based in the Qandil mountains; he was asked about their activities in Iran so could not be expected to have mentioned their base in Iraq. Nor did the Tribunal think that the Appellant could be expected to know how the *Etelaat* knew that the man was on his property. That said, the determination goes on:

> "However, of more concern to the Tribunal is how the authorities came to search the shop of a person previously unsuspected of illegal activities within only a short time of an injured PJAK member having arrived there. It was the Appellant's evidence that he left the shop 15 minutes after the injured man had arrived and gone to his nearby friend's house, and that he had asked his friend to check up on his shop only 30 minutes later. Therefore, the authorities must have raided the shop well within an hour of the injured man arriving. Given that the man arrived in the dead of night in a small rural village, I find it incredible that the authorities could have found out so quickly".

4. The Tribunal made two further negative credibility findings. First, it was not credible that the Appellant would have left the property himself, fearing implication, but left his mother and sister there to be arrested. Second, there were significant inconsistencies in the account given. In oral evidence he had said that he had been visited by a man whom he recognised to be a PJAK contact because he had used a known code word; this man had told him that the injured fighter would be coming, which he did a few minutes later. In his asylum interview the Appellant had made no mention of this first man, stating that it was the *peshmerga* who had given the code.

These matters, taken with the fact that the Appellant failed to claim asylum in a safe country *en route*, meant that he had failed to discharge the burden of proof and the appeal was dismissed.

5. Permission was granted by Upper Tribunal Judge Rintoul on the 24th July 2017 on the grounds that it was arguable that the First-tier Tribunal had made findings on the basis of what it thought the Iranian authorities might do, without identifying any proper evidential basis for its conclusions. Before me Ms Evans adopted that grant of permission and argued that the bulk of the findings in this case were premised on what the judge thought might plausibly occur in a rural village in Iranian Kurdistan. She argued that it was settled law that decision-makers in this jurisdiction should be slow to project their notions of reasonable, or probable behaviour, into other contexts with which they may not be familiar. She placed particular reliance on the decision in HK v Secretary of State for the Home Department [2006] EWCA Civ 1037.

6. Mrs Aboni agreed that the use of the term "incredible" (in the passage set out above) was unfortunate, but that the Judge had been entitled to evaluate the plausibility of the overall claim. The findings had been open to the First-tier Tribunal and the Secretary of State for the Home Department asked that I uphold the decision.

Discussion and Findings

7. The first point taken against the Appellant by the First-tier Tribunal is the issue about how and why the security services arrived at his door in order to apprehend the *peshmerga*. I confess to being somewhat baffled by the seemingly contradictory findings between paragraphs 41 and 42. At 41 the Tribunal states "the Appellant can be forgiven for not knowing how the authorities were alerted to the presence of the injured PJAK member in his shop", only to go on, at paragraph 42, to find it "incredible" that they would arrive on the scene so quickly, given that it was the dead of night in the middle of the countryside. I think it at least arguable that these are two sides of the same coin. If he could be forgiven for not knowing how they were on to him, it seems churlish not to forgive him for not knowing how they were on to him so quickly. I can think of at least one possible, and obvious, explanation for their appearance, which is that the *peshmerga* was being followed. That might in itself raise other questions but it serves to illustrate why decision-makers should avoid using the term "incredible". It is not impossible to believe this account, because there is at least one obvious explanation for what happened.

8. Similarly, the term "incredible" is used again in paragraph 43 in relation to the Appellant's decision to leave his mother and sister in the flat above the shop where the *peshmerga* was resting. The

Appellant's explanation for this is quite straightforward. They had nothing to do with his shop, which is a separate property. He assumed – rightly as it turns out – that the security services would be satisfied that the women were innocent (although they were taken in for questioning they were quickly released). It is not evident from paragraph 43 that this explanation was considered. It was, I suspect, these passages that led Judge Rintoul to grant permission.

9. They are not however the only points taken against the Appellant in the determination. Paragraph 44 notes a significant inconsistency in his account in that in his asylum interview he explained that the injured man came to his door and he let him in because he gave a PJAK codeword; whereas in oral evidence he asserted that another man had come to his house first, *he* had given the codeword and then explained that in a few moments the *peshmerga* would arrive. In her submissions Ms Evans suggested that the asylum interview [at Q64-65] is ambiguous about how many men there were, and submitted that there may not in fact be any inconsistency at all. I am afraid I am unable to share her reading of those answers. At Q62 the Appellant is asked how he came to help the injured party member. The Appellant explains that it was about 9pm on a winter's night. He is then asked:

> "Q64. How did you come to help him what happened?
>
> He knocked on our door and gave the name of a person I knew, that
> he's sent him. At first I was concerned I said I don't know him, then he said the code word 'is your black cow still alive?' then I realised its safe, he belonged to the party"
>
> Q65. How was he injured?
>
> He was shot in the leg"

It is quite apparent from these answers that "he" is a reference to the injured party member, who had been shot in the leg. I am satisfied that the Tribunal was correct to have identified the introduction of the second man as a significant inconsistency in the account, and it was one that the Tribunal was entitled to find considerably lessened the weight to be attached to the Appellant's evidence.

10. A further discrepancy is identified in the same passage in that the Appellant had given variant evidence about how many code words there were. In both interview and in his statement dated 20th December 2016 the Appellant had said that there was one codeword "is your black cow still alive" whereas in his oral evidence the Appellant had said that was one example and that they had used multiple codewords. Of this, and the preceding matter, the First-tier Tribunal found "it is such inconsistencies, which the Appellant was

given an opportunity to answer today, which lead me to conclude that the account is false and that the Appellant has forgotten what he had previously told the Respondent".

11. Caution should always be exercised when attaching weight to inconsistencies in evidence. False accounts can be expertly delivered with precision, just as perfectly true accounts can be confused and contradictory. In this case however I am satisfied that the First-tier Tribunal was entitled to treat the two discrepancies that it identified in the evidence as determinative. The Appellant is not someone who has suffered ill-treatment, nor has far as we are aware, does he suffer from any mental health issues or cognitive impairment. The Tribunal had to ask itself whether this account was reasonably likely to be true, and given the nature of those discrepancies, which went to the very core of the claim, it was entitled to find that even that low burden had not been discharged. Accordingly I am not satisfied that the unfortunate use of the term "incredible", discussed above, can vitiate this decision.

Decisions

14 The First-tier Tribunal decision does not contain an error of law such that it should be set aside.

15 There is an order for anonymity.

Upper Tribunal Judge Bruce
7th December 2017