Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02211/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 21 August 2019	**On 18 September 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

BALEN [K]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STET FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms D Revill of Counsel instructed by Duncan Lewis & Co.
For the Respondent: Ms K Pal, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Greasley, promulgated on 23 April 2019, dismissing the Appellant's appeal on protection grounds against a decision of the Respondent dated 22 February 2019.

2. The Appellant is a citizen of Iran born on 1 August 1997. The basis of his claim for protection is helpfully summarised at paragraph 2 of the grounds of appeal in support of the application for permission to appeal to the Upper Tribunal:

> *"The Appellant is an Iranian national of Kurdish ethnicity. He maintains that he fears persecution on the grounds of his imputed political opinion. In August 2015, he*

> *allowed a stranger to spend the night on his family farm. The next day, while he was out with a friend, his home was attended by Ettela'at in search of him; his father learned that the man he had helped was a supporter of the Party of Free Life for Kurdistan ('PJAK'), and that the Appellant himself was wanted for providing assistance to him. The Appellant did not, therefore, return home, and his father arranged for him to leave the country illegally with the assistance of an agent."*

(See also the summary in the decision of the First-tier Tribunal at paragraph 12.)

3. In this context, I note some of the passages in the Asylum Interview Record (appended to the Respondent's appeal bundle before the First-tier Tribunal). At question 95 the Appellant was asked how the Ettela'at had known that he had hidden someone on his farm; he responded *"I believe we were reported by neighbouring farms, or I believe that man was followed"*. This was followed up at question 96: *"Why do you believe the man was followed?"*; to which the Appellant answered, *"Sorry this is my own speculation"*.

4. In my judgement it is adequately clear from questions 95-100 that the Appellant's answers were to the effect that he had no actual knowledge of the circumstances in which the security forces had become aware that a stranger had been sheltered on the family farm overnight.

5. The Respondent refused the Appellant's application for protection for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 22 February 2019.

6. Amongst other things the Respondent's reasons include the following. Having made reference to 'country information' evidence in respect of the sophistication of the Ettela'at - described as *"an advanced intelligence force"* - the decision-maker stated *"It is therefore considered unreasonable and externally inconsistent that Ettela'at informed your father of their interest in you, allowing your subsequent escape"* (paragraph 32).

7. The Appellant appealed to the IAC.

8. The First-tier Tribunal dismissed the appeal for reasons set out in the decision of Judge Greasley promulgated on 23 April 2019.

9. The Appellant applied for permission to appeal to the Upper Tribunal. The application was initially refusal by Upper Tribunal Judge Martin (sitting in capacity as a First-tier Tribunal Judge) on 4 June 2019. However, permission to appeal was

subsequently granted by Upper Tribunal Judge Storey on 5 July 2019. In granting permission to appeal Judge Storey made the following observations:

> *"It is arguable that the judge's assessment of the Appellant's credibility rested unduly on (im)plausibility findings and did not assess or weigh in the balance whether the Appellant had shown internal or external consistency or sufficiency of detail (the two most established indicators of credibility). Also relevant in respect of the challenges to the judge's (im)plausibility findings is that the judge does not appear to have considered or weighed in the balance the Appellant's alternative explanation for how Ettela'at may have become aware of the Appellant's involvement with the stranger."*

10. The decision of the First-tier Tribunal did indeed essentially turn on the Judge's credibility assessment. This is apparent at paragraph 40, where the judge summarises his conclusions: *"I do not accept, for reasons that follow, that the Appellant has provided a truthful and credible account of events in Iran and find that he is not a genuine refugee in need of urgent international protection."* The essential reasoning for this conclusion is then set out - in particular at paragraphs 42-47 of the decision.

11. In my judgment there is substance in the grounds of appeal. In particular, I find there to be substance in the following aspects of the challenge.

12. The Judge states:

> *"I do not find it credible that the neighbours of the appellant's family farm would have sought to report to the authorities or the Intelligence Services that a fellow Kurd was visiting the appellant's family farm and remaining there. I find that it is highly unlikely that a fellow ethnic Kurd would have reported a visiting Kurd to the farm in these circumstances. This evidence is not credible."* (paragraph 42).

13. I accept that the judge appears to be making an evaluation as to the likely conduct of fellow Kurdish neighbours, and in so doing requires to be cautious as to the perspective of considering the conduct of people following different cultural practices, and in the context of a security situation unlike that experienced domestically. The Judge's finding appears to be made without identifying on what basis such conduct is unlikely to an extent that the Appellant's account can be characterised as incredible in this regard. However, be that as it may, in my judgement there is a more fundamental difficulty with this passage. The Judge refers to it as being "*highly unlikely*" that an ethnic Kurd would have reported such a visit. Necessarily that is not a conclusion that it is implausible, or that it could not happen. It follows that the next sentence – "*The evidence is not credible*" - is not supported by the preceding reasoning. It is not appropriate to conclude something is 'not credible' simply because it is unlikely or highly unlikely. In my judgment this constitutes an error.

14. I also note that criticism is made on behalf of the Appellant of the remainder of paragraph 42, which states:

> "*The Appellant, nor his father, appears to have known the identity of the Kurdish man or indeed what position or occupation he had in any political party or indeed any employment. Details ascribed to him are vague and unconvincing.*"

15. It seems to me that the Appellant has at no point pretended anything other than that his knowledge of the stranger was vague. In such circumstances I am unable to identify or otherwise follow any reasoning that leads to a conclusion that such vagueness renders the account 'unconvincing'.

16. I also accept that there is substance to the Appellant's challenge with regard to consideration of the conduct of the intelligence services. This picks up from the observations in the RFRL at paragraph 32 (cited above). At paragraph 43 the Judge says this.

> "*If the intelligence Services were aware that the visiting Kurd was a member of the PJAK, and had established this, and that this visit had taken place on the appellant's father's farm, then the appellant's account lacks credibility as to why his father was not instantly arrested and taken in for questioning at that time. This evidence further damages the appellant's credibility.*"

The point is continued at paragraph 47:

> "*I do not accept that the appellant has provided a truthful and credible account of events in Iran. I do not accept that he has been involved in any political activity, imputed or otherwise and nor too has his father. I note from the* ***Country Information and Guidance*** *that the Iranian Intelligence Services are an advanced intelligence force and I consider the appellants claim to lack credibility that they would have informed the father of their interest in the appellant, effectively allowing his subsequent escape. This is specifically referred to in the refusal decision. These comments are not rebutted.*"

17. For the avoidance of any doubt, the Appellant did not claim that either he or his father had "*been involved in any political activity*", beyond the inadvertent engagement with the PJAK suspect.

18. On the premise that the security forces were indeed looking for the Appellant, it is difficult to understand on what basis it might be concluded that they would not have informed the Appellant's father of that circumstance, to an extent that the Appellant's account could rationally be characterised as lacking credibility. In a

scenario where the intelligence agents have attended the family farm looking for the Appellant, I do not find it can be remotely suggested that it is implausible that they would not have mentioned the reason that they were there: the supposed circumstance was that they were seeking a specific person. It is difficult to envisage how any police or security force could effectively operate in tracking down a person if they did not question others as to his or her whereabouts. The Respondent's reasoning in the RFRL, and in turn the Judge's reasoning in adopting it, is to the effect that it would be implausible for the intelligence services in pursuit of the Appellant to arrive at his family farm and not demand to know his whereabouts. In my judgement there is no rational substance to the reasoning in the RFRL, and it was not rational for the First-tier Tribunal to adopt it, or expect the Appellant to rebut it. The Judge's reasoning at paragraph 47 is flawed to an extent that it amounts to an error of law.

19. It may be that there is something more by way of substance to the Judge's observation at paragraph 43 (cited above), that it would have been reasonably expected that the Appellant's father himself might have been arrested. However, again it seems that that is essentially an operational decision for the intelligence services, and one not readily to be disregarded as 'unlikely' or 'implausible'. Whilst I do not specifically identify an error of law in respect of paragraph 43, I observe that in isolation the reasoning at paragraph 43 cannot sustain what is otherwise a flawed decision.

20. I also accept that there is clear and unanswerable concern arising from the final sentence at paragraph 47. After the quotation set out above, paragraph 47 ends with the seeming non-sequitur:

> *"Nor do I find it credible the Appellant would have sought to have left his entire family and life in the country where he was born and raised."*

21. As Ms Revill points out, it is difficult to understand what place that sentence has in the overall deliberations of the First-tier Tribunal Judge. It is not at all unusual for a single member of a family to leave the rest of his or her family to seek refuge or asylum abroad. Nor is it uncommon for a single member of a family to leave for reasons other than protection, to seek a better life abroad. Yet further, plainly it is the case that the Appellant *did* indeed leave his family and come to the United Kingdom. It may be that the Judge intended to go on and say something further by way of context, but the reality is the Judge did not. The reader of the decision is confronted with an adverse sentence that has no substance or reasoning behind it. In my judgement this is a further error that must be factored into an overall consideration of the quality of the reasoning in this particular decision.

22. Further to the analysis above, the 'intact' aspects of the Judge's adverse credibility reasoning are: the point that the father was not arrested (commented upon at paragraph 21 above); the Judge's evaluation that the Appellant lacked credibility because he claimed he had not been informed where he was going when arrangements were made for his departure from Iran (paragraph 44); and with reference to section 8(4) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (paragraph 45). The latter two matters are essentially peripheral to the core of the Appellant's account. These matters – even in combination - are not in my judgement sufficient to sustain the Judge's overall conclusion such as to render the identified errors immaterial. Accordingly, the decision of the First-tier Tribunal Judge must be set aside for error of law.

23. Given that it will be necessary for there to be a full re-evaluation of the credibility of the Appellant's account, the appeal is to be sent back to the First-tier Tribunal to be heard anew.

Notice of Decision

24. The decision of the First-tier Tribunal contained material errors of law and is set aside.

25. The decision in the appeal is to be remade before the First-tier Tribunal by any judge other than First-tier Tribunal Judge Greasley or Upper Tribunal Judge Martin with all issues at large.

26. No anonymity direction is sought made.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed: Date: **17 September 2019**

Deputy Upper Tribunal Judge I A Lewis