Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04423/2019

THE IMMIGRATION ACTS

Heard at Cardiff	**Decision & Reasons Promulgated**
On 31 October 2019	**On 20 November 2019**

Before

UPPER TRIBUNAL JUDGE GRUBB
DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

N H
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Respondent: Mr C. Howells, Senior Home Office Presenting Officer
For the Appellant: Ms E. Gunn, instructed by Migrant Legal Project (Cardiff)

DECISION AND REASONS

Order Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

1. Anonymity was ordered in the First-tier Tribunal. There is no application to change that position and as the issue is one of international protection we maintain and make the same order.

The Appellant and the Proceedings

2. The appellant is an Iranian citizen of Kurdish ethnicity who is 26-year-old. He appeals the decision of First-tier Tribunal Judge Clemes ("the Judge") promulgated on 28 June 2019 whereby he dismissed the appellant's appeal, brought on international protection grounds, against by the respondent's decision dated 1 May 2019 to refuse him asylum or humanitarian protection and discretionary leave.

3. Permission to appeal was granted by Upper Tribunal Judge Sheridan on 21 August 2019, on the basis that it was arguable that the Judge had erred in concluding that the appellant's account was implausible and rejecting his account as lacking credibility.

Discussion

4. In his grounds, the appellant contends that the Judge dealt wrongly with his evidence that he had approached a vehicle unexpectedly parked up in a remote place, which it transpired contained Kurdish rebels, when he was about 15 minutes into his 25-30 minute walk home at night from the family orchard. The men detained him in the vehicle, seizing his documents for inspection, but when shots broke out in the vicinity, and men arrived in the road, he realised an ambush was taking place and the men were somehow involved in it. The men left him and all ran toward the gunfire. He ran away but left his documents in the vehicle. Initially he was frightened the Kurdish rebels might pursue him, able to locate him from his documents, and believing he was connected to the authorities, and he was too frightened to go home. He went to his uncle in the same village who told him to go to the mountain. The next day his uncle told him the authorities had visited his father's house, and he concluded it was because they had found his papers in the Kurdish rebels' vehicle and he was under suspicion as a Kurdish rebel involved in the ambush. His uncle arranged for him to flee abroad. He was subsequently in touch with his uncle.

5. Grounds 1 and 2 complain that the Judge should not have found it implausible that the appellant would approach a vehicle in a remote location at night, the Judge was being speculative and adopted a Eurocentric view when he said that the area was dangerous and unpredictable implying that natural caution would have prevented such an approach. The area was not dangerous and unpredictable. We are satisfied that there is no merit in Grounds 1 and 2.

6. There is no dispute that it was the appellant's evidence that he knew that the vehicle did not belong to a fellow local orchard owner as he knew their vehicles, and because it was not parked by the orchards but in a remote location away from the orchards. Contrary to the implication that the Judge exceeded the evidence or was speculating in a Eurocentric way, the Judge was relying on the appellant's own submission. The appellant relied on country information to show that there was a real likelihood that, in the countryside where he lived, he would come across insurgents in the way he described. The Judge was taken to the January 2019 respondents

Country Policy and Information Note which showed that Kurdish traps or ambushes on the authorities were "prevalent" in the border area and that they were conducted by all the Kurdish groups and, further, that there was an active armed conflict primarily targeting security assets in the mountainous regions along the Iraqi border (see paragraph 11). Counsel before us, who was not counsel before the Judge, took us to different parts of the background evidence, which were not referred to in the First-tier Tribunal, which stressed how difficult it is for the authorities to maintain control along the borders, and their porosity. However, the Judge was entitled to reason according to the evidence and arguments put on the day, and nothing in the evidence we were taken to demonstrates a mistake of fact or perversity in the reasoning or assessment of the evidence relied upon before the Judge. The submission to the Judge was that, because it was a close-knit area, it would be a natural instinct for the appellant to approach the vehicle. The Judge was entitled to conclude that, as the appellant had identified that the vehicle did not belong to a local orchard owner, and as the vehicle had attracted the appellant's attention because it was parked unusually, being in a remote area where there was no obvious reason for a vehicle to be parked, country conditions did not support the contention argued for.

7. Ground 3 argues that the Judge failed to apply anxious scrutiny to the appellant's account and at paragraph 21 conflated the account of the 15 minutes spent getting to the accidental meeting point with the time it would have taken the appellant to walk on to the village to obtain help, which gives rise to the appearance that the Judge believed the appellant said he had walked 15 minutes out of his way en route from the orchard to his village and so accidentally met the insurgents.

8. The ground misreads the Judge's decision. A fair reading shows that the Judge did not understand the appellant to have walked out of his way, or diverged from his route home, which led him to meet the insurgents. At paragraph 7, the Judge identified the appellant's evidence in cross examination that it took him 15 minutes to reach the accidental meeting place. At paragraph 21, the Judge noted that, when asked what he would have done had he found the vehicle was a break down, he said he would have offered help. Challenged as to how he could have hoped to help, he said that he might have walked on to the village to get help. That is not a conflation which shows that the Judge thought there had been a divergence from the appellant's normal route home.

9. Further, although not mentioned in the grounds, the appellant does say in his asylum interview that the entire walk from the orchard to the village is approximately 35 to 40 minutes, and so the Judge was not significantly outside the evidence in concluding that the walk to the village would have taken him 15 minutes again.

10. A fair reading of the whole of the decision shows that paragraph 21 is under a heading "My analysis of the evidence" which begins at paragraph 18 and continues over almost three pages to paragraph 25 of the decision.

The mere inclusion of the time the walk to the village would take, although it is the same as the time it took to walk from the orchard to the car, does not reveal a conflation or the misunderstanding argued for. There is no evidential basis for the assertion in the grounds that the Judge mistakenly reached the view that the appellant walked 15 minutes *out of his way* to assist a vehicle. We pause to note that the only particularisation of the reason for the grant of permission by Upper Tribunal Judge Sheridan is this claimed misunderstanding when the grant states: "arguably, there may be less of a credibility issue in stopping to assist a vehicle that was passed on the way home then (sic) walking 15 minutes out of the way to assist a vehicle."

11. The ground also criticises the Judge for a lack of anxious scrutiny when the Judge concluded as implausible that the appellant's account of the family being unable to buy a phone for him because the Ettala'at would trace the purchase back to them and so attract adverse attention, when his evidence was that his uncle had bought a phone for him, obscures the point being made by the Judge. That was that the appellant's account, that his family were unable to be in contact with him because their phone would be monitored, and hence he was unable to provide any information as to what had happened to his father following the Ettala'at's search of the property and the arrest of his father, was undermined because his family could have (also) purchased a phone for themselves and used it to call him. The evidence referred to in the grounds: that the appellant's uncle had bought him a phone and had not been traced nor come to any adverse attention as a result, precisely underlines the point. Further, as the Judge said, the appellant's claim went even further, namely that he was of such interest to the security services that they would have bugged his family's phones in the small window of time between their finding the documents in the vehicle and the appellant fleeing.

12. The ground further argues that the Judge was not entitled to find that, on the appellant's evidence, his uncle's house in the same village as his father's house had not been searched. Counsel clarified that because the appellant's evidence was that when he spoke to his uncle (when he was in the mountains and his uncle told him that the security forces had been to his father's house, had searched it and arrested his father, brought him food and arranged his escape over the next two days, as well as after his arrival in the United Kingdom), his uncle did not mention that his house had been raided or searched, it did not mean that his house had not been searched, it might simply be that his Uncle had not told him of any search. The ground exemplifies a nit-picking forensic approach to the Judge's assessment of credibility. The burden is on the appellant not on the Judge. The job of the Judge was to assess credibility in the round, and to provide sufficient reason to the appellant to explain why his account was not believed. The decision must be read in the round.

13. The fourth ground is that the Judge should have put to the appellant that he thought it required explanation that the appellant, finding himself abandoned in the vehicle by his captors whom he thought had detained

him in order to prevent him from revealing their presence to the authorities and whom he feared might track him to his village, would not have taken the opportunity of taking his documents in order to prevent them from doing so. The grounds say that, had the appellant had the opportunity to respond, he could have detailed his distance from the firefight and his mental and emotional state or his thought process. Ms Gunn accepted before us that the criticism in respect of this documentation point was not material on its own so as to make the decision unsustainable. We deal with it because it is a further example of how, in the detail of the grounds, the reasoning of the Judge has been mischaracterised. Contrary to the grounds, the appellant did give evidence as to how far away from the firefight he was, which was that he did not know but the nearby mountainside was lit up. He also said that he was scared and panicked, and his only thought was to get away because he thought his life was in danger. The Judge referred to that evidence, including at paragraphs 5 and 7 of his decision. There is simply no merit to the criticism that the point was new to the appellant and should have been put by the Judge. Whilst a different Judge might have come to a different credibility conclusion here it is not for us to redecide credibility absent an error of law.

14. In this case the Judge found that the appellant's account did not sit well with the country information and there were several matters which the Judge found impacted negatively on credibility.

15. The Judge took into account all of the evidence and the arguments made for the appellant and reached conclusions which were fairly open on the evidence. No perversity has been established.

Decision

16. We find the decision is not flawed by a material error of law and the decision dismissing the appeal stands.

Signed Date 13 November 2019
Deputy Upper Tribunal Judge Davidge