



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

Appeal Number: PA/07652/2018

THE IMMIGRATION ACTS

**Heard at Manchester
On 25th January 2019**

**Decision & Reasons Promulgated
On 05th April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR TWANA RAZAYI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss N Patel (Solicitor)

For the Respondent: Mr C Bates, (Senior HOPO)

DECISION AND REASONS

1. This was an appeal against a determination of First-tier Tribunal Judge D Birrell, promulgated on 23rd October 2018, following a hearing at Manchester on 16th August 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Iran, and was born on 16th November 1996. He appealed against the decision of the Respondent Secretary of State dated 5th June 2018, refusing his application for asylum, and for humanitarian protection, pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that he is of Kurdish ethnicity, and is 22 years old, and comes from Sardasht, where he lived at home with his parents and his two sisters. He had never been to school. He had been helping his father with farming as his father had sheep, lamb, and hens. In around October 2016 he started work as a *kolbar*, a smuggler, on the Iraqi Iran border because it was difficult to find work as a Kurd. He smuggled women's outfits and cosmetics. He and his brother-in-law, Hushyar, worked with a person called Ali, who was a cousin of Hussein Farzandi. The Appellant's brother-in-law and Ali would speak to one another during the journey about the situation of Kurds in Iran. They talked about their struggle for freedom. Hushyar wanted the Appellant to bring in KDPI materials and he transported these on three separate occasions in April and May 2017. They would hide the leaflets amongst their loads and go to the village where a vehicle would arrive and pick them up. However, on 8th June 2017, the Appellant received a telephone call from Hushyar that Ali had been transporting party leaflets into Iran, where there was an ambush by the authorities and Ali had been wounded and arrested. Hushyar told the Appellant to go into hiding and to wait and see what happened. The Appellant told his mother and paternal uncle and his paternal uncle took him to a friend's house. Four days later the paternal uncle returned and said that Etalaat had raided his house and his brother-in-law's house looking for them. They arrested his parents and his older sister. His parents were held for 24 hours and then released and his sister was released after three days. They were told that Ali had given the Appellant's name and his brother-in-law's name to the authorities. The Appellant fled Iran in a lorry and arrived in the UK on 2nd August 2017.

The Judge's Findings

4. The judge held that the Appellant could not succeed because he claims to have been assisting his brother-in-law in bringing KDPI leaflets into Iran because what his brother-in-law said about the Kurdish struggle had a "profound" effect on him (A36), and yet he gave a "very vague" account of his involvement with the KDPI. He was asked about Dr Abdu Ghassemlou, the leader of the KDPI. This leader had been assassinated in 1989. All the Appellant could say about him was that he was a "martyr", but he could not explain why he had been martyred, and when he was martyred, or what he looked like. Moreover, the description of the ideology at question 61 given by the Appellant, of the KDPI, "is very vague and very limited" (paragraph 42). Moreover, the judge held that the Appellant, during his screening interview at 4.1, was extremely vague, and made no reference to any ambush of his family members, or their being

arrested and detained (paragraph 44). Accordingly, the Appellant could not succeed.

Grounds of Application

5. The grounds of application state that the judge had erred in finding that the Appellant had provided no description of the KDPI leader, because he had done so at question 59 during his interview. Second, the judge had failed to put the Appellant's lack of education into the context of the findings made, and had put disproportionate weight upon their lack of detail in the Appellant's screening interview.
6. On 12th November 2018, permission to appeal was granted on the basis that the judge arguably erred at paragraph 42, in finding that the Appellant was unable to explain what Dr Ghassemlou looked like, with no reference being made to what the Appellant had said at question 59. Second, it was arguable that the judge also fell into error in finding the lack of detail at the Appellant's screening interview, because at paragraph 44 the judge had stated that the Appellant's account was "extremely vague and makes no reference to any ambush of his family members" (paragraph 44), and this arguably failed to take into account the fact that this was simply a screening interview, and not an asylum interview.

The Hearing

7. At the hearing before me on 25th January 2019, Miss N Patel, appearing on behalf of the Appellant, submitted that the judge had erred in a number of respects. First, the judge had stated (at paragraph 42) that the Appellant's knowledge of the KDPI was vague. However the Appellant had explained (at page 11 at paragraph 2 of the Appellant's bundle) that he had never been to school, and from a very young age had been helping his father with the farming. Also the judge had criticised the Appellant for not being able to provide a description of Dr Ghassemlou (at paragraph 42), but this overlooked the fact that at question 59 of the Appellant's interview, he had said that Dr Ghassemlou was slightly chubby, was losing hair, and had a slight reddish face, and no issue had been taken with this description provided by the Appellant, such that it could not be said that the Appellant had failed to give a proper account about Dr Ghassemlou. Furthermore, the Appellant had explained (at question 61) that the KDPI stood to achieve Kurdish rights, so that the judge's conclusion that the Appellant's account is "very vague and very limited" in relation to the KDPI, was unjustified. Finally, Miss Patel submitted that the criticism by the judge (at paragraph 44) that the Appellant had provided an extremely vague answer at question 4.1 of the screening interview, as to why he had to leave Iran, without referring to the ambush of his family, which led to the resultant arrest of family members, and the Appellant's escape, was wrong. This was because the Appellant was simply answering a question "briefly state all of the reasons why you cannot return to your home country" and the Appellant had stated "something happened that posed a

risk to me". This, submitted Miss Patel, was a reference to the incident that had led him to leave the country.

8. For his part, Mr Bates submitted that the risk in this case to the Appellant, arose on account of the family being ambushed. Yet, the Appellant did not refer to this risk during his screening interview. What is interesting, submitted Mr Bates, was that after the screening interview, on 16th August 2017, the Appellant's solicitors wrote a letter to the Home Office where attention was drawn to the ambush, and it was this which led the Appellant to subsequently raise the issue of the ambush during his substantive asylum interview. Second, if the KDPI had a "profound" effect on the Appellant (as the judge describes at paragraph 42), it is not conceivable that the Appellant will not be able to give a proper description of their activities. But most importantly, submitted Mr Bates, was the fact that the judge had clearly stated, that the Appellant had not joined the KDPI either in Iran or since his arrival in the UK. The judge was clear that, "I am aware from previous Iranian cases that the KDPI is active in the UK with a branch in Manchester" (paragraph 43).
9. In reply, Miss Patel submitted that the screening interview is not meant to provide a full account. Second, if one looks at the answer given in the screening interview (at paragraph 4.1) what the Appellant had said was that he had to leave Iran due to his involvement with opposition parties. Finally, that it was wrong to refer to the letter of 16th August 2017, from the Appellant's solicitors, which Mr Bates had submitted followed the screening interview, because no reference was made to this in the judge's determination whatsoever, and this could not be resurrected at this stage before the Upper Tribunal.

No Error of Law

10. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.
11. First, in what is a clear, and comprehensive determination, the judge has explained why, if it was the case that the Appellant had come under risk when Hushyar and Ali had been ambushed, and Ali had been wounded and arrested, there was no reference to this at all in the screening interview. Even with respect to what does appear in the screening interview, there is only the suggestion that the Appellant is involved with the opposition parties. However, the Appellant has not been a member of the KDPI. He has not sought to be active in the UK with a branch in Manchester (paragraph 43). And yet, the Appellant's claim is "to have been profoundly moved by the issue of Kurdish rights" (paragraph 43). The judge was entitled to come to the conclusion that she did. It was within the range of permissible options to her.
12. Second, it cannot be overlooked that the Appellant has not necessarily been entirely truthful in his evidence before the Tribunal below. The judge

wished to know how the Appellant's brother-in-law knew that there had been an ambush. The responses given at questions 63, 104, 105, and 106 did not suggest that his brother-in-law was present during the ambush. It was only after repeated challenges, as Judge Birrell explains, that the Appellant eventually states that his brother-in-law was involved but managed to escape (paragraph 45). The judge also did not accept the Appellant's account that he had not remained in contact with his family, because as the only son, who had been sent over through the services of an agent, it was simply not credible that he would not in the UK have sought to retain contact with his family (paragraph 46).

13. Third, the judge was also clear that there was no arrest warrant "because he is of no interest to the Iranian authorities" (paragraph 46). But most importantly, when the Appellant was asked, during his screening interview (at question 3.2) whether he had ever been fingerprinted, he had stated that he had not been fingerprinted. This was plainly incorrect. The Eurodac information suggests that he had been fingerprinted in Europe on his way to the UK. And yet, the Appellant had failed to be truthful about this. All in all, therefore, the judge was entitled to come to the conclusions that she did and this decision is beyond reproach.

Decision

The decision of the First-tier Tribunal did not involve an error of law. The decision shall stand.

No anonymity direction is made.

This appeal is dismissed.

Signed

Date

Deputy Upper Tribunal Judge Juss

3rd April 2019