Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11090/2018

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 4th April 2019	**On 10th April 2019**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

DS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss Cleghorn, Counsel instructed on behalf of the Appellant
For the Respondent: Mr Diwncyz, Senior Presenting Officer

DECISION AND REASONS

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

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings

1. The appellant is a citizen of Iran, who with permission, appeals against the decision of the First-tier Tribunal (Judge Hands), who, in a determination promulgated on the 30th October 2018, dismissed his claim for protection.

The appellant's claim:

2. The appellant's claim is set out in the determination of the FtTJ and in the summary set out in the decision letter dated 7 September 2018. The appellant claimed to have been involved with the KDPI in Iran since he was 24 years of age beginning in December 2011 and finishing in or about early 2018. He distributed leaflets and fixed flags during Kurdish festival times and had sometimes written graffiti on walls. He did not attend any meetings, protests or demonstrations.

3. The appellant claimed to have been involved in the party through a man called Z. He describes this man as "doing activities" and that he had asked him if he could help but that Z did not accept this. The appellant stated that he had asked him repeatedly to get involved and then Z agreed for him to be involved.

4. He stated that Z brought the leaflets/materials and he distributed them with his friend R when Z was not around. He collected the material from an orchard.

5. The appellant left Iran because Z had been arrested and had given the appellant's name to the authorities. The appellant was not at home when that had occurred but found out when contacted by his relatives. The appellant claimed that his father had been arrested on three occasions by the authorities as a result of the appellants activities; the first time before he left Iran and twice since.

6. The appellant left Iran approximately seven days after Z had been arrested and had stated his aunt's house for two days (approximately 40 minutes from his home area) and then to another area. His cousin had collected money from the appellant's father (US$14,000) which had been taken in cash to the currency exchange and an agent was involved in providing his journey from Iran through a number of countries until he reached the United Kingdom on 14 March 2018 when he was detected by police and when he claimed asylum.

The decision of the respondent:

7. The claim was refused by the Secretary of State in a decision letter of 7th September 2018 although it is right to record that the respondent accepted his nationality and his Kurdish ethnicity.

8. As to his claim to have actively supported members of the Kurdish Democratic party of Iran (hereinafter referred to as the "KDPI"), the respondent considered his replies in interview. In his screening interview, he stated that he had been involved with the KDPI by supporting the party by helping members. When questioned about the organisation to establish his affiliation, the appellant was able to answer basic questions regarding the party's founder, headquarters, current leader and their objectives however whilst his answers were externally consistent it was noted that that information was widely available in the public domain. When questioned

further, he was unable to describe the structure of the party or what party Mustafa Mawuldi lead in the separatist movement and simply answered "I don't know" (Q 74, 78). It was considered that his lack of specific knowledge of the KDPI damaged the credibility of his claim and reducing the likelihood of his support for them. This was further through his own admission that he did not continue political activity regarding the KDP I in the UK.

9. In his interview, he claimed that he was not a member of the KDPI because he did not want to listen to them all the time. He was unsure if his friend Z was a member as "he didn't say to us anything and I never asked him" (Q135) although he did ask repeatedly to get involved in the activities of the KDPI (Q 90). The respondent considered that if as claimed he did speak to him on a number of occasions about the party, he would have been inquisitive regarding his own role and activities and have a clear idea of this. The lack of detail impacts upon his credibility.

10. When asked to explain all the reasons why he could not return to Iran in his screening interview, he stated it was because of "cross-border travelling" as he had helped "members of the KDPI". However, in the asylum interview, when asked what activities he did for the party he claimed to have been distributing leaflets, fixing flags at night. He then confirmed he did not carry out any other activities for the party. He later added that he did graffiti for the KDPI and denied crossing the border stating that he went to villages to collect items from his friend Z to distribute. The respondent considered that this contradicted his initial reason for claiming asylum and was a significant inconsistency as his fear of persecution due to support for the KDPI was at the core of his claim. The appellant was unable to provide a consistent account of what activities he did carry out the KDPI and again this damaged his overall credibility.

11. The respondent considered that the appellant's own evidence demonstrated that he did not attend any meetings, protests demonstrations or events for the party (Q101 – 103). Furthermore, with regards to his claim of being an active supporter of the KDPI, it was noted that he failed to produce any documentation to confirm any activism or sympathies he had for that party or that he had to leave Iran due to any political activism. The respondent made reference to the objective material in which it was stated that the party's sympathisers would be able to get a letter of recommendation from the KDPI if the party was certain that the person asking for the letter had to leave due to political activism.

12. Consequently, the respondent did not accept his claim of supporting the KDPI.

13. As to whether he had come to the attention of the Iranian authorities the respondent rejected that party of his claim having considered it in the light of the country materials.

14. The appellant had claimed that the man Z had been arrested for his smuggling activities rather than KDPI involvement although it was stated that he was carrying leaflets to bring back for distribution. However, as his KDPI political support was not the reason for his arrest, it had not been credibly explained why Z would be asked to

provide the names of the appellant and R when nobody knew about the appellant's political activities (see question 111).

15. It was considered that his claim concerning the arrest of Z and his father was not consistent. He stated that he left Iran two months ago when interviewed initially (which would be January 2018). Z was arrested on 11 December however the appellant also claimed to have left Iran in October 2017 or October 2018 and this was not consistent with his claim of leaving Iran after the arrest of his friend Z.

16. Furthermore, he stated his father was first arrested two days after the arrest of Z. However, he had previously claimed Z did not provide his name to the authorities until he had been imprisoned for three days claiming that his father was advised that he had to hand the appellant in, or he would be arrested in his place. However, his father had not been arrested even though the appellant had not been back. It was not accepted as a reasonable explanation and therefore the account of his father being arrested was also not plausible or credible.

17. The appellant claimed to have left Iran seven days after the arrest of Z. He also stated that Z had given his name after three days of torture however, the appellant had been wholly inconsistent regarding when this incident occurred. Furthermore, it was considered that the Iranian authorities have the opportunity to locate and arrest him during this period. In particular, it was noted that his cousins knew where he was (question 1 54) and it was considered that the Iranian authorities possess the intelligence required to monitor the appellant and his family had he been of genuine interest to them as demonstrated through the objective evidence (see paragraph 75 of the decision letter).

18. It was further considered that if his activities had been noted by the Iranian authorities when Z provided his name as claimed, the intelligence organisations as set out in the country information would have acted upon this (see country information and guidance, Iran: curtain Kurdish political groups version 2.0 July 2016 5.2.4). The country information guidance states, "authorities have no tolerance for any activities connected to Kurdish political groups" and thus this supports that the authorities have the potential opportunities to arrest the appellant and at an earlier date if they viewed his activities as a genuine threat. It was also noted that I was not arrested.

19. Consideration was given to his smuggling activities however he was inconsistent concerning his description of his employment and thus his lack of consistent account as regards his employment damage the credibility of his claim.

20. Consideration was given to Section 8 of the 2004 Act, and it was noted that before arriving in the United Kingdom, he travelled through France, Greece and Italy which were considered safe countries. He was detained in Greece and claimed asylum however he did not wait for the outcome of his application as it was claimed the agent asked him to leave the country. It was also noted that he did not claim asylum in Italy or in France despite having been there for 20 days. Therefore, it was considered that he failed to take advantage of a reasonable opportunity to make an asylum human rights claim whilst in a safe country.

21. For the reasons set out in the decision letter, the respondent did not accept that he demonstrated a reasonable degree of likelihood that he would be at risk of suffering persecution or ill-treatment on return to Iran.

22. The respondent gave consideration to the issue of the appellant being a failed asylum seeker and the issue of illegal exit by reference to the country guidance decision of *SSH (illegal exit: failed asylum seeker) Iran CG* [2016] UKUT 00308 (IAC). It recorded that an Iranian male in respect of whom no adverse interest has previously been manifested by the reigning state did not face a real risk of persecution/breach of his article 3 rights on return to Iran on account of having left Iran illegally and/or being a failed asylum seeker. No such risk exists at the time of questioning on return to Iran nor after the fact (i.e. of illegal exit and being a failed asylum seeker) have been established. In particular, there is not a real risk of prosecution leading to imprisonment (see paragraph 33 (B) of determination).

23. Consideration was also given to his treatment as a Kurd on return to Iran by reference to the objective material and the country guidance decision of SSH (cited). This stated that the level of discrimination faced by Kurds in Iran is not such that it will bring the level of being persecutory or otherwise inhuman or degrading treatment. The CG decision held that the evidence did not show that there would be a risk to returnees on the basis of Kurdish ethnicity and low unless the person is otherwise of interest to the Iranian authorities.

24. In the light of the above conclusions, it was not accepted by the respondent that there was a reasonable degree of likelihood that he will be persecuted on return to Iran by reason of political opinion, either imputed or actual or on account of his ethnicity.

<u>The decision of the First-tier Tribunal:</u>

25. In a decision promulgated on the 30th October 2018 the FtTJ made adverse credibility findings in relation to the appellant's account and his appeal was dismissed.

26. The judge set out his findings of fact and as to credibility at paragraphs 13-28. The judge accepted that he was an Iranian national and was of Kurdish ethnicity ([12]).

27. At paragraphs 15 and 16 the judge set out aspects of the appellant's claim

- the appellant lived with his family in Iran which consisted of his father, brother and sister;
- none of his family were involved with the security forces or military in Iran nor involved in any political parties;
- the appellant was educated at the local mosque where his grandfather taught, and he worked on the family farm and worked as a goods transporter; he claimed to have smuggled goods but did not smuggle political material.
- He claims to have been involved with the KDPI from the age of 24.

- He distributed leaflets and fixed flags at most he did this on eight occasions in a year at festival times. Sometimes he did not do it eight times a year because of the weather or because of the security.
- He claimed have started the activities in December 2011 and left Iran in January 2018, meaning that most the appellant carried out these activities and 56 occasions.
- the appellant did nothing else for the KTP are as he did not attend meetings, protests, demonstrations get-togethers all parties.
- He would pick up the leaflets and flags from the orchard which where they were left by Z and he and his friend R would distribute them in the surrounding villages.
- No one knew about these activities and no charges have ever been brought against him and his right never been detained.

28. The judge considered the appellant's claim in the context of the objective material which she had referred to paragraphs 13 and 14 but concluded on the evidence before her that he had not given a credible, consistent or plausible account of being involved in the distribution of leaflets in Iran for the KDPI. The judge expressly rejected as account for lack of consistency and credibility that he was wanted by the Iranian authorities on return on the basis that they had arrested Z who had given his name to the authorities. I will make reference to the findings of fact made and the assessment of the appellant's credibility when considering the grounds and the submissions of the advocates.

29. The Appellant sought permission to appeal that decision and permission was granted by FtTJ McCarthy on the 21st November 2018.

The grounds of challenge:

30. There were 2 grounds relied upon in the permission grounds; the first ground challenged the credibility findings of the FtTJ and the second ground challenged the risk on return (in the context of the appellant as a supporter of the KDPI and failed asylum seeker and having exited illegally). The judge granting permission expressly refused to grant permission on Ground 2 and no application has been made to challenge that refusal, either by way of application before the hearing or at the hearing. Miss Cleghorn therefore confined her submissions to ground 1 which centred upon the assessment of the appellant's credibility.

31. Miss Cleghorn relied upon the grounds. She submitted that the judge had applied an ethnocentric approach in her assessment of credibility by assessing the evidence from a Western perspective. This was demonstrated at paragraph 19 where the judge referred to the appellant being able to ask his parents to send an email and/or documents to support his claim. She submitted villages in Kurdistan are often without electricity and the concept of sending an email to the UK is taking a westernised approach. She further submitted that the judge did a similar thing when referring to his lack of involvement with the KDPI since his arrival in the United Kingdom.

32. In respect of paragraph 18, she submitted that the finding in that paragraph that he could have been involved in the KDPI in the United Kingdom failed to take into account that he is on a limited income. It would also require the ability to access information from the Internet which failed to take into account his literacy (see paragraph 3 of the grounds).

33. As to paragraph 19, she submitted it was difficult to decipher what was being said by the judge.

34. In relation to paragraph 21, again she submitted she struggled to see what the paragraph meant. The judge noted that there was no reference to the contact made in the asylum interview but the judge's reference to the facts at paragraph 19 said that he was in Mxxxx with friends in a park and therefore there had been a reference to that. However, she submitted that the most important issue as regards paragraph 20 is that there was no inconsistency and that given the Iranian authorities suspicions that there was no inconsistency in his behaviour.

35. As to paragraph 22, the judge erred in this paragraph by reaching a conclusion that he was making up his account before she assessed the evidence in the round. Furthermore, it was not clear how the appellant's number will be traceable to him as quickly as the judge considered.

36. As to paragraph 23 she submitted that paragraph did not make sense and that propaganda and the advertising of events served a number of purposes and not just, as the judge suggested, to inform people of the time and date of an event but also the objects of the party.

37. In respect of paragraph 24 and 25, she submitted that those paragraphs did not add anything to the claim and in relation to paragraph 26 he was not asked about the timeline of events. Furthermore, even if the appellant had asked his father such questions, no one would want to hear the details of torture and it is not reasonable that a parent would share with this with their child.

38. As to paragraph 28 it was submitted that this paragraph also did not make sense and that the judge approached it from a Western perspective assuming a value on education as reflected in the UK.

39. The she submitted the credibility assessment was flawed and should be set aside.

40. Mr Diwnycz on behalf of the respondent submitted that the determination may not have been a model of clarity due to the convoluted nature of the appellants claim however the judge reached findings that were open to her on the evidence and the grounds were merely a disagreement with those findings of fact. In particular at paragraph 28, it was open to the judge to consider the issue of literacy. There are different levels of literacy and the judge considered this against the appellant's account that he claimed have been schooled in a mosque and therefore they must have been some level of literacy as the Koran is in Arabic. Thus, the judge was entitled to find that he was not illiterate as claimed.

41. In summary, he submitted that the findings were open to the judge and that the appeal should be dismissed.

Discussion:

42. Dealing with the first ground, at its heart it challenges the judge' assessment of the appellant's credibility and refers to each individual paragraph within the determination. It is trite law, but the determination should be read as a whole to consider whether the judge has given adequate and sustainable reasons for reaching the overall conclusion where she disbelieved the core of his account.

43. In cases (such as the present) where the credibility of the appellant is in issue courts adopt a variety of different evaluative techniques to assess the evidence. The court will for instance consider: (i) the consistency (or otherwise) of accounts given to investigators at different points in time; (ii) the consistency (or otherwise) of an appellant's narrative case for asylum with his actual conduct at earlier stages and periods in time; (iii) whether, on facts found or agreed or which are incontrovertible, the appellant is a person who can be categorised as at risk if returned, and, if so, as to the nature and extent of that risk (taking account of applicable Country Guidance); (iv) the adequacy (or by contrast paucity) of evidence on relevant issues that, logically, the appellant should be able to adduce in order to support his or her case; and (v), the overall plausibility of an appellant's account.

44. The basis of the appellant's claim was that he was a supporter of the KDPI and helped out in activities for that party. The judge had regard to the objective material relating to that party at paragraph 13 where she set out the Iranians authorities' suppression of cultural activities and expression of Iranians Kurds. At paragraph 13, the judge also set out the circumstances of the KDPI, a banned organisation in Iran and thus operated from out of the country. She set out that nonetheless the party operated and that there were three categories of person affiliated with the KDPI "members, sympathisers and friends". She recorded "letters of recommendation about members or sympathisers are issued by the Paris office of the KDPI and will be sent directly to the asylum administration of the country in question and not directly to the recommended person himself." This reflected the material set out in the Country Information Guidance, Iran: Kurds in Kurdish political groups, version 2.0 July 2016 and set out paragraph 68 of the decision letter.

45. The judge considered his account that he had carried out the activities for a lengthy period of time from 2011 – 2018 and on his evidence that he would distribute leaflets eight times per year. It had also been his claim in interview that he had become involved through Z whom he had asked repeatedly to let him help. It was through the arrest of Z it is claimed that the authorities knew of his involvement in the distribution of leaflets. The judge therefore had to consider the evidence as to whether his account of the activities and interest in the KDPI were credible, consistent and plausible and whether he had demonstrated to the lower standard of proof that Z had been arrested therefore linking him to the activity.

46. In interview the appellant was able to answer basic questions concerning the KDPI (see paragraph 63 to 68). The decision letter noted that the answers to those questions

were all in the public domain and that when probed further he was unable to answer questions about the party structure, whether there was a youth group. Thus, the inference raised was that his knowledge was purely superficial and not commensurate with his claimed activities from 2011 – 2018.

47. Furthermore, as set out in the decision letter, when asked whether Z was a member or a supporter of the KDPI the appellant claimed "he didn't say anything I never asked him "and a similar response was set out in his witness statement in reply to the decision letter at paragraph 6. The decision letter concluded that if his account were true that he had spoken to Z on a number of occasions about the party that the appellant will be inquisitive about his role and his lack of detail relating to the man with whom he worked impacted on his credibility.

48. It was against that background that the judge observed that the appellant was able to answer correctly basic details about the KDPI's founder, their headquarters and current leader but that "other than that the appellant was unaware of any other aspects of the party because they were based in Iraq and he had no direct involvement with the party". The judge then considered the lack of supporting evidence from the KDPI (see paragraph 17, 18 and 19). As set out earlier, the country material made it plain that if someone who had given support to the KDPI they would be able to confirm this in writing to confirm their role and to assist them in establishing their claim.

49. Contrary to the grounds, it is clear that at paragraphs 17 and 18 the judge considered the overall lack of supporting evidence for his claimed activities for the KDPI. Whilst there is no requirement to corroborate an asylum claim, if there is information which claimant could have access to it would be open to a judge to find that it is reasonable for that evidence to be obtained to lend support to their claim and establish the factual circumstances (see decision in *TK (Burundi* (2009) EWCA Civ 40). This is what the judge considered at paragraphs 17 and 18. The judge expressly considered his explanation for not providing any information from the KDPI at paragraph 17 and his explanation was that he had limited finances and therefore he could not join the KDPI in the United Kingdom.

50. It was submitted on behalf of the appellant that he was on a limited income and therefore did not have the resources to do this. Furthermore, in the grounds at paragraph 3 it is submitted that the finding made was unreasonable because the appellant was illiterate and therefore, he could not write or email the KDPI.

51. However, it was open to the judge to find that in both respects the appellant had not provided a reasonable explanation for the lack of evidence to demonstrate his involvement in the KDPI. As to the financial aspect the judge took into account his claim that he could not join the KDPI in the UK due to lack of finances but was entitled to place weight in reliance upon the appellant's own evidence that his family were and remained "financially well off" and that against that background made a finding that his family would be able to send funds to him to assist in this regard. Or in the alternative, that they would have been able to make a payment to obtain information from the KDPI.

52. Whilst the grounds also assert that he was illiterate and therefore he could not undertake any activities, the judge expressly rejected his account of being illiterate at paragraph 28 of her decision. Whilst this was in the context of his claim that he did not know how to claim asylum, the judge took into account the evidence he had given as to his ability to provide information as to what was written on the leaflets he claimed he was distributing, his own knowledge of Iran, his knowledge of the monetary system and numeracy; all of which had been set out in the interview. The judge also took into account that his own evidence was that he had been educated in the mosque through his grandfather. As Mr Diwncyz submitted there are degrees of literacy and that was a finding open to the judge to make on the evidence before her taking into account the evidence in the round.

53. Miss Cleghorn submitted that she struggled to decipher what the judge had meant it her finding at paragraph 19. In the written grounds it was stated that the criticism appeared to be that the appellant did not get an email from a family member to support his claim. In this context it is submitted that if he had provided such evidence limited weight would been placed on the document and it would have been interpreted as entirely "self-serving".

54. At paragraph 19 the judge begins by recording the appellant's account as to why he had left Iran noting his evidence that he had left because his father and R's brother were arrested and were told that the appellant and R were disputing leaflets. That his auntie and cousins had been told by his family to get the appellant out of Iran because he had been at his aunt's house when they had been informed. As to the whereabouts of R judge recorded the evidence of the appellant that he had been in the village but "as far as the appellant knows he left Iran at the same time." The judge then went on to set out the appellant's claim to have telephoned his parents and therefore concluded "this would leave it open to the appellant to ask his cousins or father or mother to send an email or information to provide some documentation to support his claim."

55. I do not consider that that paragraph is difficult to understand. The judge was simply recording the appellant's evidence as to events and his lack of knowledge as to specific details, including what happened since he left and the position of R. The judge took into account that the appellant's own evidence that he had been in contact with family members in Iran since he had left and therefore he had the opportunity to obtain evidence or documentation from his relatives in support of his claim. The assertion in the grounds that such evidence would be "self-serving" and therefore would be ignored by the Tribunal is not tenable. A statement from a family member is capable of lending weight to a claim, the issue is whether looked in the round it does so in the particular case question (see R (on the application of SS v SSHD ("self-serving statements" [2017] UKUT 0019.) The judge's observation was that his lack of detail as to events both in Iran and after he had left could have been addressed by the appellant obtaining further information from his relatives. I do not consider that the judge address this from a Westernised perspective and there was no evidence to support the submission made by Ms Cleghorn that their village had a lack of electricity.

56. Therefore, the findings paragraphs 17 – 19 properly led to the judge's conclusion that the appellant had not taken all steps open to him to establish his claim.

57. The judge then considers the circumstances in which he left Iran. The grounds challenge the findings of paragraph 21 and it is submitted by that paragraph 21 makes no sense. I do not agree with that submission. The judge found at paragraph 21 that the appellant had not been consistent about the events that occurred in Iran. The account given is that the authorities became aware of the appellant's activities with Z after Z's arrest. He claimed Z gave his name but only after he had been tortured after three days to give the appellant the chance to escape. However, as the judge noted that account was not consistent with the account given in interview. Here he claimed that it was two days after Z's arrest that his father was arrested. At this stage Z and not given the appellant's name and there was no other evidence to link him to any activities on his own account and therefore there was no reason to arrest the appellant's father. That was the inconsistency which the judge referred to paragraph 21- "the appellant has not been consistent with these events which, as they have meant a complete upheaval in his life, are vitally important." The Judge also made reference to an inconsistency between his contact with R when in his interview his account was that he was visiting his aunt made no reference to contact with R.

58. The second point made at paragraph 21 the judge found no reasonable explanation was given as to why he waited until his father's arrest before making plans to leave if he knew Z been arrested. The submission made by Miss Cleghorn is simply a disagreement with that finding and does not demonstrate that the finding was not one open reasonably open to the judge on the evidence.

59. Miss Cleghorn submits that paragraph 22 does not stand up to scrutiny. Her first submission is that the judge was in error by reaching the conclusion that he was not telling the truth instead of considering all the evidence "in the round". Secondly, she submits that there was no evidence, or it was speculative that the authorities would be able to find out the appellant's identity without the need to illtreat Z to obtain the information. I do not accept that submission. At paragraph 22 judge was referring back to the evidence given to support his departure from Iran therefore it was open to the judge to reach the conclusion that she did not believe those events. It was also open to the judge to take into account the appellant's evidence that he had kept in touch with Z by telephone when in Iran and that if Z had been arrested, the details on his phone as to those he had kept in touch with would have been available and accessible.

60. As to paragraph 23 the judge gave reasons as to why she rejected his account of having photographs of leaders of the KDPI kept in a box in his home. The judge here was contrasting his lack of involvement in the party and lack of his real knowledge with the claim that he had saved such photographs and found "the appellant does not know enough about these people he claims to have pictures of to support this claim." The grounds are a disagreement with that finding do not demonstrate that it was not one reasonably open to the judge on the evidence.

61. As to the distribution of leaflets, the judge at paragraph 23 found that the appellant was unable to explain why he would distribute leaflets at the time of Kurdish

festivals when they would already be aware of the events. The judge also took into account the objective material in the light of the appellant's evidence that Kurdish festivals did take place but considered that the objective material suggested that the authorities had clamped down on such activities and that against that background it was likely that there would be a security presence. She had recorded the appellant's evidence that he did not carry out activities if there was such a high security presence and therefore the judge concluded "it brings into doubt just how many times he distribute material if at all." I would accept that the finding could have been better expressed but the point the judge was making that was it she did not believe that he had distributed leaflets in the circumstances as claimed because the appellant's own evidence was that he would not do so if there were high levels of security and the objective material demonstrated that there had been a crackdown by the authorities and thus they would be limited opportunities available which therefore brought his claim into doubt.

62. The finding at paragraph 24 relates to the nature of his activities and that his evidence was vague as to how he could fix flags high upon a public building such as a school or where he wrote graffiti or the villages, he distributed leaflets in. The judge gave three reasons why she reached the conclusion that his account lacked plausibility because of the lack of detail and connectivity between his life prior to 2011 and after 2011 when he claimed he activities began.

63. The grounds do not expressly challenge paragraphs 24 or 25. At paragraph 25 the judge highlighted the inconsistent nature of the appellant account. The judge recorded the appellant's evidence that he claims to know that Z had given his name to the authorities because when his family were allowed to visit him in prison, he told them that he managed to survive three days of torture in order to give the appellant time to escape before he gave the appellant's name and R's name. However, the judge concluded that Z would not know that the appellant knew of his arrest at the time it had happened therefore Z would not know when he would need three days (or sufficient time to escape). The appellant's statement claimed that it was two days and three nights but that does not undermine the finding made by the judge.

64. The finding at paragraph 26 related to the appellant's lack of detail in support of his claim and as he was in contact with his father there would be no reason or explanation as to why that evidence had not been clearly given to him. The judge also made findings under section 8 paragraphs 33 and 34 (the failure to claim asylum).

65. In the decision of *SB (Sri Lanka) v SSHD* [2019] EWCA the issue of credibility and reasoning was considered as follows:

> "29. The duty is contextual. The level of detail required will vary considerably from case to case and I am not suggesting that in every Tribunal case a detailed evidential exegesis is required. To suggest as much would be impractical and inconsistent with the recognised limits on an appellate court interfering with the evaluative judgments of trial courts: In *Piglowska v Piglowski* [1999] UKHL 27 Lord Hoffman stated: "*...the appellate court must bear in mind the advantage which the*

> *first instance judge had in seeing the parties and the other witnesses. This is well understood on questions of credibility and findings of primary fact. But it goes further than that. It applies also to the judge's evaluation of those facts. ...*". Lord Hoffman cited his own judgment in *Biogen Inc v Medeva* [1996] UKHL 18 (a patent case) to the effect that "… *findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance … of which time and language do not permit exact expression, but which may play an important part in the judge's overall evaluation*."

66. In this appeal the judge had the advantage of hearing the evidence of the appellant and considering his account in the context of the evidence in the round. Overall the judge made findings of fact on the evidence before her and I am not satisfied that those findings of credibility were flawed in the way submitted by Miss Cleghorn on behalf the appellant.

Decision:

The decision of the First-tier Tribunal did not involve the making of an error on a point of law and the appeal is dismissed; the decision of the First-tier Tribunal shall stand.

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

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed SM Reeds

Date: 5th April 2019

Upper Tribunal Judge Reeds