



IAC-FH-CK-V1

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

Appeal Number: PA/06907/2019

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice Centre
On 17 February 2020**

**Decision & Reasons
Promulgated
On 6 March 2020**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**KA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss A Faryl, Counsel

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

The appellant is a citizen of Iran who claimed asylum in the United Kingdom on 7 December 2018. That claim was refused by the respondent and detailed reasons provided in a letter dated 11 July 2019 of some 19 pages in length.

The appellant's appeal to the First-tier Tribunal ('FtT') was heard on 3 September 2019 and dismissed in a decision dated 16 September

2019. The appellant was then represented by Miss Faryl of Counsel, who also represents him today. The respondent was not represented. The FtT dismissed the appellant's appeal. The FtT did not accept the credibility of his account in Iran. This can be summarised in this way: he worked as a smuggler carrying goods over the border and also was found to have political information viewed adversely by the Iranian authorities in relation to Kurdish political activism. The FtT also rejected the appellant's claim to be a genuine convert to Christianity.

Appeal to Upper Tribunal ('UT')

The grounds of appeal against the FtT's decision can be divided into three parts. The first attacks the FtT's findings regarding the appellant's claim to be a smuggler. The second criticises the FtT's findings as to the appellant being of any past adverse interest to the authorities by reason of any political opinion imputed to him. The third addresses the FtT's findings regarding his conversion to Christianity.

In a decision dated 25 October 2019 FtT Judge Saffer granted the appellant permission to appeal, observing that it was arguable that the FtT may have misunderstood some of the appellant's evidence and has not explained which background evidence he relied upon to find against the appellant in relation to geographical distances relevant to his home area and the point at which he claimed to smuggle goods. Judge Saffer observed that the grounds regarding the claimed conversion appeared to him to be weaker but he did not limit the grant of permission.

At the hearing before me, Miss Faryl relied upon all of the written grounds of appeal and Mr Tan responded in full to each. I shall address their respective submissions when discussing each ground of appeal in turn.

(1) Grounds relevant to the credibility of the claim to be a smuggler

Three points are taken by Ms Faryl in relation to this ground. The first concerns the appellant's own evidence as to the financial circumstances of his family in Iran. Miss Faryl submitted that the FtT misunderstood that evidence and misrepresented what the appellant said in the interview. She pointed out that at various points within the interview the appellant explained that his family was very poor, see for example questions 14, 20 and 39. Mr Tan, however, pointed out that in response to question 37 the appellant said this:

"IO: And your family could survive on this earnings?"

Appellant: Yes it was enough for them not the best quality of life but it was good."

Mr Tan submitted that the FtT's finding at [15(b)] that it was not possible to reconcile the appellant's two statements was open to the FtT Judge in these circumstances.

I agree with Mr Tan. On the one hand, the appellant was saying at times in his interview that the family were very poor indeed but at question 39 he clearly said that they were able to survive. That must be seen in the context of the country background evidence that the judge referred to at [15(c)]. The judge said this:

"The appellant made clear that he realised how risky being a kolbar would be. The background information, recited in the refusal letter, makes clear that people who transport such goods are generally extremely poor, forced to risk their lives by making journeys in exchange for a small sum of money."

The point here is that the judge was entitled to expect the appellant to be clear that because his family was extremely poor that was why he was prepared to risk his life in order to be a smuggler. The judge was entitled to find that the evidence provided by the appellant as to the financial circumstances of the family was not possible to reconcile.

I now turn to the second point made by Miss Faryl in the grounds of appeal. In the written grounds Miss Faryl refers to the judge's finding at [15(c)] that the distance between the appellant's home and the point at which he began his smuggling activities, a place called Tileko, took some four hours. The point made by Miss Faryl is that this was not a matter put to the appellant and it is unclear what background information the judge was referring to in this respect. As I have already noted, there was no Presenting Officer representing the respondent before the FtT. However, there was a very detailed decision letter, 19 pages in length, containing 89 paragraphs.

At [29] of the decision letter the respondent says this:

"Furthermore, you claim you were trading your goods at a place called Tileko on the border between Iran and Iraq. It is noted that this area is a village in Dehgolan county located further away from the border than your home district of Sarpol⁶. You claim you have been trading at this border market on a regular basis and that it took you about 1.5 hours to get there by car (AIR 45). This is inconsistent with available external information showing that the distance between Sarpol and Dehgolan is actually nearly four hours by car⁷. It is also noted that during your interview you were asked to explain your journey to the border and you couldn't. You stated you have to walk to Iraq and then bring things back and you provided no further details (AIR 46). Further, you did not provide details of who your regular customers were (AIR 50). You have therefore failed to provide sufficient details of your work as a kolbar. As this is a core aspect of your claim your credibility is considered damaged."

The footnotes ⁶ and ⁷ then refer to links to maps. Those links appear to be very detailed and specific although I have not accessed them, (and I was not invited to do so).

It seems to me that it is incorrect to say that it is unclear what background information the FtT was referring to. The FtT was clearly referring to the background information footnoted to [29] of the decision letter. Although this specific matter may not have been put to the appellant it was clearly an issue in dispute between the parties. Indeed, in his rebuttal witness statement the appellant addressed this matter. He said this:

“Tileko is a small village which is located between Esgeleh and Sarpol. On account of this village the market where we load or unload the goods was also called Tileko. I confirm that the village that I refer to as Tileko is not in Dehgolan.”

I invited Miss Faryl to explain this evidence to me because it was not immediately clear what point was being made. Miss Faryl at first submitted that there was two Tilekos, one the Tileko market, which was not in Dehgolan, as the appellant said in his witness statement, and another Tileko between Esgeleh and Sarpol. When I invited further clarification she took instructions from the appellant and said that there were not two Tilekos but there was one Tileko, but that Tileko was not in Dehgolan.

There was a map provided in the FtT bundle at B2 which highlights Sarpol and Esgeleh, as well as the border between Iraq and Iran. There was also a handwritten and starred reference to Tileko between Sarpol and Esgeleh, that was not on the border but near to the border. It was entirely unclear to me how the judge could have possibly been assisted by the vague evidence contained in the response by the appellant in his rebuttal statement. This was clearly an issue of concern by the respondent, the respondent particularised it and relied upon country background evidence. The appellant responded to it in a vague way without any clear country background evidence or map to make the point that he wished to make, i.e. that the distance was 1.5 and not four hours. In those circumstances, the FtT was entitled to prefer the evidence relied upon by the respondent and the finding at [15(c)] to that effect does not contain any material error of law.

The third point refers to a submission that the FtT was not entitled to find that the appellant failed to describe his journey to the border when the appellant gave a detailed account at question 46 of the interview. The judge found that that was not a clear explanation and referred specifically to question 46. That was a matter for the judge. The judge did not regard the explanation to be clear and that finding has simply been disagreed with in the grounds of appeal.

(2) Appellant came to authorities adverse attention

I now turn to the second part of the grounds of appeal which addressed the appellant's claim that he came to the adverse attention of the Iranian authorities. The first point that is made is that the FtT did not give adequate reasons for finding that the appellant would not keep leaflets in his own home. It is right that the FtT simply recorded at [15(d)] that the appellant's account that he kept leaflets in his own home did not survive scrutiny but that must be seen in the context of the point made in the decision letter that there was a very strong government military presence in the appellant's home area and the appellant seemed unable to explain in his interview why he was prepared to put his family at risk in that regard.

The grounds of appeal also challenge the FtT's finding that the appellant was unable to provide further details of where a claimed ambush took place. Again, the FtT relied upon the reasoning in the decision letter. At [35] that says this:

"You claim you came to the attention of the authorities when you were ambushed by the security forces during your last trip to the border (AIR 70). This is considered inconsistent with the fact that you could not explain where this incident took place. You stated you were ambushed between Sarable and Sarpol and again provided no further details of this location (AIR 70). Upon consulting available country information it was realised that the distance between these two places is a stretch of 120km⁹. Your inability to provide sufficient details of this incident damages your credibility."

Footnote ⁹ then refers at page 9 of the decision letter to an online link to Google Maps that again seems detailed and specific.

The response to this within the rebuttal witness statement is this: "*I confirm that I answered the question which was asked of me. I was ambushed suddenly by the authorities. I was on a road, close to my village. In the interview I provided the location.*" The appellant has not directly addressed the point made that the road was very long indeed. There was a specific point that was made and could and should have been addressed. In those circumstances, the FtT was entitled to draw adverse inferences as set out at [15(e)] of the decision.

The final point made in relation to this part of the grounds relates to the FtT's finding at [15(f)] wherein the FtT says this:

"The appellant claimed his uncle was in touch and then returned next morning to say that his father had been taken by the authorities. This cannot be reconciled, once again, with the appellant's statement in interview that his father had been released that very night."

This appears to relate to a point again made within the decision letter at [37] that says this:

“You claim your uncle hid you for the night and then returned in the morning to tell you your father had been taken by the authorities (AIR 71). This is inconsistent with your later statement that your father had been released the same night.”

Although the FtT judge did not give much detail on why he regarded there to be an inconsistency regarding the claim that the father had been released and who said that the father had been released, it seems clear to me when all the information is considered that there was a discrepancy in relation to this aspect of the account and it was unclear from the interview what the appellant was actually saying. In those circumstances, the FtT was entitled to draw adverse inferences as set out in the decision letter.

I also note that although the appellant said at question 71 that in the morning his uncle came to him and told him that his father had been taken and that the authorities were looking for him, the appellant did not at that point say that the uncle said that the father had been released the next morning. At question 74 when asked, what the authorities did with his father, the appellant said that he did not really have news because his father did not talk to him but that when he was in a hostel he had contact with his father, who told him he had been released the same night. Although the FtT has not been very clear or detailed in this regard it seems to me that the respondent was entitled to note concerns regarding the claim as to the father’s detention and release and who said what and when, which the FtT touched upon. When the adverse credibility findings are viewed together, the FtT was entitled to make an overall adverse credibility finding.

(3) Conversion to Christianity

I now turn to the third part of the grounds of appeal, which relates to the appellant’s claimed conversion to Christianity. Miss Faryl submitted that the overall findings relevant to this aspect are cursory and show a “*complete disregard*” for a number of witnesses who attended the hearing to support the appellant. It is important to carefully consider the FtT’s findings regarding the claimed conversion. This begins at [15(g)] and continues to [15(n)] and take up about two pages of the FtT’s decision.

The FtT made it absolutely clear that there was no reason to doubt the sincerity of the witnesses who attended the hearing on the appellant’s behalf. The FtT summarised in considerable detail each of those witnesses, how they knew the appellant and their explanation for believing the appellant. That is set out in detail at [15(g)]. The FtT then made it clear that all of the witnesses said that they were aware of the possibility that a person might pretend to be a Christian convert and insisted that they would not have let the appellant undergo baptism unless he was a true convert. Indeed, the FtT

quoted the evidence provided by Mr Mander in that regard. The FtT referred specifically to Mrs Jakuta and Mr Cherry giving evidence in similar terms. The FtT reminded itself that it had the evidence of witnesses who were genuine. The FtT gave a number of reasons for nonetheless regarding the claimed conversion not to be genuine.

The FtT observed that the appellant was baptised very quickly after joining the church when he did not have English, could not read the English Bible and was occasionally having to use Google Translate although there was a Bible in Farsi. The FtT was clearly concerned with the rapidity with which the appellant reached baptism, having paid due regard to the evidence provided by the supporting witnesses. The FtT was entitled to find the appellant not to be genuine notwithstanding the genuinely held views of the witnesses.

The FtT could have offered more detailed reasoning. However, in my judgment, the FtT's reasoning is adequate. I accept that it would have been preferable for the FtT to have not referred to the adverse credibility findings in relation to what happened to the appellant in Iran to have "*coloured*" his attitude to the appellant's claimed conversion. However, the FtT has not said that because he did not believe the appellant in one respect, he was not going to believe him regarding the claimed conversion. Although it could have been put far more clearly, the FtT was simply saying that the adverse credibility findings that he had already made are relevant *background* factors when considering the credibility of the appellant's evidence to have genuinely converted to Christianity.

It follows that I wholly reject the submission made in the written grounds and orally that the FtT simply disregarded the evidence of each of the supporting witnesses and based its finding on conversion wholly on the earlier erroneous credibility finding. Quite the contrary, the FtT recorded in some detail the evidence provided by each of the witnesses, accepted that it was genuinely held. In this particular case, notwithstanding that evidence, the FtT did not accept that this appellant was a genuine witness, bearing in mind all the evidence considered together. That was a finding open to the FtT.

For all those reasons, the grounds of appeal are not made out.

Decision

For the reasons I have provided the FtT has not committed any material error of law and I dismiss the appellant's appeal.

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 or any member of his family. 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: *UTJ Plimmer*

Date: 21 February 2020

Upper Tribunal Judge Plimmer