

**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Number: PA/01316/2018**

**THE IMMIGRATION ACTS**

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| **Heard at Field House** | **Decision & Reasons Promulgated** | |
| **On 24 May 2018** | **On 11 June 2018** | |
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**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**ROA**

(anonymity direction made)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms. C. Ryan, Duncan Lewis & Co. Solicitors

For the Respondent: Ms K. Pal, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Siddall, promulgated on 19 March 2018, in which he dismissed the Appellant’s appeal against the Respondent’s decision to refuse to grant asylum.
2. As this is an asylum appeal I make an anonymity direction continuing that which was made in the First-tier Tribunal.
3. Permission to appeal was granted as follows:

“It is arguable that the judge erred in failing to give adequate reasons and that irrational findings were made by the judge in relation to the appellant’s journey.

It is arguable that the judge has failed to resolve a conflict of fact and made irrational findings in relation to the appellant’s risk on return in the light of his connection to his father.”

1. The Appellant attended the hearing. I heard submissions from both representatives following which I announced that the decision involved the making of material errors of law. I set the decision aside to be remade.

**Error of law**

*Ground 1*

1. At [32] the Judge found that the Appellant’s father was a KDPI supporter.

“The appellant arrived with no documentation and there is no evidence to show that his father was involved in KDPI activities. Nevertheless from the appellant’s account I accept that it is possible that his father was at the very least a KDPI supporter. As such he would be at risk of detention and this is consistent with the objective evidence.

1. At [33] the Judge found that the Appellant had undertaken the journey to Sarshew.

“The appellant provides a clear and consistent account of his journey to Sarshew. His account of travelling with a group of 50-60 smugglers or kulbar, and coming under attack from the Pasdar, is consistent with background evidence and I accept that he has demonstrated to the required standard that he undertook this journey.”

1. However at [34] and [35] the Judge did not accept the Appellant’s account of why he undertook the journey. He stated:

“The evidence that he went to Sarshew at the request of his father to collect two boxes of books relating to Kurdish independence is far more problematic. It is hard to understand why his father would have asked his sixteen-year-old son to undertake such a task when he had previously kept any KDPI activities very separate from him, refusing even to speak about what he was doing. This is particularly so given that such a journey in the company of the Kulbar was fraught with danger. Background evidence provides detailed reports of such groups being fired upon or being arrested for their smuggling activities, and so asking the appellant to go on such a trip at all was putting him at great risk. Given the cautious approach his father had taken prior to that it seems inconceivable that he would choose to increase those risks hugely by demanding that he collect material which would place him in great danger of persecution if he was apprehended.

I find therefore that although the appellant did make such a journey, he has not demonstrated that he did so in order to collect material about Kurdish independence.”

1. The Judge found at [33] that the Appellant undertook a journey which he then described at [34] as being “fraught with danger”. He found that “asking the appellant to go on such a trip at all was putting him at great risk” [34]. However he then found that the Appellant’s father’s approach had been “cautious”, with reference to the Appellant’s father’s KDPI activities. The Judge has not explained why on the one hand he has accepted that the Appellant’s father would put him at great risk by sending him on the journey, but on the other hand not accepted that he would put him at risk by asking him to collect Kurdish materials. I find that it is irrational to find that the Appellant’s father would place him in such great danger, but then to find that it is “inconceivable” that he would not ask him to collect Kurdish materials.

1. At [36] the Judge states:

“If I am wrong on that, I find that carrying the books did not in any event create a specific personal risk for the appellant as he abandoned the books and he was not caught. Even if the Pasdar recovered the books there would be nothing to link them with the appellant even if his name had been written on the boxes as he had managed to escape back to Sarshew.”

1. It was accepted by Ms Pal that [36] was “not entirely clear”. I find that the findings at [36] are inadequately reasoned and do not make sense. First, inadequate reasons have been given for finding that there was nothing to link the books to the Appellant given that his name was written on the boxes. Secondly, it does not follow that there would be nothing to link the Appellant to the books because he had managed to escape back to Sarshew. Whether or not the Appellant escaped back to Sarshew, his name was written on the boxes which contained the books. This does not make sense. Finally, just because the Appellant abandoned the books and was not caught does not mean that carrying the books did not create a specific personal risk.
2. I find that Ground 1 is made out and that the Judge failed to give adequate coherent reasons for his findings in relation to the purpose of the Appellant’s journey to Sarshew.

*Ground 2*

1. I find that the Judge erred in his consideration of the risk to the Appellant on the basis of the positive findings that he made, irrespective of the findings referred to in ground 1. He found at [32] that the Appellant’s father was a KDPI supporter and would be at risk of detention. At [37] he accepted that a raid on the family home and the arrest of the Appellant’s father could have happened at some point.
2. At [15] the Judge quotes from the Respondent’s Country Information and Guidance Iran: Kurds and Kurdish political groups, July 2016 (the “2016 CIG”) as follows:

“*3.1.3 Family members of persons associated with a Kurdish political group are also harassed and detained and may be subject to inhumane treatment.”*

1. The Judge also refers to the USSD report dated 3 March 2017 at [12]. At [13] he quotes from this report stating:

“It notes that security forces monitored the social activities of citizens, entered homes and offices, monitored telephone conversations and internet communications, and open to email without court authorisation.”

1. However despite making the findings set out above, and despite being aware of this background evidence, the Judge found that the Appellant would not be at risk on return to Iran [38].

“I find that the appellant has not demonstrated that even if his father has been arrested that he would be at risk upon his return to Iran. His evidence is clear that he was never involved in any KDPI activities himself. Even if he was carrying books that would have been viewed as suspicious by the authorities he abandoned these some way from his home and was not detained. He has not shown that he placed himself at risk as a result. While I accept that the family members of KDPI supporters may be at risk of harassment, there is no evidence in this case of the appellant’s mother and siblings being detained or attacked alongside his father.”

1. The Appellant’s evidence is that he has had only a very brief phone call with his family since he left Iran. There has been no further contact since. Therefore there was no evidence either way as to whether or not the Appellant’s mother and siblings had been detained. To use this as justification for a finding that the Appellant would not be at risk is an error.
2. Further the Respondent’s own 2016 CIG as quoted by the Judge indicates that family members are at risk of harassment, detention and inhumane treatment. Therefore on the lower standard of proof, having accepted that the Appellant’s father was a KDPI member who had been arrested, the Appellant himself was at risk. This is the case on the Judge’s positive findings as they stood irrespective of the inadequately reasoned findings made in relation to the Appellant being associated with the books, and there being a link back to the Appellant himself.
3. I find that the Judge has erred in his consideration of the risk on return to the Appellant in the light of his findings that the Appellant’s father was a KDPI member whose home had been raided, and who had been arrested.
4. Accordingly I set the decision aside.

**Remaking**

1. I adopt the findings of the First-tier Tribunal Judge that the Appellant’s father was a KDPI supporter [32], who sent the Appellant on a journey with smugglers to Sarshew [33], whose home was raided and who was arrested by the Iranian authorities [37].
2. I have considered the evidence regarding the purpose of the journey. The Judge accepted the Appellant’s own evidence when finding that his father was a KDPI supporter as he noted that there was no documentary evidence of his father’s membership. He also found that the Appellant had provided a “clear and consistent account” [33].
3. I have taken into account these positive credibility findings. I have considered the Appellant’s witness statement dated 15 September 2017 which was provided prior to his asylum interview. In this he states that he left school when he was very young [3]. At nine or ten years old he started working as a shepherd. He was not paid directly for doing this job, although his father may have been paid because it was his father who told him that he needed to do the work. He worked from morning until evening and sometimes at night [4].
4. At [7] he set out how his father asked him to do the job of collecting the boxes:

“When I was working as a shepherd my father asked me to do a job for him. My father told me to go to a man called SMS to collect 2 boxes. He told me that the boxes had my name on it and I should bring them back home. He told me that the boxes with the freedom of the Kurdistan to free Kurdish people from the Iranian government. He told me to say “slaw democrat” which is like a password so S would know why I was there. It means “hello democrat”. S would then give me the boxes. My father told me that the boxes would free Kurdistan and he told me not to open them. I did not ask my father why I needed to collect the boxes. I think my father wanted to keep it a secret so I didn’t tell anyone.”

1. After this the Appellant sets out in detail his account of the journey, which account was accepted by the Judge in the First-tier Tribunal.
2. In his witness statement provided for the appeal the Appellant addressed the reasons given by the Respondent for rejecting his account of being asked to collect the boxes [8]. The Appellant states:

“I did not have a choice. I have never refused [my father’s] requests or what he asked me to do. I did not say anything and I just accepted to do it. When I was 9 or 10 I started working as a shepherd for my father. He told me I needed to do this job and I accepted it. I could not refuse to do this. When my father told me to go and collect these boxes I was tired. I had come back from work and I was tired. I was feeling very bad I had been working in the night and did not sleep enough. In the daytime I went to work again and I was not sleeping enough. When my father told me to do this I just agreed. I did not think about it. I did not think this was going to happen. I am still thinking about it and I do not know why my father asked me to do this job. I do not know if my father knew I would be in danger. I have not spoken to him. Whenever my father said anything I accepted it. I did not talk too much to him.”

1. I find that the Appellant set out clearly in his second witness statement the nature of his relationship with his father. He set out how he did not go to school but worked long hours from a very young age as a shepherd. Given that the Appellant’s father sent the Appellant to work at the age of nine or ten as a shepherd working long hours, including at night, and given that he sent his son on a very dangerous journey where he may be shot at or arrested, I do not find there is anything implausible about the Appellant’s father asking him to collect two boxes of materials relating to Kurdish independence, even if he did not discuss KDPI activities with him. The Appellant’s evidence was clear that he did not have a choice. He had to do what his father asked him. I find it is reasonably likely that the purpose of the Appellant’s journey to Sarshew was to collect the two boxes of books as claimed.
2. Further I accept the Appellant’s account that his name was written on the boxes. I find that the Appellant abandoned the boxes, but he does not know what happened to them. The Appellant was shot at by the Iranian authorities, and it was while he was running away that he abandoned the boxes, so is quite possible that the boxes were picked up by the Iranian authorities. If so, there is a clear link between the Appellant and activities promoting Kurdish independence, because the Appellant’s name is on the boxes.
3. I found above in my consideration of the error of law that, on the positive findings made by the Judge, the Respondent’s 2016 CIG indicates that the Appellant would be at risk on return as being the family member of a person associated with a Kurdish political group.
4. At 2.3.5 of the 2016 CIG, it states:

“Family members of persons associated with a Kurdish political group are also harassed and detained. In pre-trial detention in Evin Prison, members of minority ethnicities, including Kurds reportedly were repeatedly subjected to more severe physical punishment or torture than other prisoners, regardless of the type of crime accused. The execution rate is disproportionately high among Kurds in Iran. A large proportion of these executions are based on accusations of drug smuggling, but sometimes political activists are executed under the pretext of being drug smugglers (see Treatment of Kurdish political or human rights activists and perceived activists/family members).”

1. The further evidence on which this conclusion is made is found at section 11 of this report.
2. Further I find that the Appellant may be perceived as being involved himself with a Kurdish political group given that his name was on boxes of material relating to Kurdish independence abandoned by the Appellant when he was shot at by the Pasdar, the Iranian authorities.
3. Paragraph 2.3.3 of the 2016 CIG states:

“The situation is different for those who become or are perceived to be involved in Kurdish political activities. The authorities have no tolerance for any activities connected to Kurdish political groups and those involved are targeted for arbitrary arrest, prolonged detention, and physical abuse.”

1. I therefore find that the Appellant would be at risk on return to Iran either on account of his own imputed political opinion, as he is perceived to be involved with a Kurdish political party, or on account of being the family member of a supporter of Kurdish political party whose home has been raided and who has been arrested. The risk to both of these categories of people is accepted by the Respondent in his 2016 CIG.
2. I therefore find that the Appellant has demonstrated that there is a real risk that he will suffer persecution on return to Iran, and so his claim succeeds on asylum grounds. As I have allowed his claim on asylum grounds, I do not need to consider his claim to humanitarian protection. Following my finding in relation to his asylum claim, I find that he would also be at risk of treatment contrary to Articles 2 and 3 of the ECHR such as to put the United Kingdom in breach of its obligations. The appeal is therefore also allowed on human rights grounds.

Notice of decision

1. The decision of the First-tier Tribunal involves the making of material errors of law and I set the decision aside to be remade.
2. The Appellant’s appeal is allowed on asylum grounds.
3. The Appellant’s appeal is allowed on human rights grounds.

**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 their 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 Date 8 June 2018

**Deputy Upper Tribunal Judge Chamberlain**