



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07460/2017

THE IMMIGRATION ACTS

Heard at Civil Justice Centre, Manchester
On 16th July 2018

Decision and reasons Promulgated
On 30th July 2018

Before

UPPER TRIBUNAL JUDGE COKER

Between

MA
(ANONYMITY ORDER MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard, instructed by Fountain solicitors
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. MA, an Iranian citizen, claimed asylum in the UK on 22nd July 2015. His claim was refused by the respondent and his appeal dismissed by First-tier Tribunal Judge E M M Smith for reasons set out in a decision promulgated on 5th January 2018.
2. Permission to appeal was granted by First-tier Tribunal Judge Hodgkinson on the grounds that First-tier Tribunal Judge Smith “clearly concluded that the appellant was a Kurdish poet and cultural activist and that Etalaat had asked him to work for them” and as such it was arguable that the appellant’s profile was such that he would be at risk on return to Iran, contrary to the conclusion reached by First-tier Tribunal Judge Smith.

3. The grounds for permission had been put forward on the basis the appellant was a poet and cultural activist for the KDP-I. The grounds rely on political activity as substantiating risk. The appellant was found by the First-tier Tribunal Judge **not** to be an activist for the KDP-I but permission was granted in any event because of the cultural activism element of the findings, even though that had not been specifically pleaded. The grounds had not challenged the findings of First-tier Tribunal Judge Smith that the appellant was not a member or supporter of the KDPI.

4. Relevant findings of the First-tier Tribunal judge are as follows:

27. During his evidence, the appellant was questioned by Ms Millward [the presenting officer] as to whether any of his remaining family have been spoken to by Etalaat or have received any difficulties from them. The appellant confirmed that whilst he speaks regularly to his family and in particular his brother none have received any threats. It is implausible that if the appellant had disappeared when required to attend court having been released from custody the authorities showed no further interest in him.

....

29. Those photographs that have been lifted out of Facebook I am satisfied show nothing more than the appellant as a poet and cultural activist.

....

31. I have already found that he has not established he is a member or activist of the KDP-I and in each of the demonstrations he was at he appears to be a member of the crowd and not a speaker or an organiser, indeed the photographs appear to portray him as an uninterested bystander. I do not find that satisfactory evidence has been submitted to establish that the demonstrations attracted media coverage in Iran or have been identified on social media.

32. ...I am not satisfied even to the low standard of proof that the appellant has provided a true account of his experiences and reasons for claiming asylum that justifies his claim of fear. I am satisfied he has not discharged the low standard of proof he was a member of the KDP-I in Iran or Iraq, I do not accept he has established that he was detained because of any political reasons connected to the KDP-I and if he was detained it was because he was a cultural activist and poet. I do not accept the authorities regarded him as a member of the KDP-I bearing in mind he was detained and released twice without any restriction, and no suggestion of violence towards him. The fact that he was asked to work for Etalaat was because of his cultural connections not his political affiliation.

....

34. Having considered the authorities and the evidence before me and noting that there is no evidence that a returning poet or a cultural activist who is not regarded as a member of a political party and therefore an activist is at risk on return.

5. Mr Howard acknowledged that the grounds incorrectly stated that the First-tier Tribunal Judge had accepted the appellant was involved with the KDP-I. The core of his submissions was that the First-tier Tribunal judge had accepted the appellant was a poet and cultural activist, that Etalaat had asked him to work for them, he'd attended demonstrations albeit was not an organiser, that he was a teacher and that he was Kurdish. The country material referred to poets being targeted and that given the appellant's overall profile the First-tier Tribunal Judge had not adequately assessed risk on return. It was not necessary, he submitted for there to be a political party element. Mr Howard denied there had been any shift in focus in the appellant's claim, as submitted by Mr Tan; the appellant continued to claim he was a political activist.

6. Mr Tan referred to the judge's conditional reference in paragraph 32 of the decision to the appellant being detained and that the focus of the appellant's claim had changed from membership of the KDP-I (as formulated in the grounds

seeking permission to appeal) to the risks he ran as a poet and cultural activist. He drew attention to the lack of any interest in the appellant's family members by Etalaat, which was contrary to the country evidence where a person was of interest. He submitted that there was nothing in the appellant's account that had been accepted that indicated he was or would be perceived to be a threat to the regime.

7. There is reference in the material that was before the First-tier Tribunal judge to those who express peaceful dissent or speak out about Kurdish rights can be seen as a threat to the state. The difficulty that this appellant has is that there is no finding by the First-tier Tribunal Judge that when he was in Iran he was perceived to be a threat. He was found not to be a political activist and there was no application for permission to appeal that finding by the judge. Even if, as the First-tier Tribunal Judge put it, he had been detained, there was no evidence that he continued to be of interest. The country evidence makes clear reference to families being at the very least harassed by Etalaat if a family member is of interest to them. That has not happened.
8. The First-tier Tribunal judge reached her findings placing the appellant's case at its highest but on the basis that he had no activity with the KDP-I. The *sur place* activities were considered by the judge as part of the whole and she reached findings that his activities, as a whole, did not place him at risk.
9. The judge has reached findings that were open to her on the evidence that was before her: he was not an activist with the KDP-I, he had not claimed any other political activity, Etalaat were not interested in him and his *sur place* activities did not amount to resulting risk.
10. There is no material error of law.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision; the decision of the First-tier Tribunal stands.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008; the appellant was an asylum seeker.



Date 23rd July 2018

Upper Tribunal Judge Coker