

**Neutral Citation Number: [2009] EWCA Civ 914**  
**IN THE SUPREME COURT OF JUDICATURE**  
**COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE ASYLUM AND IMMIGRATION TRIBUNAL**  
**[AIT No. AA/02780/2008]**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: Thursday, 23<sup>rd</sup> July 2009

**Before:**

**LORD JUSTICE PILL**

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**Between:**

**NS (IRAN)**

**Appellant**

**- and -**

**SSHD**

**Respondent**

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**Ms Patel** (instructed by Oldham Law Centre) appeared via video-link on behalf of the  
**Appellant.**

**THE RESPONDENT DID NOT APPEAR AND WAS NOT REPRESENTED**

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**Judgment**

## **Lord Justice Pill:**

1. This is an application for permission to appeal against a decision of the Immigration Appeal Tribunal dated 12 December 2009. The case had been referred to the tribunal by Collins J on 17 September 2008 following an earlier decision favourable to the applicant on the asylum issue of 27 June 2008.
2. The applicant is 24 years' old and a citizen of Iran and is Kurdish. He arrived in the United Kingdom on 26 October 2007 and claimed asylum. That was refused in a very long refusal letter dated 28 March 2008. The applicant gave evidence before the tribunal at the hearing and was represented by Ms Patel of counsel, who also appears by video-link to present his application, and I have heard her helpful submissions.
3. The Home Office was not represented at the hearing before the tribunal, and indeed they requested an adjournment, but, because of the delay which had already occurred, the immigration judge was not prepared to grant it. The applicant gave evidence before the tribunal and confirmed as accurate and true the contents of earlier statements he had made. In paragraph 14 of the judgment the tribunal summarise the applicant's claim that he had joined the PKK. He had been involved in fighting on their behalf; he had worked his way up the ranks. For a time he joined the PJAK and fought with them, but returned to the PKK.
4. In 2007 he heard about a raid on his family home by the authorities and he then left Iran with the help of another man. The claim for asylum is based on fear from both the PKK and of the Iranian authorities on return. In its ruling the tribunal referred at paragraph 21 to what was described as "an extraordinary about-turn in his account of why he fled Iran".
5. The tribunal referred to the fact that at interview (there had been a detailed interview before the Home Office decision) he said that he was a soldier with the PJAK and his membership was described in detail, as was his action with the PJAK. At paragraph 24 the tribunal stated that the applicant had "utterly changed his account of political allegiance and told the Tribunal that in fact he had been a member of the PKK for virtually all the time referred to in his witness statement".
6. In a long paragraph, paragraph 26, the tribunal considered the evidence and found that the claim that the applicant was a soldier with the PKK and/or the PJAK was incredible. Reasons were fully set out, and I do not propose to refer to those in detail. The appellant's explanation of why he lied to the Home Office on interview was, the tribunal found, "incredible". The tribunal found that he was:

“...none the less willing to exercise considerable and elaborate dishonesty in making his false asylum claim. That it bound, I find, to seriously undermined his overall credibility”

7. Reference was made to the interview and to the questions and answers given. Reference was made to photographs which were claimed to show that the applicant was a PKK fighter. The tribunal accepted that the applicant could be identified on some of the photographs, but there was nothing on them to show that the men on them belonged to the PKK or any other organised group. The tribunal was unable to attach weight to them.
8. The tribunal concluded that the change of account was:

“...an audacious attempt to overcome the multitude of deficiencies in his first account and the many issues raised in the refusal letter.”

The tribunal rejected “all aspects of his claim”.

9. Ms Patel’s submission is based upon the Surendran guidelines. Those were guidelines issued by the tribunal with the case of MNM v SSHD [2000] INLR 576, dated 31 October 2000, the judgment of Collins J. The submission is that the tribunal should not have made those adverse findings on credibility without itself having questioned the applicant on the matters about which findings were made. Particular importance is attached to paragraph 6. Paragraph 6 begins with the sentence: “It is our view that it is not the function of a special adjudicator [or the judge] to adopt an inquisitorial role in cases of this nature”; that is, when the Home Office presenting officer has not appeared. There is, however, a qualification to that later in the paragraph. Having stated:

“...nor is it his function to raise matters which are not raised in it [that is, representations], unless these are matters which are apparent to him from a reading of the papers, in which case these matters should be drawn to the attention of the appellant’s representative who should be invited to make submissions or call evidence in relation thereto.”

10. Ms Patel’s difficulty is that the applicant was well aware of the issue as to his credibility. It was obvious from the reasons the tribunal gave; but it had been highlighted by Collins J when ordering the reconsideration. He criticised the earlier decision on the basis that the judge “does not grapple with the discrepancies disclosed in the refusal letter”. Collins J went on to say:

“The immigration judge does not explain why one who asserted that he was an active member of PKK and PJAK to the extent of involvement in battles and assistant to the ‘Takoshar’ would despite this not be subject to paragraph 1 F(c).”

That particular paragraph is not now relevant to the submissions made, but there is no doubt that the applicant and those advising him were alerted to the serious credibility issue which had arisen.

11. I am quite unable to criticise the tribunal for not adopting in this case the inquisitorial role which, to a considerable extent, Ms Patel submits it should have adopted. I refer also (without reading it in full) to paragraph 4 of the guidelines which, in my judgment, appropriately sets out the judge's position in the circumstances such as these.
12. Ms Patel relies in particular on the finding about the photographs. It was a finding the tribunal was entitled to make. It was open to the applicant and those advising him to call further evidence demonstrating the authenticity of the photographs and their materiality. It is the latter which is in issue -- that the photographs were genuine photographs of the applicant, but they do not obviously show the involvement with the organisation or in battles, which the applicant needed to establish.
13. A further point is made on the answer at the interview. The answers given in relation to the questions about the nature of the organisation to which the applicant claimed to belong, and to the weapons -- particularly the Kalashnikov -- which the applicant was using. I have to say that it appears to me that some of these questions were of a detail where ignorance, for example, the calibre of the Kalashnikov might not be known to a user of it; but these were essentially questions for the tribunal, as was the other question raised, namely that the interviewer passed on from the organisation to other matters saying there was no need to pursue it further. These were essentially points to be made before the tribunal. The tribunal is the fact-finder and it is not generally possible for an applicant to come to this court and attempt to take points which could have been, but Ms Patel accepts were not, taken before the judge.
14. To say that the finding is unsatisfactory because of lack of inquisitorial function by the judge is, in my judgment, not an arguable one. A point is made about the lack of inquiries of the parents. I do not find that of any weight. This is a renewed application, refused on consideration of the papers by Sir Richard Buxton. He stated:

“The applicant was comprehensively disbelieved, in terms fully open to the judge. Although he mentions section 8, the factual findings needed no support from statutory assumptions. The obligation to consider whether the applicant may have an alternative case even though the case that he actually put was entirely false only arises when there is some, probably substantial, material suggesting that alternative case. Here there is nothing.”
15. I agree with that. As I have indicated, I am not able to accept Ms Patel's submission that the tribunal was not entitled to make the finding it did without itself entering into the arena and cross-examining the applicant, in the absence of a presenting officer. I am satisfied that the applicant had a fair hearing

before the tribunal, and it is not arguable that this court would reverse the decision or give any relief to the applicant.

16. For those reasons this application must be refused.

**Order:** Application refused