Case No: C5/2006/2049

Neutral Citation Number: [2007] EWCA Civ 1299
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM AND IMMIGRATION TRIBUNAL
[AIT No. AS/21498/2004]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Thursday, 15th November 2007

Before:

LORD JUSTICE TUCKEY,
LORD JUSTICE MAURICE KAY
and
LORD JUSTICE HOOPER

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Between:

YH (IRAN)	**Appellant**
- and -	
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

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Mr J Walsh (pro bono) appeared on behalf of the **Appellant**.

Ms Kate Olley (instructed by Treasury Solicitor) appeared on behalf of the **Respondent**.

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Judgment

Lord Justice Tuckey:

1. This is an appeal by YH from the AIT which, on a re-consideration, dismissed his appeal from the Secretary of State's refusal to grant him asylum.

2. The appellant, a 26-year-old Iranian Kurd, arrived in the United Kingdom in September 2004. He claimed asylum on the ground that, as a member of an outlawed Kurdish nationalist party, the KDPI, he had been persecuted by the Iranian authorities and would be detained, tortured and severely punished if returned. The appellant unsuccessfully appealed the Secretary of State's refusal of his claim to an adjudicator in February 2005. The adjudicator had concluded:

> "I found the Appellant's evidence as a whole to be generally vague and evasive especially when questioned on points of detail. At the hearing, he appeared to be adding new elements to his story as he went along, in order to find answers to questions put to him. I find that I cannot rely on any of his evidence."

3. But, at a first stage reconsideration hearing of that decision, in January 2006, the tribunal decided that there had been errors of law in the adjudicator's reasoning on credibility and ordered a full rehearing of the appeal so that a proper assessment of risk on return could be made.

4. So it was that the appeal came before Immigration Judge Thornton in June 2006. After hearing evidence from the appellant and considering what he had said in his SEF and accompanying statement and in interview, the judge concluded that the appellant's account of his involvement with the KDPI was a complete fabrication. A senior immigration judge refused permission to appeal from this decision on the ground that no arguable error of law had been identified.

5. However, the appellant, then acting in person, applied for permission to this court which Carnwath LJ granted at an oral hearing on 23 November 2006. He did so because he thought it was arguable that the judge had dismissed parts of the appellant's case as wholly implausible without adequate reasoning and without sufficient understanding of conditions in Iran. He was concerned about the importance which the judge attached to the appellant's evidence about hiding KDPI leaflets and other material in a television.

6. So that is what this appeal is about. Do the reasons given by the immigration judge justify her conclusion that the appellant was wholly lacking in credibility? If not, that is an error of law which requires us to send this case back for a further reconsideration, so giving the appellant a third chance to persuade an immigration judge that his account of his involvement with the KDPI is credible.

7. What is that account? Put shortly it is that at the request of his friend Karim (a senior member of the party) the appellant recruited his cousin and another friend to form a

clandestine cell which, for about three years, distributed party leaflets and other material and put up posters in the very small town in which they lived, at night. They also attended demonstrations with a view to making them anti-regime and pro-KDPI. The appellant and others were arrested at a demonstration in September 2003 and detained for ten days when he was interrogated and asked about his political activities and tortured. In August 2004 he had collected KDPI material from Karim for distribution on the party's anniversary, but was unable to do this because his father was dying in hospital and he had to be present. His two colleagues were to distribute this material but were arrested the night his father died. So was he, and he was interrogated about his association with the other two; but the following day he was released to enable him to attend his father's funeral. He fled when he learned that the security forces had searched his house and found KDPI material hidden in his room.

8. In her determination, the immigration judge set out this account fully and fairly. She noted that the objective evidence showed that the Iranian regime dealt harshly with KDPI leaders and their militant supporters. For this reason the Home Office had conceded before the adjudicator that, if true, the appellant's claim was well-founded.

9. In paragraphs 15--32 of the determination, the judge explains why she found that this account was untrue. She gave examples, which she said were not intended to be exhaustive, which led her to find that the appellant's evidence was inconsistent and implausible. Having noted that the appellant's cell had been very careful not to be seen associating with one another or Karim, the judge referred to evidence the appellant had given about how he regularly collected KDPI materials from Karim hidden in a television set and then after about a day took them out and hid them in a compartment under his wardrobe which is where he said they had been found by the security forces. The judge records that in the course of his evidence to her the appellant had given inconsistent accounts about what he had done. Moreover, it was implausible. Why take the materials out of the TV if they were safely concealed inside it and it was difficult to get them out of it? She found that he had only said this because he had fabricated the story about the television and then realised that it was inconsistent with his previous account that the authorities had found the KDPI material under his wardrobe. Why make repeated trips with the television to and from Karim's house over a period of three years when they were so concisions of the need for secrecy? In his interview, the appellant had said that he had given all the KDPI materials which he had to his colleagues when he realised he would have to be with his dying father. The judge was also sceptical about the appellant's account of how his sister had been able to alert him to what the authorities had done which enabled him to flee and his evidence that he only became a party member in June 2004, whereas he said, his cell had been founded in 2001. As to the demonstration which had led to his detention in September 2003, the appellant said in evidence that it was held in protest at the fact that his cousin had been shot and killed by security forces, whereas in interview he had said that his cousin had been killed in the course of that demonstration.

10. Having set out these reasons for disbelieving the appellant's evidence, the immigration judge concluded by saying:

> "I find the Appellant's entire story to be a complete fabrication. For the many reasons I have given above, he has failed to adduce any credible evidence that he carried out any activities on behalf of, or had any involvement whatsoever with, the KDPI. Nor do I find his account of his involvement in a demonstration [in 2003] to be credible. He has adduced no credible evidence that the Iranian authorities ever had any adverse interest in him, either on suspicion of involvement with the KDPI or for any other reason."

11. As we have said, the appellant appeared before Carnwath LJ in person. He has since been represented by Mr Walsh of counsel on behalf of the Bar Pro Bono Unit and we are grateful to him for his skeleton argument and the submissions which he has made to us this morning. In his skeleton argument he reminded us of the difficulties of making findings about credibility in cases such as these, particularly where evidence is given through an interpreter, as was the case here. He reminds us of the need for reasons to be spelt out for findings of inconsistency and implausibility. He has taken us through the reasons given by the judge, which I have summarised, and submits that they simply do not justify the sweeping conclusion which she reached.

12. I do not accept this submission. It is seldom that this court will accede to such a submission where the decision in question is entirely dependant upon the specialist judge's view about the credibility of an applicant in the position of this appellant. This was the second time the appellant's account had been disbelieved. It is apparent from this decision and the earlier one that the way in which the appellant added to and a changed his account giving his evidence played a significant part in the overall assessment of his credibility. Its significance is difficult to demonstrate on appeal, particularly without a transcript. The evidence which the appellant gave about hiding material in his television was obviously an example of this which is no doubt why it features so largely in the judge's reasons. There were other elements of implausibility about this which the judge pointed out; notably the way in which Karim and the appellant regularly and apparently openly carried this television set in the appellant's taxi backwards and forwards from his to Karim's and others' houses in this very small town where it was said that everyone knew everything, when the appellant's evidence was that the activities of his cell were carried out in the utmost secrecy. There was also implausibility about the fact that he claimed to have been intimately involved with the affairs of the KDPI from 2001, and yet had only become a member of that party in 2004, shortly before he fled the country. Mr Walsh reminds us that one should be cautious about finding implausibility when one is considering the activities of others in a country where things may be very different from how they are in this country. I take this in to account, but am not persuaded that this or any of the other points which Mr Walsh made to us this morning, cast doubt on the correctness of the decision made by the immigration judge. Of considerable importance was the inconsistency in the appellant's evidence about when and how his cousin had been killed in 2003. The judge was entitled to attach considerable weight to this.

13. For these reasons I would dismiss this appeal.

Lord Justice Maurice Kay:

14. I agree.

Lord Justice Hooper:

15. I also agree.

Order: Appeal dismissed