



IAC-AH-DN-V1

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

Appeal Number: AA/09645/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 2 November 2015**

**Decision & Reasons Promulgated
On 25 November 2015**

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

**MR WARZIR HUSSEINI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Palmer, Counsel

For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION ON ERROR OF LAW

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Hodgkinson who in a determination dated 11 February 2015 dismissed the appellant's appeal against the decision of the respondent made on 23 October 2014 to refuse to grant him asylum in the UK and to remove him from the United Kingdom.

2. The appellant is a Kurdish citizen of Iran born on 10 January 1995. He arrived in the UK, illegally, on 6 January 2011, a few days before his 16th birthday and applied for asylum on 10 January 2011. On 11 March 2011 his asylum application was refused but he was granted discretionary leave to remain until 10 July 2012 because he was an unaccompanied minor.
3. On 9 July 2012 he made an application for leave to remain, the refusal of which is the subject of this appeal.
4. The judge rejected the appellant's account of political activity by his father who, he claimed, was an active member of the Kurdish Democratic Party (KDP). The judge also rejected the appellant's account that in December 2010 the Iranian authorities had raided their home, arrested his father and his friends who were meeting there and had executed them. The judge also rejected the appellant's claim that he had assisted his father by distributing KDP leaflets. The judge's adverse credibility findings were comprehensive. These findings have not been challenged and are to stand.
5. The grounds upon which permission was granted argued that the judge failed to consider the particularised evidence of material before the Tribunal regarding the screening and a risk of arrest at the airport of returnees meeting the appellant's description. The challenge was in relation to the judge's finding at paragraph 45 but I shall quote paragraph 44 as well as follows:
 - "44. Further in paragraph 3 of his skeleton argument, Mr Palmer cites additional country material, which makes reference to the screening of returned, failed asylum seekers and, indeed, a country guidance decision in **SB** makes reference to the increased adverse interest in Kurds deemed to be opposed to the regime in Iran. I was referred to the respondent's own Operational Guidance Note of October 2012, which makes reference to Iranians arriving in Iran without a passport, and/or any valid travel document, being arrested and taken to the airport court. However, I bear in mind that, in the present instance, the appellant would not be returned without a valid travel document, as he would not be removed without an emergency travel document having been issued to him by the Iranian authorities.
 45. In his skeleton argument, Mr Palmer also relies upon a report of the Immigration and Review Board of Canada of 20 January 2014, but that report relates to the treatment of anti-government activists, and I have concluded that the appellant is not an activist, and never has been. Whilst I acknowledge that his connection to the United Kingdom is an aggravating feature, as is his Kurdish ethnicity and his illegal exit, there is no country material brought to my attention which causes me to conclude these factors such that it is reasonably likely that the appellant himself will suffer persecution or adverse interest in the event of his removal to Iran where, I conclude, he can return to live in his home village, bearing in mind my findings of fact."
6. Mr. Palmer relied on his grounds which argued that country background material was expressly set out or referenced in his skeleton which was before the judge. Mr Palmer relied on the COIS Report on failed asylum seekers at 32.27 which relies on

an extract from an Amnesty International Report about how failed asylum seekers who are returned to Iran are perceived and treated. They could be prosecuted for making up accounts of alleged persecution. On 26 April 2011, Kayhan Newspaper, which is controlled by the office of the supreme leader, also reported that Iranians are seeking asylum on the pretext of supporting the opposition. I note that the judge did not specifically refer to the COIS Report and there was no indication that he had taken this evidence into account.

7. Mr Palmer also relied on the Home Office Operational Guidance Note v.8.0 (October 2012) which states inter alia at 3.15.5 that *"If an Iranian arrives in the country, without a passport or any valid travel documents, the official will arrest them and take them to [Mehrabad Airport] court."* I note that the judge at paragraph 44 made reference to this report.
8. Relying on those reports Mr Palmer said in his grounds that there is therefore no need for an appellant to have a particular profile to attract arrest, detention and investigation and/or prosecution. It was clear from the objective reports that returnees in the appellant's circumstances would be arrested, detained and investigated. He submitted that the appellant's connection to the UK is likely to be an aggravating feature and relied on paragraphs 24 and 51 of **SB (risk on return - illegal exit) Iran CG [2009] UKAIT 00053** (and "**SB**"). His illegal exit would heighten the risk.
9. Mr Palmer relied on a judicial review decision by Upper Tribunal Judge Allen in the case of **Ali Ahmed Rashid v Secretary of State for the Home Department IJR [2015] UKUT 00430 (IAC)**. He submitted that reference was made in **Rashid** to Professor Joffé's report which addressed risk to Kurds, not only on the basis of political activism but simply by dint of being Kurds. UTJ Allen held that the fact is that Professor Joffé's report is a generic report and does contain and refer to evidence which would have to be considered seriously by the putative First-tier Judge. UTJ Allen held that although there is endorsement of the conclusions in **SB** in the later decisions of **BA** and **SA**, he did not think it was properly open to the respondent to conclude that Professor Joffé's report was not sufficient to warrant departing from the country guidance findings.
10. Mr Palmer submitted that Professor Joffé's report was before the First-tier Judge. At paragraphs 92 to 96 Professor Joffé's considered return to Iran by failed asylum seekers. He did refer to unsuccessful asylum seekers who are usually returned on travel documents furnished by the Iranian Embassy in the country in which they sought asylum. This was the finding made by the judge at paragraph 44. Dr Joffé said that a person who has left Iran illegally will be screened and arrested upon return. He or she will then be passed to a special court at the airport which will adjudicate on the issue of illegal departure in accordance with Article 34 of the Iranian Penal Code. At 95 he referred to Kurds who have fled Iran and are frequently suspected of having had political reasons for doing so and are treated accordingly. At 96 he said that the Iranian authorities assume that all asylum seekers who are returned to Iran have engaged in anti-regime activities whilst abroad,

especially in spreading false information about the Islamic Republic. Mr. Palmer submitted that the judge failed to consider the evidence contained in the report.

11. I accept Mr Wilding's submission that the appellant's account of past events has been rejected by the judge. I also accept his submission that the judge found at paragraph 44 that the appellant would not be returned to Iran without a valid travel document having been issued to him by the Iranian authorities. I find however that the judge erred in what he said at paragraph 45. I find that the objective evidence relied on by Mr. Palmer was in the appellant's bundle and had been drawn to the judge's attention. The objective evidence was material in relation to how a failed asylum seeker is perceived and treated by the authorities on return Iran and the assumptions of political activity attributed to them by the authorities. The objective evidence was material to the assessment of risk on return. The judge's failure to consider the objective evidence was a material flaw in his decision.
12. The judge's decision on risk on return cannot stand. The decision is set aside in order for it to be remade.
13. The judge's rejection of the appellant's credibility of his past accounts will stand.
14. The issue the First-tier Tribunal Judge will need to consider is whether in the light of the objective evidence, the Appellant is likely to be at risk of persecution on his return to Iran as a failed asylum seeker.

Directions

The appeal is remitted to Hatton Cross to be heard by a First-tier Judge other than FtTJ Hodgkinson

Signed

Date

Upper Tribunal Judge Eshun