



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

Appeal Number: PA/05012/2016

**THE IMMIGRATION ACTS**

**Heard at Liverpool  
On 21 April 2017**

**Decision & Reasons Promulgated  
On 12 May 2017**

**Before**

**DR H H STOREY  
JUDGE OF THE UPPER TRIBUNAL**

**Between**

**MR BEHROUZ AHMI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mrs John-Rose (Solicitor) Immigration Advice Service  
For the Respondent: Mr A McVeety, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, a national of Iran of Kurdish origin, challenges a decision of First-tier Tribunal (FtT) Judge Clarke sent on 30 November 2016 dismissing his appeal against a decision made by the respondent on 5 May 2016 refusing to grant him asylum.
2. I should mention at the outset that a few days before the Upper Tribunal hearing before me the appellant's representatives faxed two bundles of documents, the first some 101 pages being mainly background matters that were before the FtT judge, The second being further materials. I

made clear at the outset that the latter being post-decision, they were not relevant to the error of law issue.

3. The grounds of appeal stated that the judge's finding at paragraph 66 that "the appellant was not credible regarding his claims of illegally exiting Iran" were not determinative of the alternative limb of his claim which was that he faced risk on return as an undocumented asylum seeker of Kurdish ethnicity. The grounds stated that there was no country guidance to justify treating a failure to show illegal exit as determinative of the issue of risk on return as an undocumented Kurd. They go further and indicate that there was further up-to-date evidence that had been produced to the judge which the judge failed to consider.
4. I am grateful to both representatives for their concise submissions.
5. I have no hesitation in rejecting the grounds of appeal. It is true that the judge failed to specifically address the issue of risk on return as an undocumented Kurd, but that cannot be said to amount to an error of law or a material error.
6. In this regard I would first of all observe that the grounds rely on what was an alternative submission made to the FtT judge. The primary submission had been that the appellant was at risk by virtue of having illegally exited in order to escape the Iranian authorities who had become aware he was actively assisting the Party Free Life of Kurdistan (PJAK). However this primary submission had been comprehensively rejected by the judge who found his account not credible in material respects. The judge specifically found that the appellant had completed his military service and had not left Iran illegally.
7. Having found that the appellant had failed to show that he was targeted by the Iranian authorities, the judge should have given separate consideration to whether the appellant would be at risk on return by virtue of his Kurdish origin which was not in dispute. However, I do not consider this error was material. First of all there was no Tribunal country guidance decision identifying such persons as a risk category. Mrs John-Rose sought to argue that this was an issue which was still live and reference was made to the country guidance case of **SSH & HR (illegal exit: failed asylum seeker) CG [2016] UKUT 308 (IAC)** and a passage in that decision at paragraph 34 in which the UT panel had noted: "It was not suggested to us that an individual faces risk on return on the sole basis of being Kurdish". This case was before the judge in the appellant's bundle. The problem with that submission is that the panel in **SSH & HR** went on to address the issue in any event, first reviewing the country evidence as set out in the Home Office Operational Guidance Note (OGN) and concluding that:
  - (i) whilst there was evidence of the government disproportionately targeting minority groups including Kurds for arbitrary arrests, prolonged detention and physical abuse; and that

(ii) there were

“no examples provided of ill-treatment of returnees with no relevant adverse interest factors other than their Kurdish ethnicity and we conclude that the evidence does not show risk of ill-treatment to such returnees ...”.

Hence there was not only no support in the country guidance for the appellant’s alternative submission but a firm finding contrary to it.

8. Mrs John-Rose submitted that separately from the issue of country guidance, it was incumbent on the judge to have considered the further evidence that was submitted including the Home Office Country Information and Guidance on Iran and Background Information on Kurds and Kurdish political groups both dated July 2016. Asked to identify any passage in these supporting the appellant’s alternative submission, she drew attention to passages that noted that in the past nine months the authorities had executed more than 750 people, the majority of whom were Kurdish (5.2.10 of the first-mentioned document). Yet neither of these documents contain any suggestion that the increased level of executions demonstrated that persons of Kurdish origin were now generally at risk of ill-treatment and indeed paragraph 2.3 of the letter expressly states that “... in general the level of discrimination faced by Kurds in Iran is not such that it will reach the level of being persecutory or otherwise inhuman or degrading ill-treatment.”
9. The appellant’s submission also sought to rely on the fact that the appellant would on return be “undocumented”. She referred in this context to what the panel had said in **SHS** at paragraph 33 about persons who do not possess a passport being “returned on a laissez passer which he can obtain from the Iranian Embassy in proof identity ....”. It is far from clear to me that the appellant in this case would be in the position of having no passport, since it was the judge’s findings that he had left lawfully and accordingly it would be open to him to apply for or obtain another passport. But even if the appellant were returned on a laissez passer, he would be someone who, on the judge’s finding, had left lawfully. There is no background evidence that even remotely suggests that persons in this category would be at risk, even adding into the equation that such a person is of Kurdish origin.
10. For the above reasons I conclude that the judge did not materially err in law and accordingly the judge’s decision must stand.

No anonymity direction is made.

Signed

Date: 8 May 2017



Dr H H Storey

Judge of the Upper Tribunal