



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/08160/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at North Shields**

**On 18 April 2018**

**Decision & Reasons  
Promulgated  
On 25 April 2018**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**D H A**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Brakaj, Iris Law Firm

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Gribble, promulgated on 5 October 2017, dismissing his appeal against the decision of the respondent made on 16 August 2017 to refuse his asylum and human rights claim.
2. It is the appellant's case that he is an Iranian Kurd who has been politically involved with PJAK (Kurdistan Free Life Party), having been forced to transport leaflets for them. Some two or three days later his uncle, who had a connection with the Etellaat (the Iranian Secret Police) told him there was a warrant and for his arrest and took him into hiding whilst he

arranged for an agent to take him out of the country. He was then smuggled over land to the United Kingdom but he entered clandestinely, having been fingerprinted in Germany.

3. The respondent accepted that the appellant is Iranian and of Kurdish ethnicity but considered that his claim to be working for PJAK was inconsistent with his account that he was a smuggler of goods, it not being credible that a terrorist organisation would force an unwilling person to assist them given that he could report them to the authorities nor was it credible that they would have given them two opportunities to refuse before threatening him.
4. The judge found that:-
  - (i) the appellant's account had been inconsistent in three main areas:
    - a. as to whether he had been approached two or three times before threatened;
    - b. whether it is one or two or one to three days after his delivery of the PJAK leaflets that his uncle told him about the warrant; and,
    - c. he had said in his witness statement he was new to the area yet in his oral evidence said that he had lived there all his life concluding that from these points his account was unreliable [32] to [34];
  - (ii) there were other issues in the account which made it implausible [35] to [37] finding the account of the circumstances of him leaving to be implausible;
  - (iii) the appellant was not involved with leaflet distribution or delivery for the PJAK, had no political affiliation profile and he could make no finding on his actual occupation due to the inconsistencies identified;
  - (iv) even if the appellant were involved in the smuggling of goods illegally he would not fall within the Refugee Convention and any penalty he may face would be prosecution, not persecution;
  - (v) the appellant would not face persecution on account of having left Iran illegally.
5. The appellant sought permission to appeal on the grounds that the judge had erred in failing to consider the implications of return in all the circumstances including the fact that he is a Kurdish national, had left illegally and, were he to be accepted as a smuggler, how he might be reviewed on return and whether any political element might be perceived. It is further argued that he might be perceived as somebody who had outed against the regime due to the cumulative factors facing him on return.
6. On 23 November 2017 First-tier Tribunal Judge Brunnen granted permission to appeal.
7. I do not consider that there is any proper challenge to the findings of the judge with respect to credibility, nor did Ms Brakaj submit that there were.

Having considered them carefully, I conclude that they are sustainable, properly reasoned and made in the light of the background material. It was manifestly open to the judge given the implausibilities and inconsistencies he identified to conclude that the appellant was not telling the truth and was not credible.

8. It was open to the judge to say that he could not make a finding on the appellant's actual occupation. He was not obliged to do so and, in any event it was for the appellant to prove that he is a smuggler and it is clear by the judge's use of the phrase "even if" at [40] and the use of the phrase "if he was simply a smuggler of goods" at [41]. I do not consider, despite the submissions to the contrary that he could be considered that the appellant had been found to be a smuggler and thus it did not fall to be taken into account in assessing the risk on return. While Ms Brakaj sought to argue that the judge should have made a finding on occupation, that is not what was pleaded in the grounds, nor was there any proper indication that a finding on that issue had been sought.
9. The judge directed himself in line with SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 308 which also considered Kurds. In particular, the Tribunal noted at paragraph 34:

"34. It was not suggested to us that an individual faces risk on return on the sole basis of being Kurdish. It was however agreed that being Kurdish was relevant to how a returnee would be treated by the authorities. For example, the Operational Guidance Note refers at 3.12.14 to the government disproportionately targeting minority groups, including Kurds, for arbitrary arrest, prolonged detention and physical abuse. No examples however have been 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, though we accept that it might be an exacerbating factor for a returnee otherwise of interest. Accordingly we conclude that it has not been shown that a person in the position of these appellants faces a real risk on return to Iran either on the basis of what would happen to them when questioned at the airport or subsequently if they were convicted of an offence of illegal exit. With regard to HR specifically, it does not appear to be disputed that he is Kurdish and that he is undocumented: hence we see no reason for remittal. Prosecution for illegal exit is an outcome not generally experienced by such returnees, and where it does occur, the most likely sentence in relation to the illegal exit charge would be a fine. It has not been shown that there would be a real risk of prosecution under Article 500 for propaganda against the state on the basis of having made an asylum claim which was found to be false. Accordingly these appeals are dismissed."

10. The head note in **SSH and HR** is clear as is the ambit of the guidance it gives and it is clear from the decision at [13(e)] and [17] that the judge was fully aware of the contents of the case. It was not incumbent on him to repeat that when assessing the risk on return and his reasoning based on **SSH and HR** that the appellant is not a refugee and is not at risk on return as a failed asylum seeker is adequate and sustainable. The grounds fail to identify what additional factors could be taken into account

and whilst it is averred that there might be a political element, there is no basis for this put forward in the essence the submission is that the judge should have departed from county guidance in the absence of cogent evidence. There is no merit in it and I find that the decision of the judge did not involve the making of an error of law.

11. For these reasons I uphold the decision of the First-tier Tribunal.

#### NOTICE OF DECISION

1. The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it,
2. I maintain the anonymity order made by the First-tier Tribunal.

Signed

Date 24 April 2018

A handwritten signature in black ink, appearing to read 'Jonathan Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul