



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

Appeal Number: PA/08899/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 9 November 2018**

**Decision & Reasons
Promulgated
On 26 November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

**A P
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Dakora, Solicitor

For the Respondent: Mr Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iran. He was born on 1 August 1999.
2. He appealed against the respondent's decision dated 29 June 2018 to refuse his claim for asylum, humanitarian protection and on human rights grounds.
3. Judge Griffith (the judge) dismissed the appellant's appeal. She found the appellant was not a credible witness, he would not be at risk on return and that the respondent's decision was proportionate.

4. There are three grounds, failure to take into account relevant case law, failure to deal appropriately with expert evidence, and misunderstanding of essential aspects of the evidence:

Failure to take into account relevant case law

The grounds claim the judge failed to take into account **AB and Others (internet activity - state of evidence) Iran [2015] UKUT 00257**. The grounds claim that it is irrelevant if a person had used the internet opportunistically as the Iranian authorities are not concerned with a person's motivation.

Failure to deal appropriately with expert evidence

Professor Joffe's report which postdated the current country guidance said that a failed asylum seeker of Kurdish ethnicity who exited Iran illegally was at risk. The judge failed to give any reasons for departing from such an opinion. It was argued before the judge that the CG case **SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC)** did not specifically address the risk faced by failed asylum seekers who exited Iran illegally and who were also of Kurdish ethnicity

Misunderstanding the essential aspects of the evidence

The judge found the appellant was of no adverse interest to the Iranian authorities because he showed lack of knowledge of the wider aspects of the Kurdish separatist cause. The grounds claim the judge did not specify what those wider aspects were and accordingly failed to take account of the background evidence concerning the anti-government activities of ordinary Kurds in Iran. See page 96 of the appellant's bundle. Kurds are frustrated and inclined to join whatever protest that arises.

5. Judge Ford granted permission to appeal on 18 September 2018. She said inter alia:

"3. While the Tribunal does refer to the report of Dr Joffe (which can be found at page 174 of the (AB), at paragraph 34 of the decision and the appellant's Facebook activities at paragraph 44 to 46, it is not engaged with the substance of the report. The appellant claimed that he was an activist for the Kurdish cause and for clear and cogent reasons the Tribunal did not find him credible in this claim. The only aspects of the appellant's account that were accepted were that he is an ethnic Kurd who left illegally.

4. It is arguable that the Tribunal did not carry out an adequate assessment of the risk to the appellant on his return by reason of his ethnicity, his Facebook activity and his illegal exit on the basis of the country guidance and the expert report of Dr Joffe and why it rejected Dr Joffe's opinion that a Kurdish failed asylum seeker will face a real risk of

persecution without more and the discrimination against Kurds is so severe that it amounts to persecution.”

Submissions on Error of Law

6. Mr Dakora relied upon the grounds. The current country guidance was arguably inadequate. Dr Joffe addressed these issues at length but the judge refused to engage with the same.

Conclusion on Error of Law

7. The judge found that the appellant submitted an opportunistic claim at a time of turmoil in the Middle East. See [43] of the decision. She also found at [46], that he would not be at risk because of his sur place activities here.
8. The judge was obliged to engage with the report of Dr Joffe, in particular his comments on **SSH & HR**, which she failed to do. It might well be that given her adverse findings, Dr Joffe’s views would have made no overall difference to the judge’s decision, however, it was an error not to engage with the same. The issue must be whether it was a material error for the judge not to engage with Dr Joffe’s report. Mr Clarke refers me to Dr Joffe’s report at [17]-[23]; see appellant’s bundle P231-232. Those paragraphs refer to prior analysis all of which had been considered in **SSH & HR** and the expert report of Dr Kakhki. Mr Dakora’s position was that given the judge’s failure to engage with the report of Dr Joffe, she inevitably, materially erred. Although Dr Joffe’s report was dated August 2016, he was drawing upon information from 2011 and 2014. Mr Dakora could not refer me to any content of Dr Joffe’s report that had not been previously considered in **SSH & HR**. In such circumstances, the judge did not materially err in not engaging with the report of Dr Joffe and was entitled to place reliance upon **SSH & HR**. See [47] of the decision.
9. The judge did not err in her analysis of **BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT**. The fact that the appellant had posted on-line opportunistically was irrelevant to the judge’s analysis. See [45]-[46] of the decision. The grounds fail to explain why it was that the judge was obliged to engage with **AB and Others** in the particular circumstances of the appellant’s claim. What the judge said was that the material claimed to put the appellant at risk, appeared to be sharing other people’s posts with very little original material beyond a few slogans or statements that he had attended demonstrations. She found the appellant’s claim wholly incredible. She found he had no political profile, he was not a journalist, a blogger or an activist. He would not be at risk on return. Those were findings the judge was entitled to come to on the evidence before her.

Decision

10. The decision of the First-tier Tribunal contains no error of law and shall stand.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 9 November 2018

Deputy Upper Tribunal Judge Peart