



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11985/2017

THE IMMIGRATION ACTS

Heard at Bradford
on 18 July 2018

Decision promulgated
On 31 July 2018

Before

UPPER TRIBUNAL JUDGE HANSON

Between

NK
(anonymity direction made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs A Chaudhry instructed by Halliday Reeves Law Firm
For the Respondent: Mrs Pettersen Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Bircher, promulgated on the 4 January 2018 following a hearing at North Shields on 18 December 2017, in which the Judge dismissed the appellant's appeal on protection and human rights grounds.

Background

2. The appellant, citizen of Iran born on 21 March 1988, arrived in the United Kingdom on 17 March 2016 having travelled through Turkey, Greece, Germany and France.

3. The Judge noted the basis of the appellants claim before setting out findings of fact from [22] of the decision under challenge. The core finding, for the reasons set out in the decision, is that the appellant has failed to discharge the burden of proof upon him to the required standard to show that his claim is credible or that he will face any risk for the reasons claimed on return to Iran.
4. The applicant sought permission to appeal which was granted by another judge of the First-tier Tribunal for the following reasons:
 - “3. The record of proceedings shows that counsel for the appellant made submissions about the risk on return to Iran as a failed asylum seeker and that the position of Kurds had not specifically been considered in the relevant country guidance caselaw. Judge Bircher did not refer to this particular submission and did not deal with it at all in dismissing the appellants appeal.
 4. I Am satisfied that this failure is arguably a material error of law.”

Error of law

5. Mrs Chaudhry relied upon the grounds on which permission to appeal was sought. These claim the appellant will face a real risk of persecution and/or article 3 harm as a result of being identified as a Kurdish failed asylum seeker. The appellant maintains he will be identified on the basis of having to obtain documentation to return home and that upon return he will be asked questions about his time in the UK at which point it will become clear that he had made an asylum claim. He will be asked details of the claim and have to disclose that he had claimed that he had been engaged in smuggling and an incident with the authorities and that, even if the appellant told the authorities his claim was fabricated, due to his Kurdish ethnicity they will be inclined to believe that he was lying and detain him as a result of his “admitted” activities. The appellant asserts the country guidance case of SSH and HR (illegal exit: failed asylum seeker) Iraq CG [2016] UKUT 308 does not deal with the risk upon return as it is not specific to Kurds. The submissions referred to the case of BA (demonstrators in Britain - risk on return) Iraq CG [2011] UKUT 36 (IAC) and the reference to the risk related to the appellant at the ‘pinch point’ at the point of return.
6. The appellant asserts that the Judge failed to make specific findings on these points.
7. On behalf of the respondent Mrs Pettersen referred to [25] of the decision under challenge in which the Judge makes a specific finding that the appellant will be of no interest to the authorities in Iran and that no issue of risk on return arises. It was also noted the appellant left Iran on his passport and could return on the same or if renewed; but it had not been made out that he left illegally or that he falls into any of the risk categories identified in the case law.
8. Mrs Chaudhry, by way of reply, stated the appellant did not have his passport so will be returned on an Emergency Travel Document and so the questions that she posed must be addressed and considered in light of the current situation on return.
9. Even if the Judge was required to make a finding on this particular submission the failure to do so has not been shown to amount to arguable legal error material to the decision to dismiss the appeal.

10. In SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC) the appellants were Kurds and the Upper Tribunal said that it was not suggested to them that an individual faced risk on return on the sole basis of being Kurdish. Being Kurdish was relevant to how the returnee would be treated by the authorities but no examples had been provided of ill-treatment of returnees with no relevant adverse interest factors other than their Kurdish ethnicity and the Upper Tribunal concluded that the evidence did not show a risk of ill-treatment to such returnees, though they accepted that it might be an exacerbating factor for a returnee otherwise of interest.
11. In MA v SSHD [2017] CSOH 134 the First-tier Tribunal had concluded that the appellant had been a supporter of the Kurdish cause but had not been a member of KDPI, that he had involved himself in sur place activity in the UK to the extent of attendance at one meeting and contact with the KDPI but that was highly unlikely to cause him to be of interest to the authorities. The Court of Session concluded that it had been reasonably open to the First-tier Tribunal in the light of country guidance to find that even full disclosure by MA of his activities (when questioned at the airport by the authorities) would not create an interest in him as his activities were of such a low level.
12. It was not made out on the evidence before the Judge in the decision under challenge that the appellant faced any real risk on return. It was not made out the appellant had a profile that would make him of interest to the authorities in Iran as a Kurd or otherwise, sufficient to create a real risk at the point of return. The appellant will not be required to tell the authorities of activities which do not demonstrate a fundamental aspect of his belief as the Judge found the appellant not to be a credible witness and rejected his account of why he claims to be of interest to the authorities.
13. The case law establishes failed asylum seekers are not risk of return to Iran, per se, and the conclusion of the Judge that the appeal should be dismissed has not been shown to be a finding infected by arguable legal error sufficient to undermine that finding.

Decision

14. **There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

15. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 25 July 2018