



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

Appeal Number: PA/01403/2019

THE IMMIGRATION ACTS

Heard at Bradford

On 9 September 2019

**Decision & Reasons
Promulgated
On 22 November 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

EJ

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Holmes, instructed by Parker, Rhodes Hickmotts
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. By a decision promulgated on 6 August 2019, the President of the Upper Tribunal (Immigration and Asylum Chamber), Mr Justice Lane, found that the decision of the First-tier Tribunal was flawed by legal error and set it aside. On 9 September 2019, I conducted the resumed hearing in the appeal Bradford.
2. The reasons for refusing the appellant's application for asylum are set out in the respondent's letter dated 17 January 2019. Respondent accepted that the appellant is an Iranian citizen and is also of Kurdish ethnicity. However, the respondent not accept the appellant's claim that he was at risk from the authorities in Iran due to his pro-Kurdish activities. The respondent accepted that the appellant demonstrated knowledge of the aims and values of the Kurdish Democratic Party of Iran (KDPI). However, the respondent did not accept the appellant's claim to have been active with the KDPI in distributing leaflets nor did he accept the appellant's claim that in August 2015 the appellant's colleague, Bilar, had been attacked by unknown persons and abducted. The appellant claimed that his home had been raided following the abduction of his friend and the KDPI leaflets have been removed from his room. The appellant fled Iran and claims that this family in Iran had been harassed by the authorities subsequently.
3. The burden of proof is on the appellant. The appellant must prove that there are substantial grounds for believing that he will face a real risk of persecution or inhuman or degrading treatment contrary to Article 3 ECHR if he is returned to Iran.
4. I heard evidence from the appellant who spoke in Kurdish Sorani with the assistance of an interpreter. He was cross-examined by Mr Diwnycz, who appeared for the Secretary of State, only in respect of his *sur place* activities with the KDPI in the United Kingdom. The appellant claimed that he had attended demonstrations against the Iranian regime in London and Manchester, most recently in July and April 2019. He had produced photographs which appeared to show his attendance at a number of meetings. He was cross-examined by Mr Diwnycz regarding the whereabouts of the Iranian and Austrian Embassies in London. However, in his submissions, Mr Diwnycz acknowledged that no credibility issues arose from the answers given by the appellant.
5. I also heard evidence from Mr Kadir Ibrahim Tarbiat. He spoke in Kurdish Sorani and gave his evidence with the assistance of an interpreter. Mr Tarbiat was granted asylum in the United Kingdom after his arrival in 2007 and claims to be a senior member of the KDPI in this country, a claim which was not challenged at all in cross examination. He stated that he had met the appellant at a meeting in Manchester in January 2018 and that he had seen the appellant at a number of KDPI meetings subsequently, most recently in Manchester in August 2019. He stated that, to his knowledge, the appellant is a committed supporter of the KDPI who also operates a Facebook account which exhibits postings hostile to the Iranian government.

6. In his submissions, Mr Diwnycz stated only that the crux of this appeal rested upon the appellant's Facebook account. He submitted that there was no evidence that the account had been or would be accessed by the Iranian authorities and that the appellant might, in any event, delete the account to avoid detection.
7. Mr Holmes, who appeared for the appellant, submitted that criticisms of the appellant's account contained in the refusal letter were of little merit. Those criticisms consisted of a series of suggestions as to how various events detailed in the appellant's account might have happened differently. Mr Holmes submitted that such a analysis failed to produce any valid reason for doubting the appellant's account by reference to the relevant standard of proof; the fact that events may have evolved in more than one way did not in itself show that the appellant's own account was untrue. Secondly, Mr Holmes submitted that there had been no challenge in cross examination to the genuineness of the appellant's political beliefs and, in particular, his adherence to the cause of the KDPI. Notwithstanding what may appear on the appellant's Facebook account by the time he reaches Iran, the likely 'hair trigger' response of the Iranian authorities charged with interrogating a failed asylum seeker from the United Kingdom who is of Kurdish ethnicity was reasonably likely to lead to the appellant being asked questions about both his political beliefs and political activities whilst living abroad. Since the appellant's commitment to the Kurdish cause was genuine, he could not be expected to lie in order to avoid persecution (see *HJ (Iran)* [2010] UKSC 31).
8. I have considered the evidence both oral and written very carefully. I agree with Mr Holmes that there was no inconsistency whatever in the oral evidence given by the appellant; that evidence was entirely consistent with his previous written evidence and with the written and oral evidence of the witness. In particular, I note that no challenge was made either to the credibility of the appellant's account of past events or that of the witness; Mr Diwnycz confined his challenge to the appellant's appeal to the Facebook account which he submitted will either not come to the attention of the authorities or could be deleted before the appellant entered Iran. I find that I agree with Mr Holmes that the challenge to the appellant's credibility contained in the refusal letter is without merit for the reason which he has advanced whilst I find, moreover, that the appellant is a genuine supporter of the KDPI and has been such both in Iran and in his *sur place* activities here in the United Kingdom. I find it reasonably likely that the account which he has given of the abduction of his friend and the aftermath of that abduction is accurate. Having regard to the background material and country guidance, I find it reasonably likely that the appellant will be questioned on arrival in Iran about his political beliefs and activities in the United Kingdom. Because I consider that he is a genuine supporter of Kurdish separatism, I find that he will reveal the truth about his opinions to his interrogators and, as a consequence, you will be exposed to the real risk of harm. Accordingly, his asylum and Article 3 ECHR appeals are allowed.

Notice of Decision

I have remade the decision. The appellant's appeal is allowed on asylum and human rights (Article 3 ECHR) grounds.

Signed

Date 30 September 2019

Upper Tribunal Judge Lane

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

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

