



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

Appeal Number: PA/04146/2019

**THE IMMIGRATION ACTS**

**Heard at Manchester CJC**

**On 28 October 2019**

**Decision & Reasons**

**Promulgated**

**On 22 November 2019**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**M B**

**(ANONYMITY DIRECTION MADE)**

**and**

Appellant

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

Respondent

**Representation:**

For the Appellant: Mr H Sadiq, Adam Solicitors

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

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Alis promulgated on 14 June 2019, dismissing the appellant's appeal against the decision to refuse his protection and human rights claim.
2. The appellant is a Kurd from Iran whose case is that he has been active in the KDPI; that this was known to the Iranian authorities; and, that he has been attending one demonstration in the United Kingdom since arriving here and has been active both on Facebook and Instagram since his arrival

here, again in opposition to the Iranian regime. The Secretary of State did not accept the appellant's case and did not accept the account of what had happened to him in Iran.

3. The First-tier Tribunal Judge had before him an email dated 3 April 2019 enclosing a letter dated 31 March 2019 which had been provided to the London KDP by the main organisation department in Kurdistan. This letter certified that the appellant was a supporter of the party. The judge observed [29] that he the appellant had provided scant support for his claim although [29] accepting the letter was sent to the appellant's lawyers via the UK branch of the KDP stating that he was a supporter. The judge found that the appellant's account of his activities in Iran were not credible and he did not accept that he had been identified there. The judge did not accept the authorities had attended his family home as a result of demonstrations or otherwise and whilst accepting that he had a Facebook account did not conclude that he would come to the adverse attention of the authorities. He concluded that requiring the appellant to close down or delete his Facebook account would not contravene HJ (Iran) v SSHD [2010] UKSC 31. He did not accept that he was an activist nor that the fact of being a returnee of Kurdish ethnicity would create a risk of persecution or treatment contrary to Article 3 [45] nor were any of the factors listed in the headnote of HB (Kurds) CG [2018] UKUT 430.
4. The appellant sought permission on the grounds that the judge had erred in rejecting the appellant's claim in that he had
  - (i) Relied on only one adverse credibility point at [31] which was an unsustainable finding based purely on plausibility;
  - (ii) failed to take note that, having not rejected the authenticity or integrity of the letter from the KDPI referred to at paragraph 29, this confirmed his anti-government activism and support for a banned political organisation which would in itself put him at risk of persecution on return;
  - (iii) failed to take into account the appellant's clear awareness of Kurdish political affairs and the party to which he was affiliated;
  - (iv) that he could not be expected, as a genuine activist, to delete his Facebook and Instagram posts;
5. I heard submissions from both representatives.
6. It is notable from the CPIN on Iran Kurdish political groups (a copy of which was before the judge and to which he referred) that the KDP is an active organisation. At section 7.4.1 of the CPIN verification of membership is dealt with as follows:

The same source from 2013 reported: '...Mustafa Moloudi, (KDP-Iran) informed the delegation that the headquarters of the party in Khoysanjac, KRI issues letters of recommendation to members going abroad to seek asylum. Since all

members have their names listed in the headquarters, it is possible to identify each one of them. The party issues letters of recommendation, but the source emphasized that letters of recommendation are not delivered to asylum seekers and they will only be issued directly to the asylum authorities or the asylum seekers' lawyers in Europe. Every member has a written file within the headquarters which forms the basis of the description of the situation of the asylum seeker in the letter of recommendation. If a party member for instance goes to Denmark to seek asylum, he or she must address the local party committee that will then ask the headquarters to issue a letter of recommendation. The party's sympathizers can also get a letter of recommendation if the KDP-Iran is certain that the person asking for the letter had to flee due to political activism. In such case it will be stated in the letter that he or she is a party sympathizer and not a member.'

7. It is evident that the letter referred to by the judge at [29] was obtained in the manner as identified in this passage. As the appellant submitted, the judge did not take issue with the letter's authenticity but found that it did not confirm his account of his activities. What judge failed to do was to take into account the bare fact of the appellant's support for a banned organisation when analysing what would happen to the appellant on return to Iran.
8. It follows from this, that the decision of the First-tier Tribunal involved the finding of an error of law and must be set aside.
9. Having announced that at the hearing, Mr McVeety did not dispute my observation that on the basis of the finding that the appellant was involved with the KDP, as a documented supporter, that there was a real risk of him being persecuted on return to Iran.
10. It follows from what is said in SSH and HR (Illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 and HB that the appellant is at risk of questioning on return to Iran. He would be returned without documents as a Kurd. The Upper Tribunal accepted in SSH and HR at [9] that a person returning to Iran on a temporary document will be questioned. It is almost inevitable that he would be asked whether he had been involved with any Kurdish organisations and he could not be expected to do anything other than tell the truth. The mere acceptance of documented support for the KDP would, I consider, be sufficient to result in the appellant being detained and ill-treated with sufficient severity to amount to persecution and/or breach of Article 3. Further, this would be on account of his perceived political opinion.
11. In the circumstances, I remake the appeal by allowing it in asylum and on human rights grounds.

### **Notice of Decision**

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

2. I remake the appeal by allowing it on asylum and on human rights grounds.

**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 19 November 2019

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

Upper Tribunal Judge Rintoul