



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

Appeal Number: PA/13002/2018

THE IMMIGRATION ACTS

Heard at North Shields

On 24 May 2019

**Decision & Reasons
Promulgated
On 29th May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

**H. M.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

The Appellant, a citizen of Iran, entered the UK illegally in October 2015 and made a protection claim which was refused on 30 October 2018. The Appellant's appeal against that decision was heard, and dismissed, by First-tier Tribunal Judge Bircher, in a decision promulgated on 9 January 2019. The Appellant's application for permission to appeal was granted by First-tier Tribunal Judge Beach on 15 February 2019 on the very brief ground advanced, that the Judge had failed to make reference to relevant country guidance. The Respondent did not reply to that grant with a Rule 24 response.

The Appellant's case was that as a Kurd, he had come to the adverse attention of the authorities in Iran as a result of his smuggling activities on behalf of a Kurdish group. He claimed to have left illegally, and to be without any identity documents. His sur place claim was that the very act of returning him, and re-documenting him from the UK, would in the circumstances place him at risk

upon return. His Iranian nationality and his Kurdish ethnicity were not disputed, although the remainder of his account was.

The grounds offer no challenge to the Judge's rejection as untrue of the Appellant's evidence concerning his experiences as a smuggler in Iran. Both parties are agreed therefore that whatever else, this element of the decision must stand.

Before me both parties were however agreed that the Judge failed to make any findings of fact upon three relevant issues; (i) whether the Appellant had at the date of the hearing any identity documents in his possession, or in the possession of his family in Iran; (ii) whether the Appellant was in truth in contact with his family in Iran; and, (iii) whether the Appellant had left Iran illegally, or would be perceived to have done so upon return to Iran.

It is not clear whether the Judge intended to accept, or to reject, the Appellant's claim to have been involved in political activity in the UK that was opposed to the Iranian regime [19-20]. Even if she did, the parties are agreed that there is no finding as to whether there was a real risk that the activity relied upon in the UK had already come, or would in the future come, to the attention of the Iranian authorities in the event of enquiries made into him either in advance of re-documentation, or, upon his return to Iran. The decision is silent on these issues.

In addition, both parties were agreed that the Judge failed to make any express reference in the course of her decision to either the guidance to be found in SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 308, or, HB (Kurds; Illegal exit: failed asylum seeker) Iran CG [2018] UKUT 430. The latter had been promulgated prior to the Judge writing her own decision. Not only was there no express reference to the guidance to be found in these decisions, but the parties were agreed that even when read as a whole her decision did not address all of the relevant issues.

In the circumstances both parties agree that a fresh hearing is the only pragmatic course open, in order that relevant findings might be made upon the sur place activities, and, whether the Appellant faces a real risk of harm upon return to Iran in the light of the guidance to be found in HB. I agree. As set out above however the rejection of the Appellant's evidence concerning his smuggling activities is unchallenged and must stand. It will be for the fresh hearing to determine whether in those circumstances there is any substance to the Appellant's unresolved claims to have left Iran illegally, and, to be unable to contact his family. Whilst it is not easy at present to see why those claims would be true if he were not a smuggler wanted by the authorities, as he had initially claimed, he must have the opportunity to put his case in this respect, and have an adequately reasoned decision made upon it.

In circumstances such as this, where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the parties of the opportunity for their case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of

the Practice Statement of 13 November 2014. Moreover the extent of the judicial fact finding exercise required is such that having regard to the overriding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 13 November 2014.

To that end I remit the appeal for a fresh hearing by a judge other than First-tier Tribunal Judge Bircher, at the North Shields Hearing Centre.

A Kurdish Sorani interpreter is required.

The Respondent must file and serve a copy of the Appellant's screening interview, or confirm that none took place, by 5pm 7 June 2019.

The Appellant must file and serve any further evidence on which he intends to rely in support of his appeal by 5pm 7 June 2019.

The remitted appeal is suitable for the short warned list. The parties should expect the appeal to be called on for hearing at short notice after 10 June 2019.

Notice of decision

1. The decision did involve the making of an error of law sufficient to require the decision to be set aside on all grounds, and reheard. Accordingly the appeal is remitted to the First Tier Tribunal for rehearing, with the directions set out above.

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 his 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 24 May 2019

Deputy Upper Tribunal Judge J M Holmes