



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

Appeal Number: PA/06924/2019

THE IMMIGRATION ACTS

**Heard remotely via Skype for Business
On 24 February 2021**

**Decision & Reasons
Promulgated
On 5 March 2021**

Before

UPPER TRIBUNAL JUDGE LANE

Between

AI

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Lay

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a Kurdish male citizen of Iran who was born in 1989, appeals to the Upper Tribunal against a decision of the First-tier Tribunal (Judge Ian Howard) promulgated on 4 February 2020. By that decision, the First-tier Tribunal dismissed the appellant's appeal against a decision of the Secretary of State to refuse his human rights/international protection claim following the making of a deportation order.
2. The appellant had been convicted of several offences whilst in the United Kingdom. In particular, he was sentenced to 7 years' imprisonment following conviction on 21 December 2015 for rape of a female over 16 years of age.
3. The appellant had claimed international protection previously and his appeal against the subsequent refusal had been dismissed by the First-tier Tribunal in 2011. Judge Howard took the findings of fact of that Tribunal as the starting point for his own analysis (see *Devasseelan* [2002] UKIAT 00702*). The 2011 Tribunal had found the appellant to be an wholly unreliable witness. Judge Howard found likewise, having considered all the evidence including the appellant's oral testimony at a hearing at Harmondsworth on 29 November 2019. The judge upheld the application by the Secretary of State of section 72 of the 2002 Act (as amended). That part of his decision is not challenged on appeal.
4. The appellant challenges the First-tier Tribunal's decision on one ground. The appellant asserts that the judge failed to have adequate regard to relevant country guidance, namely *HB (Kurds) Iran (illegal exit: failed asylum seeker)* CG [2018] UKUT 430 (IAC). The appellant's claim of having been accused of smuggling for a Kurdish militia group had been rejected by the First-tier Tribunal, a finding which the appellant does not challenge. However, the appellant argues that he gave oral evidence before the First-tier Tribunal in which he stated that he was opposed to the Iranian regime because it discriminated against Kurds. The appellant queries whether the judge made any clear finding in respect of that statement or acknowledged that a Kurd which had spent 10 years in the United Kingdom 'in an atmosphere of freedom' would have 'grown in cultural and political awareness.' The appellant relies on HB at headnote [10]: *The Iranian authorities demonstrate what could be described as a 'hair-trigger' approach to those suspected of or perceived to be involved in Kurdish political activities or support for Kurdish rights. By 'hair-trigger' it means that the threshold for suspicion is low and the reaction of the authorities is reasonably likely to be extreme.* [the emphasis added by the grounds of appeal]. The appellant acknowledges that he would not be at risk as a 'mere failed asylum seeker' as the judge found at [48]. However, given the 'hair trigger' attitude of the Iranian authorities, he submits it had been necessary for the judge to consider all the evidence of his claimed opinions.
5. I find that the ground of appeal is without merit for the following reasons. First, the judge did consider all the evidence, including the appellant's oral testimony in which he stated his distaste for the Iranian government on

account of past discrimination of Kurds. At [24(viii)], the judge records that the appellant ‘describes discrimination as a Kurd while growing up.’ At sub-paragraphs (ii) and (iii), the judge notes that the appellant ‘does not support the Islamic Republic of Iran as they, as a state, persecute the Kurdish population’ and ‘he would not speak out against the state for their persecution of the Kurds for fear of being killed.’ At [36], the judge made the comprehensive finding that the ‘appellant is not a credible witness.’ That finding has not been challenged. It follows that the judge did not accept anything which the appellant claimed to be true, including all the appellant’s claims summarised by the judge at [24]. The appellant was, therefore, accurately characterised for the purposes of the assessment of risk on return as nothing more than a failed Kurdish asylum seeker, a status which, without any additional or aggravating factor, the grounds accepted does not expose the appellant to risk.

6. Secondly, even if the judge should have made more detailed findings on the appellant’s oral evidence (which I do not accept that he was obliged to do) it clearly follows from his comprehensive rejection of the appellant’s credibility that he would inevitably have rejected any claim that he held opinions in respect of the Iranian government that would expose him to risk on return or render him a refugee by being compelled to alter his behaviour under the principle set out in *HJ (Iran)* [2010] UKSC 31. Moreover, if any error did occur, it is not material; if I were to remake the decision in the Upper Tribunal, on the evidence before the First-tier Tribunal, I would reach the same finding. If I were to find an error of law (which I do not), I would not set aside the decision.
7. Thirdly, I am satisfied that, even though the judge does not refer in terms to *HB*, his decision is wholly in accordance with that country guidance. Mr Lay, who appeared for the appellant before the First-tier Tribunal and the Upper Tribunal, acknowledged that there may be a ‘fine line’ dividing a returning, failed Kurdish asylum seeker and a returning, failed Kurdish asylum seeker ‘with views’ that the Iranian government is ill-disposed to its Kurdish population. In my opinion, the line is perhaps so fine that it may not exist at all; it is not speculative to assume that there are, in all probability, very few returning failed Kurdish asylum seekers who are supporters of the current Iran regime. Ultimately, the judge’s view that the appellant was a failed, Kurdish asylum seeker and nothing more and that he should assess the objective risk posed by returning him to Iran on that factual basis was correct in law. Accordingly, the appeal is dismissed.

Notice of Decision

This appeal is dismissed.

Signed

Date 26 February 2021

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.