



**Upper Tribunal
(Immigration and Asylum Chamber)
Number: PA/08525/2019**

Appeal

THE IMMIGRATION ACTS

Heard at Field House

On 21 July 2021

Decision & Reasons

Promulgated

On 05 August 2021

Before

UPPER TRIBUNAL JUDGE BLUM

Between

**SF
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Gayle, of Elder Rahimi Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. In an 'error of law' decision promulgated on 17 March 2020 I found that Judge of the First-tier Tribunal Rae-Reeves' decision, promulgated on 10 October 2019, dismissing the appellant's asylum, humanitarian protection and human rights appeal against the

respondent's decision of 23 August 2019 refusing his protection and human rights claim and his claim for humanitarian protection, failed to make any material findings in respect of the appellant's claim to have used an agent to leave Iran, his country of nationality, and that the judge failed to take account of relevant evidence relating to this issue. I additionally found that the judge erred in law in his approach to some of his adverse credibility findings.

2. I indicated in my 'error of law' decision that Judge Rae-Reeves's decision would be set aside and that the Upper Tribunal would retain jurisdiction to consider the protection appeal afresh. The appellant was given permission to adduce further evidence for the remaking hearing. Following the onset of the Covid-19 pandemic several directions were issued resulting in the appeal being listed for a remote hearing to remake the appeal decision on a de novo basis.

Summary of the appellant's account of events supporting his protection claim

3. The appellant, an ethnic Kurdish national of Iran born in Sardasht in 1993, arrived in the UK illegally on 18 February 2019 and claimed asylum.
4. The appellant worked as a trader (a kolbar) at the Iran/Iraqi border, operating from the Kileh market on the Iranian side. He became a member of the Kurdish Democratic Party of Iran (KDP-I) around 2015/2016, which is a proscribed organisation in Iran. Once or twice a month he smuggled items for the party across the border such as food, money, letters, flags, books, flash memory cards and pamphlets amongst the produce he lawfully traded (usually lime or rice or tea).
5. In approximately June or July 2018 the appellant was preoccupied with his work and became complacent and forgot that KDP-I material had been hidden in boxes that had just crossed the border. Without thinking the appellant placed the boxes, including the box containing the hidden material, in a taxi and sent the taxi driver to his village as he still had other jobs to do and was focusing on those jobs. The taxi was however stopped at a checkpoint and a customs guard discovered the hidden material. The taxi driver, who was well known to the customs guards, gave the guard the appellant's name and his father's name and then the guard contacted the security services. Before the intelligence services arrived the taxi driver had an opportunity to telephone the appellant's father and informed him of what had occurred. The appellant's father then contacted the appellant who fled to Iraq and remained for a short period with his aunt before an agent was arranged to take him to Turkey from where he travelled in the company of an agent to Europe. The appellant's father was detained by the security services for 3 nights and interrogated. As a consequences of the appellant's activities his

father was no longer able to work in the border market. The appellant's brother was also interrogated and was ejected from university as a consequence of the appellant's activities.

6. After arriving in the UK the appellant attended some KDP-I demonstrations against the Iranian authorities and some KDP-I meetings and posted content on his own Facebook account critical of the Iranian authorities, and then, after being informed that the Iranian authorities were aware of his Facebook posts and had threatened his father and brother with imprisonment, the appellant started using another Facebook account in an anonymous name (BS) to post political content.
7. The respondent accepted the appellant was an Iranian Kurd but rejected his account of having transferred and smuggled goods and material across the Iran/Iraq border, and rejected his claim that the authorities had discovered KDP-I material in a taxi. The respondent did not consider that "pass cards" provided by the appellant in support of his application entitled him to cross the Iraq/Iran border and noted, in reliance on an August 2019 Country Policy and Information Note (CPIN) report that the Iranian/Iraqi border had been closed in October 2017. The respondent did not accept the appellant's claim that he forgot about the content of the boxes given the serious consequences for him if they were discovered. Nor was the respondent satisfied that the taxi driver would have an opportunity to phone the appellant's father if smuggled material was uncovered. The respondent was not satisfied the Facebook account in the appellant's name contained any material that would cause him to be ill-treated by the Iranian authorities, and there was no evidence that the appellant was in any way associated with the Facebook account in the identity of BS.

The hearing to remake the decision

8. The appellant served a consolidated bundle of documents which included, inter alia, the appellant's statement dated 19 September 2019 and his supplementary statement dated 1 July 2021, photographs of him at three KDP-I demonstrations on 13 and 23 July 2020 and 8 September 2020, a selection of KDP-I Facebook account screenshots and photographs showing the appellant participating in demonstrations outside the Iranian Consulate in London on 11 July 2021, and 2019 printouts of his Facebook page in his name and 2019 printouts of a Facebook account in the name of BS (a pseudonym used by the appellant). The bundle additionally contained a letter dated 10 October 2019 from Qadir Wiryra of the Organisation Department of the KDP-I based in Iran.
9. The respondent's bundle contained some photographs of the appellant attending demonstrations, a completed "Application form to

support asylum seekers, The Committee in Great Britain” issued by the KDP-I in the UK (the appellant’s signature is dated 23 July 2019) and a completed “membership application form headed “Kurdish Democratic Party, Formation Committee Abroad”.

10. At the outset of the hearing Ms Everett helpfully indicated, after having a pre-hearing discussion with Mr Gayle, that she considered the central issue for consideration was the appellant’s sur place activities. I indicated to the parties that I did want to hear evidence regarding the appellant’s account of events that caused him to leave Iran. I additionally informed both representatives that I had found three documents following an Internet search that suggested that the Kileh border crossing had been open since at least April 2018. I provided the details of an article from the Financial Tribune dated 23 September 2019, an Iranwire report dated 28 May 2021 and an article published by the Kurdistan Human Rights Network dated 12 May 2021. I informed the parties of the content of the documents, and in particular references to the Kileh border crossing being open since April 2018, and explained that I considered the documents of some relevance given that the respondent maintained that the border crossings between Iran and Iraq had been closed since October 2017. Neither party objected to my consideration of the documents and Ms Everett indicated that she was happy for me to take judicial notice of the porosity of the Iran/Iraq border and that the borders open and close regularly.
11. The appellant gave his evidence at the remote hearing via a Farsi interpreter. He was asked no questions in examination-in-chief. There was no questions put to the appellant by way of cross-examination. I asked the appellant some brief clarificatory questions concerning his claim to have worked as a kolbar and the ‘pass cards’. The appellant indicated that the pass cards he provided did not relate to his crossing of the border and only gave him permission to enter Kileh village, in respect of which individuals without the requisite pass were excluded. In brief re-cross-examination the appellant stated that his trade in items such as lemons and tea was legal.

Submissions

12. In her customary even-handed manner Ms Everett noted the level of uncertainty surrounding the issue as to how the appellant may be perceived by the Iranian authorities in light of his sur place activities. She accepted that she was in difficulty in relying on some of the adverse credibility points raised in the Reasons For Refusal Letter, such as the closure of the border. She did not add anything further to the Reasons For Refusal Letter in terms of the appellant’s account of events in Iran. Having regard to the appellant’s particular circumstances and his particular sur place activities Ms Everett again indicated that there had to be some degree of uncertainty as to how

the Iranian authorities would treat the appellant on return, particularly given the 'hair trigger' approach by the authorities to those suspected of or perceived to be involved in Kurdish political activities or support for Kurdish rights, as set out in HB (Kurds) Iran CG [2018] UKUT 00430 (IAC) ("HB").

13. Mr Gayle relied on his skeleton argument and submitted that the appellant would be at real risk of persecution if removed to Iran. I indicated to both parties that I had already carefully considered all of the documents in the bundles, and in particular the appellant's Facebook account which, in my judgment, did contain posts of a clearly political nature. I indicated that I found, on the lower standard of proof, that the appellant's account of events in Iran was credible and consistent with the background evidence and that he was a genuinely supporter of the KDP-I. I indicated that I would allow the appeal.

Findings of fact and conclusions

14. The burden of proof in protection claims rests on the appellant, and the standard of proof is whether there is a 'real risk' of the appellant being subjected to treatment sufficiently serious to amount to persecution and/or Article 3 ill-treatment.
15. The appellant has provided a relatively detailed account of his claim to have worked as a kolbar in a border market called Kileh. The articles referred to at paragraph 10 above confirm the existence of a border crossing at Kileh near Sardasht. This aspect of the appellant's claim has been consistently made. The Pass Cards provided by him appear prima facie reliable and are consistent with his claim that he was authorised to work in the border village. The respondent noted that the translation of the Pass Cards indicated that they were "only for service provision in the market area" and she drew an adverse inference on the basis that the Pass Cards did not authorise the appellant to approach or cross the border. The appellant however made it clear in his oral evidence that the Pass Cards were not authorisation for him to approach or cross the Iran/Iraq border but simply to enable him to enter the market area at Kileh. It was never the appellant's case that the Pass Cards related to his activities at the actual border. Moreover, the same articles at paragraph 10 above indicate that, while the border may have been temporarily closed in October 2017, it had reopened by the latest April 2018. There is therefore no inconsistency in respect of this aspect of the appellant's account.
16. In his asylum interview the appellant was asked a number of questions relating to the KDP-I (see questions 70 to 88). His answers were relatively detailed (he knew, for example, when the party was formed, who founded it, where its headquarters were located, and he

was able to name a number of prominent KDP-I individuals including Mustafa Moloudi, the chair of the party). The appellant gave a generally accurate explanation of the party's aims and objectives and he gave a plausible explanation of how and why he became involved in the party (through an introduction by a cousin, against the background of his grandfather having been tortured by the Iranian authorities for helping the party and his desire for Kurdish self-government). This aspect of the appellant's claim is also supported to some degree by the letter dated 10 October 2019 issued by Qadir Wirya of the Organisation Department of the KDP-I, which certifies that the appellant was a member of the party. The letter is however brief and does not explain how the appellant's membership was confirmed and so can attract only limited weight. The appellant's claim that he was a member in Iran is however consistent with his subsequent involvement with the party in the UK following his arrival.

17. I find the appellant has again provided a detailed and plausible account of the method by which the KDP-I would get in contact with him regarding material that was to be smuggled, how the material would be smuggled, and what the appellant would usually do with the material once he gained possession of it and how he would then pass on those materials to the KDP-I in Iran (see in particular the appellant's answers in his asylum interview at questions 102, 103 and 104). In respect of his involvement with the KDP-I in both Iran (and indeed in the UK) the appellant has not sought to exaggerate or expand the level or degree of his involvement. For example, he never suggested that he ever distributed leaflets in Iran himself and he rejected any involvement that related to weapons. In this regard the appellant's evidence has been measured. The appellant's account of the Iranian authorities' attitude to the KDP-I is consistent with the background material (for example, the Kurdistan Human Rights Network documents provided by the appellant in the consolidated bundle) and the decision in HB (see in particular the evidence considered by the Tribunal in paragraph 32 and the summary of the oral expert evidence at Annex B). His account of his father being detained and interrogated for 3 days and losing his job as a kolbar is therefore consistent with the Iranian authorities' approach to those suspected of being involved with an illegal organisation.
18. The respondent did not find it plausible that the appellant would become complacent and forget that boxes he received from Iraq contained the KDP-I materials when he placed them in a taxi to be delivered to his home village. Whilst I acknowledge the respondent's observation that the potential consequences to the appellant if he was caught smuggling illicit materials would be severe, it is only too human to forget about even important matters when one's mind is pre-occupied with other matters, as claimed by the appellant. I do not find this aspect of the appellant's claim to be inherently implausible. Nor do I find it implausible, in light of the appellant's full explanation,

that the taxi driver would have been able to make a phone call to the appellant's father. The appellant explained that the taxi driver and his father were well known at the customs post (see his 2019 statement at paragraph 11) and it is plausible that the customs guard, who was not part of the intelligence agencies, may not have prevented the taxi driver making a phone call. The respondent has not identified or relied upon any other inconsistency in the appellant's account to undermine his credibility.

19. The appellant's decision to flee to Iraq on hearing that the smuggled KDP-I material had been discovered is credible given that the party is proscribed in Iran and given the background evidence relating to the prevalence of torture facing those detained in Iran (see, for example, section 1(a) to (c) of the US State Department Human Rights report 2020, contained in the consolidated bundle). His account of using an agent to illegally flee Iran is plausible, as is his account of his journey to Turkey and then to Europe, including his description of the violence inflicted on him by the agent that caused the appellant's leg to break.
20. I have considered with care the appellant's sur place activities in the UK. I note that he has attended a number of KDP-I demonstrations in this country, including those outside the Iranian Consulate. The photographs show him holding flags and placards critical of the Iranian regime. The unchallenged evidence relating to the KDP-I Facebook account, screenshots of which were included in the appellant's consolidated bundle, confirm that photographs of demonstrations that include him have been posted. The appellant is not identified by name but his face is clear. I have additionally considered the photographs of the appellant next to prominent KDP-I members at KDP-I meetings in the UK, although there is no evidence that these photographs have been published.
21. I have additionally considered the posts made by the appellant in respect of his own Facebook account in his name, the screenshots of which are contained in the consolidated bundle. I do not share the respondent's view that there are no political posts. A number of the posts are clearly political and critical of the Iranian authorities. For example, at page 50 of the consolidated bundle there is a poster of a man making a 'V for victory' sign with the words "Freedom Kurdistan" underneath. At pages 54 and 55 there are posts showing photographs of Rahman Ghassemlou, a Kurdish leader assassinated in 1989. At pages 61 and 62 there are disturbing photographs of individuals hanged by the Iranian authorities and a post demanding that the Iranian authorities stop executing children. If these posts were viewed by the Iranian authorities I have no doubt that the observer would conclude that the appellant is a person who holds and shares views that are critical of the Iranian regime.

22. For the reasons given above, and having applied the lower standard of proof, I am persuaded that the appellant has given a truthful account both of the events that caused him to flee Iran and of his sur place activities in the UK. I find that he was a member of the KDP-I in Iran and that he smuggled non-military items for the party into Iran under cover of his activities as a kolbar. I accept the appellant's account that he complacently placed boxes containing illicit materials in a taxi, that the taxi was searched at a customs post, and that the illicit materials were discovered. I find that the Iranian authorities considered the appellant to be a member of the KDP-I and that his father and brother were interrogated concerning the appellant's activities and that his father was detained for three days, although eventually released. I find that the appellant did leave Iran illegally having obtained an agent to facilitate his journey. I accept that the appellant is a genuine supporter of the KDP-I in its manifestation in the UK and that his posts on his Facebook account in 2019 were genuinely made based on his support for the KDP-I.
23. I must now consider whether these facts would expose the appellant to a real risk of persecution if he were removed to Iran. I have been assisted by the observations made by Ms Everett on behalf of the respondent relating to the uncertainty surrounding how the authorities may view the appellant's sur place activities. The decision in HB, which held that SSH and HR (illegal exit: failed asylum seeker) Iran CG [2018] UKUT 00430 (IAC) remains valid country guidance, indicates, *inter alia*, that although Kurds in Iran face discrimination this, in general, is not at such a level as to amount to persecution or Article 3 ill-treatment, and that the mere fact of being a returnee of Kurdish ethnicity with or without a valid passport, and even if combined with illegal exit, does not create a risk of persecution or Article 3 ill-treatment. Since 2016 the Iranian authorities have however become increasingly suspicious of, and sensitive to, Kurdish political activity and those of Kurdish ethnicity are regarded with even greater suspicion than hitherto and are reasonably likely to be subjected to heightened scrutiny on return to Iran. Kurdish ethnicity is therefore a risk factor which, when combined with other factors, may create a real risk of persecution or Article 3 ill-treatment. The Tribunal found that Kurds involved in Kurdish political groups or activity are at risk of arrest, prolonged detention and physical abuse by the Iranian authorities. Headnote 10 reads, "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." Headnote 9 reads, "Even 'low-level' political activity, or activity that is perceived to be political, such as, by way of example only, mere possession of leaflets espousing or supporting Kurdish rights, if discovered, involves the same risk of persecution or Article 3 ill-treatment. Each case however, depends on

its own facts and an assessment will need to be made as to the nature of the material possessed and how it would be likely to be viewed by the Iranian authorities in the context of the foregoing guidance.”

24. I am satisfied that the Iranian authorities regard the appellant as someone involved with the KDP-I and that he has been actively sought by the authorities. The fact that he smuggled illicit KDP-I materials creates a real risk that he will be subject to a real risk of serious ill-treatment if returned to Iran. Moreover, as the appellant’s posts on his Facebook account were made because of his genuine support for the KDP-I, applying the principles established in HJ (Iran) v SSHD [2010] UKSC 10, [2011] AC 596, which were applied in the context of political opinion in RT (Zimbabwe) v SSHD [2012] UKSC, [2013] 1 AC 152, and having regard to the assessment made in AB and Others (internet activity – state of evidence) Iran [2015] UKUT 0257 (IAC) relating to inquiries the Iranian authorities may make into a returnees internet activities (applied in HB specifically in respect of Facebook), I find that the appellant will also be at real risk of persecution if removed to Iran based on his sur place activities.

Notice of Decision

The protection and Article 3 human rights appeals are allowed.

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

Unless and until a Tribunal or court directs otherwise, the appellant in this appeal 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.

D.Blum

23 July 2021

Signed

Date

Upper Tribunal Judge Blum