



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/11697/2019

**THE IMMIGRATION ACTS**

Heard at Bradford (Hybrid hearing)  
On 16 July 2021

Decision promulgated  
On 13 August 2021

Before

UPPER TRIBUNAL JUDGE HANSON

Between

IAM  
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Abdullah, Solicitor.

For the Respondent: Mr Diwnycz a Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Sills ('the Judge') promulgated on 11 February 2021 in which the Judge dismissed the appellant's appeal on all grounds.
2. This Initial Hearing, to enable the Upper Tribunal to establish whether the Judge had erred in law in a manner material to the decision to dismiss the appeal, was conducted as a hybrid hearing with myself and the appellant in court and with

both advocates connecting remotely. I am satisfied that the appellant received a fair hearing of his appeal.

## **Background**

3. The appellant is a citizen of Iran of Kurdish ethnicity, born on 9 December 1995. The appellant claims to have left Iran on 25 October 2017, to have travelled on foot to Turkey, and then through Italy and France, before arriving in the UK on 15 December 2017.
4. The Judge, who had the benefit of considering not only the documentary evidence but also seeing and hearing the appellant give oral evidence, sets out findings of fact from [14] of the decision under challenge.
5. The Judge sets out the basis of the appellant's claim at [3] which is summarised in the following terms:
  - a) Your name is IAM and you were born in Iran.
  - b) In 2017, you discussed your families' money problems with two friends and they explained to you that you could earn money by smuggling goods over the Iran border.
  - c) You were introduced to a man called QM who you agreed to smuggle for.
  - d) You began smuggling alcohol and KDPI papers into Iran for QM.
  - e) Each time you smuggled for Q, he would return your birth certificate to ensure you did not steal any of his goods.
  - f) On 23 October 2017, after returning from the Iraq border with alcohol and KDPI papers, you are ambushed by members of the Iranian Government.
  - g) You fled the scene immediately and ran to a remote area by the Iraq border before returning to your family home the next day.
  - h) You explained to your father what had happened and he advised you to leave and arranged for you to go to your uncles.
  - i) That day the Iranian Government attended your parents [sic] houses as they had arrested Q at the scene and in turn found your birth certificate which you had retained.
  - j) The Iranian Government searched your village and house looking for you.
6. At [25] the Judge writes:
  25. I have carefully considered all the evidence in the round, in line with the guidance from the case of Ravichandran v Secretary of State the Home Department [1996] Imm AR 97 and Karanakaran v SSHD [2000] EWCA Civ 11. I have applied the lower standard of proof, with the burden upon the Appellant. I accepted that aspects of the Appellant's account are plausible. However, I consider that there are fundamental flaws in key elements of the Appellant's case. I consider that the country information relied upon by the Respondent to the effect that KDPI flyers are designed in Iraq but printed in Iran immediately before distribution undermines the Appellant's claim to be transported printed flyers from Iraq to Iran. I do not accept that Q would gain anything by holding the Appellant's birth certificate while he was on a job. All this practice would do would be to make it more likely that all those working for Q would be caught if he was caught. I do not accept that a smuggling operation would operate in this manner. I do not consider the Appellant has given a credible account of the ambush by the authorities, namely that the authorities drew attention to themselves by shooting in the air before they were in a position to arrest all the smugglers. It is not credible that after fleeing Iran and crossing into Iraq, the Appellant would return home without first seeking the assistance of the

KDPI who he claims to have been assisting to establish what had happened and the danger he faced on return. I do not accept that the Appellant would leave Iran without any means of communicating with his family. For these reasons I find that the core of the Appellant's account of events in Iran is not credible. I do not accept that the Appellant worked as a Kolber. I do not accept that he smuggled alcohol or KDPI flyers. I do not accept that he and his group were ambushed by the authorities. I do not accept that Q held his birth certificate. I do not accept that the authorities have raised his home. I do not accept that the Appellant has come to the attention of the authorities. In view of these findings, I do not accept that the Appellant left Iran illegally. Taking account of these findings, and the timing of the commencement of his political activity and its limited extent, I am satisfied that the Appellant's political activism is motivated not by genuine political belief, but by his wish to remain in the UK.

7. Having considered the country guidance on risk on return and in light of the earlier findings, the Judge found the appellant had not established a real risk as a failed asylum seeker as per SSH and HR (legal exit: failed asylum seeker) Iran CG [2016] UKUT 308 [29], nor in accordance with HB (Kurds), Iran CG [2018] UKUT 00430 (IAC) as it was not found that the appellant's attendance at demonstrations in the United Kingdom and posting of online footage would have come to attention of the authorities [30], or that the appellant's Facebook account had come to the attention of the authorities in Iran, and by reference to BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC) such as to create a real risk on the basis the appellant's political activities being at a very low level and the appellant not having established that it was reasonably likely he had put his family in Iran at risk or come to the adverse attention of the authorities.
8. The Judge considered the issue of heightened scrutiny on return but did not find risk arose for the appellant. It was found by the Judge that at the 'pinch point' the appellant could be asked about the basis of his asylum claim and that if the appellant stated he falsely claimed to be a Kolber (smuggler) and to have transported leaflets it would not put him at risk [34]. The Judge accepts the appellant could be asked if he had taken part in any demonstrations or ever posted any critical message against the regime online but found that the appellant would deny having done so and did not find there was a real risk the Iranian authorities would discover that the appellant had in fact attended such demonstrations and posted critical messages if he denied having done so when questioned [35].
9. The Judge considered the HJ (Iran) point, and whether it was permissible to expect the appellant to lie about what he had been doing United Kingdom, after which it is written at [39]:
  39. I consider that these passages highlight an important distinction between the Appellant's case in HJ Iran encapsulated. A key question highlighted in HJ Iran was the why question, namely, why would an individual act discreetly. In my view, the key question concerning the Appellant is the what question. What must the Appellant conceal to avoid persecution. In contrast to HJ Iran and RT, the Appellant does not need to conceal any race, religion, nationality, membership of a social group or political opinion to avoid persecution. The Appellant has not established that he holds any particular political opinion. I have not accepted the Appellant's attendance at demonstrations or social media posts reflect any genuinely held political opinion. The 'price' that the Appellant must pay is to conceal opportunistic attendance at demonstrations and social media posts motivated

solely by the wish to be granted refugee status in the UK. The Appellant is not required to conceal a characteristic or status that cannot be changed, or he cannot be expected to change. In the Appellant's case, the necessary modification to avoid persecution does not involve surrendering his right to live freely and openly in society as to who he is, in terms of the protected characteristic. I do not consider that when construed in light of its objects and purpose, the HJ Iran principle applies to this Appellant. I do not accept that the protections of the Refugee Convention apply to the Appellant. I therefore find that the Appellant has not faced a well-founded fear of persecution for a Convention reason on return to Iran. I dismiss the appeal on asylum grounds. Any appeal on humanitarian protection and human rights grounds, stands and falls with the asylum on asylum grounds.

10. The appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal, the relevant part of the grant being in the following terms:
  2. Having read the decision of the judge I note that there are contradictory findings of fact with regards to the claim that the Appellant was employed as a Kolber smuggling alcohol. As rightly pointed out by the grounds there is a direct contradiction with the assessment at paragraph 17 of the determination where the judge stated "I note that the Appellant's oral evidence about what he smuggled and when was reasonably consistent with his earlier evidence" when compared to the findings at paragraph 25 where the judge found "I find that the core of the Appellant's account of events in Iran is not credible. I do not accept that the Appellant worked as a Kolber. I do not accept that he smuggled alcohol or KDPI flyers".
  3. In view of these contradictory findings on core aspects of the Appellant's claim, which are related to his claim to have assisted with KDPI flyers, it is arguable that the findings of fact of the judge are not safe with regard you should have risk on return. In view of the legal error of the judge with regards to the credibility issue permission to appeal is granted.
11. The appellant relied on two grounds of appeal, claiming the assessment of the appellant's evidence regarding his past employment as a Kolber lacked detail and was based upon inadequate findings for the reasons set out below in [4 - 11] of the grounds, and also erred in that the findings in relation to the appellant's sur place activities were flawed for the reasons stated at [12 - 15] of the grounds.

### **Error of law**

12. The Judge's findings at [25] are set out above. At [17] the Judge wrote:
  17. I consider it is plausible that the Appellant would turn to smuggling due to his family's economic circumstances. It is also plausible that he would begin working with his friends contact, Q. 60 - 70kgs strikes me as a rather heavy loads to be carrying across remote tracks for 3 ½ hours at a time, but I accept this may be an innocent overstatement. If the goods were loaded in boxes I accept the Appellant may not have been aware of precisely what type of alcohol he was carrying. The Appellant was also able to name border crossing routes at his asylum interview. While not corroborated, this level of detail suggests knowledge of the area. I note that the Appellant's oral evidence about what he smuggled and when was reasonably consistent with his earlier evidence.
13. I do not find it made out that the Judge has made contradictory findings sufficient to amount to material legal error. At [17] the Judge was commenting upon aspects of the evidence which themselves were found to be plausible and giving the appellant the benefit of the doubt with regard to other aspects

mentioned. It is at [25] that the Judge draws together the threads of his thinking, leading to it being found that the appellant is not a credible witness, for which sufficient reasons have been given.

14. The Judge clearly considered the evidence with the required degree of anxious scrutiny, and it is clear why the Judge arrived at the conclusions set out in the decision.
15. Whilst at the hearing reference was made to what was described as detailed evidence in the asylum interview and before the First-tier Tribunal by Mr Abdullah, that material was clearly considered by the Judge, and it has not been established to the contrary. The argument advanced by Mr Abdullah that the Judge should have accepted the same does not establish arguable legal error. That submission is, in effect, a disagreement with the weight the Judge gave to the evidence and an argument that the Judge should have given greater weight to the appellant's claim, resulting in a more favourable outcome. The fact the appellant disagrees with the outcome does not mean the evidence was not properly considered.
16. In addition to the evidence from the appellant, the Judge had country evidence which was also considered. The Judge's concerns in relation to what the appellant alleged occurred when he claimed they were encountered by the border guards at [20-21] are clearly within the range of findings available to the Judge on the evidence.
17. Mr Abdullah in his submissions repeated his claim that the findings were not supported by adequate reasons, but a reader of the determination is able to understand why the Judge came to the conclusions that have been recorded. The reasons provided by the Judge are adequate.
18. In relation to risk on return, Mr Abdullah submitted the Judge's findings were not safe for even though the appellant had been found to have fabricated his activities in the United Kingdom they could still give rise to real risk. Reliance was placed upon the position of Kurds in Iran.
19. Mr Diwnycz referred to the 2019 CPIN in the public domain relating to smugglers in Iran and submitted that even though the appellant may know what happens in his home area in Iran this did not mean he undertook such activities himself.
20. I accept the submission of Mr Diwnycz that even if an account had been found to be plausible it did not mean it was credible, especially if the evidence considered as a whole suggested it was not, which is the situation in this appeal.
21. The Judge was not required to set out each and every aspect of the evidence provided and relied upon, nor to make findings upon each and every point raised. To do so would have resulted in a considerably lengthier document, the outcome of which was likely to be the same.
22. Whilst the appellant disagrees with the outcome and seeks more favourable conclusions, the grounds fail to establish that the Judge's decision to dismiss the appeal is outside the range of findings reasonably open to the Judge on the evidence; especially in light of the current available country information.

- 23. I do not find the appellant has established legal error material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in this matter.

**Decision**

- 24. **There is no material error of law in the Immigration Judge’s decision. The determination shall stand.**

Anonymity.

- 25. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated 28 July 2021