



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

Appeal Number: UI-2021-001373
IA/03480/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 12 May 2022**

**Decision & Reasons Promulgated
On 12 July 2022**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**KT
(ANONYMITY ORDER IN FORCE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Mohzan, Solicitor from CB Solicitors

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

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court. I make this order because the appellant seeks international protection and publicity might itself put him at risk.
2. This is an appeal by a citizen of Iran against a decision of the First-tier Tribunal dismissing his appeal against a decision of the respondent refusing him asylum or other kind of international protection.

3. It is the appellant's case that his family are citizens of Iran but are ethnic Kurds and are at risk of persecution in Iran.
4. The appellant says that his father had to flee Iran because of persecution and, as soon as they could after his father's departure the nuclear family, including the appellant, joined him in Iraq. After living there for about eighteen years there was an attack on his father orchestrated by the Iranian authorities so that the appellant was advised by his family to leave Iraq because it was not safe for him to remain there. He then left Iraq and established himself in the United Kingdom where he sought asylum.
5. He was disbelieved by the Secretary of State and, when his case was heard on appeal, he was disbelieved by the First-tier Tribunal. The First-tier Tribunal Judge found that the core claim was improbable because there was no background evidence of the Iranian authorities acting in Iraq against Kurdish Iranian nationals and, further, even if the Iranian authorities did send raiding parties into Iran, there was no apparent reason for them to take an interest after about 18 years had lapsed.
6. The First-tier Tribunal Judge recognised that Iraqi Kurds face many difficulties but decided, in accordance with country guidance, that they are not persecuted per se. The First-tier Tribunal Judge found that the appellant had nothing to fear in the event of return. He was not linked with Kurdish activities in the minds of the authorities; his claims to the contrary being untruthful. The Judge found that the appellant was not linked in any significant way with pro-Kurdish politics in the United Kingdom. The appellant had attended two demonstrations during his stay there and although he had been photographed at demonstrations by a friend there was no reason, the judge found, to conclude that there was any real risk of the authorities in Iran knowing about his involvement or linking him with such activities in the event of his return.
7. The judge made a clear error. Although the judge reminded herself of the guidance given by this Tribunal in **HB (Kurds) Iran (illegal exit: failed asylum seeker) CG [2018] UKUT 430 (IAC)** the judge lost sight of part of that guidance which included recognition that people who had lived in Iraq would be of particular interest in the event of return. Paragraph 6 to the headnote of **HB** states:

"A period of residence in the KRI by a Kurdish returnee is reasonably likely to result in additional questioning by the authorities on return. However, this is a factor that will be highly fact-specific and the degree of interest that such residence will excite will depend, non-exhaustively, on matters such as the length of residence in the KRI, what the person concerned was doing there and why they left".
8. It is, I think, the same decision that first used the phrase "hair-trigger" as a convenient way of summarising the attitude of the Iranian authorities, or some of them, to potential opponents of the regime. As was explained in paragraph 10 of the headnote:

"the threshold for suspicion is low and the reaction of the authorities is reasonably likely to be extreme".
9. The first ground identifies this alleged error and I have no hesitation in finding that the First-tier Tribunal erred because the Secretary of State has served a

Rule 24 notice acknowledging in terms that the First-tier Tribunal had erred and suggesting the decision be re-made in the light of the findings of fact that have not been challenged. I return to this below.

10. The second ground criticises the First-tier Tribunal for not explaining its conclusion that there was no real risk to the appellant on account of his very modest sur place activities. The point is made that there is “chain of country guidance authority which makes it plain that the Appellant will be questioned about his activities in the United Kingdom upon return”.
11. The clear inference is that such an interrogation would lead to the appellant admitting to in country activities and the hair-trigger approach would be sufficient to create problems for the appellant in the form of a real risk of persecution.
12. This alleged error is not accepted by the Secretary of State. In the Rule 24 notice the respondent relies on the First-tier Tribunal Judge’s finding that the appellant is not someone who has been involved in politics in the United Kingdom. I find that a surprising position for the respondent to take. Ms Ahmed, rightly, reminded me that there were clear findings that the appellant’s activities would not come to the attention of the authorities. The judge at paragraph 39 of the Decision and Reasons made an entirely clear finding that the two attendances were the result of an intention to bolster his protection claim.
13. The appellant had relied on the decision in **BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC)**. I agree with Ms Ahmed that this case does not determine that any demonstrator is necessarily at risk but attendance at a demonstration is undoubtedly a risk factor and although the First-tier Tribunal has decided for, with respect, entirely sensible reasons that the appellant’s support for Kurdish separatism in the United Kingdom has been mild and insincere, it is not clear to me why the Iranian authorities can be relied upon to see it in that way. I find the judge’s explanation for concluding the appellant would not be at risk because of those demonstrations to be at the very least extremely thin.
14. Mr Mohzan in his submissions referred to this as a “pinch point case”. With respect that is apt. It is clear that this appellant will be noticed by the authorities in the event of his return because he will be travelling on a laissez-passer which will prompt enquiry.
15. It is quite clear to me that the established country guidance shows that the appellant will be interrogated and it must be assumed that his very long absence from the United Kingdom will come to light and this will promote further questioning. It is quite plain that, whether or not the Iranian authorities are actually involved in attacking people in Iraq, they regard Iraq as a hotbed of Kurdish nationalism and anyone with links to that country will interest them. It may well be that the appellant has done nothing except live in Iraq because his father moved there but my concern is how he will face interrogation when he has been involved in sur place activities.
16. It is unattractive to allow the appeal because the Judge’s findings that the appellant has been insincere are entirely sensible but I do not understand how

the Judge was able to conclude that there was no real risk of the appellant's sur place activities coming to light.

17. I further find that risk or persecution arising from political activities, which is a real risk, is much enhanced by reason of the appellant's prolonged sojourn in Iraq.
18. Putting all these things together I see no need for a rehearing. I set aside the decision because the judge erred in law by not explaining why the appellant would not be at risk by reason of his sur place activities and did not take account of the enhanced risk flowing from his living in Iraq. I apply the findings of fact that have been made. When I put everything together I find the appellant has proved the case and I substitute a decision allowing the appeal.

Notice of Decision

19. The First-tier Tribunal erred in law. I set aside its decision and I allow the appellant's appeal against the respondent's decision to refuse him asylum.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 20 May 2021