



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

Appeal Number: PA/04835/2016

THE IMMIGRATION ACTS

**Heard at Birmingham
On 5 May 2017**

**Sent to parties on:
On 18 May 2017**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

**[S H]
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Azmi (Counsel)

For the Respondent: Mr D Mills (Senior Home Office Presenting Officer)

DECISION AND REASONS

Introduction

1. This is the claimant's appeal to the Upper Tribunal from a decision of the First-tier Tribunal whereupon it dismissed his appeal against the Secretary of State's decision of 28 April 2016 to refuse to grant him international protection.

2. Although not invited to, I have made an anonymity order in respect of the claimant. That is, essentially, as a precaution and on the basis that there might conceivably be information contained in this decision which could lead to his experiencing difficulty if returned to Iran. I have, therefore,

simply referred to him as “the claimant” throughout this decision. I have also anonymised others where a failure to do so might lead to his being identified.

The claimant’s immigration and adjudication history

3. The claimant, as was accepted before me, is an Iranian national of Kurdish ethnicity. He was born on [] 1997. He was encountered by the United Kingdom authorities on 30 October 2015 when he claimed asylum. His claim was refused on 28 April 2016 and an appeal to the First-tier Tribunal was dismissed on 29 July 2016. However, on 10 February 2015 a Judge of the Upper Tribunal set aside the decision of the First-tier Tribunal for error of law. Specifically, it was decided that the First-tier Tribunal judge had erred in refusing an adjournment for a witness to attend. It was also decided that there would be a complete rehearing of the appeal before the Upper Tribunal. That is how I came to hear the appeal on 5 May 2017.

The law

4. In order to demonstrate entitlement to asylum, the claimant must show that if he were to be returned to Iran he would face a real risk of persecution for one of the five reasons set out in the Refugee Convention. If he is to fail on that basis he can, nevertheless, establish entitlement to a grant of humanitarian protection if able to demonstrate a real risk of serious harm upon return. He can also succeed on human rights grounds if he can demonstrate that he would face a real risk, upon return, of being treated in a way which would bring about a breach of Article 2 or Article 3 of the European Convention on Human Rights (ECHR).

5. With respect to all of the above, it is for the claimant to demonstrate that there is a real risk of such persecution, serious harm or Article 2/Article 3 ill-treatment. In other words, while the standard of proof is a low one the burden lies upon him. I have assessed matters as at the date of the hearing before me.

The claim in summary

6. The claimant says that he is from Sardasht in Iraq and that he is illiterate. He claims to have been a supporter of the Kurdish Democratic Party in Iran (KDPI) having become involved in 2013 or 2014 through a friend of his called “S” who was, in fact, a member of that party. He claims to have distributed leaflets for the Party at night-time. He says that he was invited to a Party meeting but did not attend because there was a visitor to his family home and custom demanded he was present whilst the visitor was there. He states that, in fact, the meeting was raided and that he subsequently received a telephone call from a person I shall call “M” who was resident in Iraq and who was a party official. M informed him that the Ettelaat had discovered a list of the proposed attendees at the meeting and that his name had been on that list. Soon after receiving that information he noticed a white motorcar approaching his village and claims that, since he had not seen that sort of motorcar in the area before, he realised it was being driven by members of the Ettelaat. He says he also heard their footsteps approaching his family home and that, in consequence, he fled. He says he then left Iran illegally (illegal exit not being seriously disputed before me) before eventually making his way to the UK.

7. Since coming to the UK the claimant says that he has undertaken some political activity with the KDPI in the UK. In his oral evidence to me, he said that he had got to know a person I shall refer to as “RD” who is now the deputy leader of the UK branch of the KDPI. He had attended a demonstration outside the Austrian Embassy. He had attended a memorial service for a fallen member of the KDPI. He had attended a gathering he referred to as a “reunion of Kurdistan”.

In total he had attended three events. He had not, he said, attended any other sorts of events or meetings in the UK. However, he does have a presence on Facebook and, whilst being illiterate, he has a friend who assists him in placing information on his Facebook pages and managing his Facebook account. He asserts that there is material on there which demonstrates his pro-Kurdish and anti-Government beliefs. He claims to have in excess of 500 “Facebook friends” and that some of them are, in fact, supports of the Iranian regime.

8. Essentially, the way the case is put on the claimant’s behalf is that having come to the adverse attention of the Ettelaat, he will be at risk upon return in consequence of his activities in Iran. Alternatively, even if he has not undertaken any activities in Iran he will be at risk in consequence of his having had a presence on the Internet (essentially his Facebook pages) and that as a Kurdish failed asylum seeker who had exited illegally and who would be returning on a temporary travel document, he would be questioned by the authorities upon return and (since he cannot be expected to lie) such questioning would reveal that he has a Facebook presence and, once that is looked at, it will reveal his anti-Government beliefs. That, in turn, will lead to his being persecuted.

The Secretary of State’s position

9. The Secretary of State does not accept that the claimant has provided a credible account of events in Iran. What is accepted, as noted above, is that he is Iranian and Kurdish and his claim to have left illegally was not disputed either. Mr Mills accepted that if I were to find the account of events in Iran truthful, the appeal must succeed. If, however, I were not to so conclude, then he argued it should fail notwithstanding the evidence about his Facebook account. He says that whilst the claimant might well be questioned upon return, the Iranian authorities would perceive him as being a mere “hanger on” or a person who was simply seeking to create a false internet profile in order to artificially enhance his prospects of being able to settle permanently in the UK. As such, they would see no need to persecute him or to subject him to serious harm. He pointed out that there had been a number of Country Guidance decisions of the Upper Tribunal suggesting that illegal exit, an unsuccessful claim for asylum and being returned on a temporary travel document would not create a real risk of persecution or serious harm. He made reference to the reported decision of the Upper Tribunal in *AB and Others (Internet Activity – State of Evidence) Iran [2015] UKUT 0257 (IAC)* but pointed out that that was not a Country Guidance decision and had only been reported, as was explained in the headnote, for the purpose of placing within the public domain the evidence that been considered by the Upper Tribunal in that case.

The documentary evidence

10. I had before me all of the documentation which had been prepared for the initial first-tier hearing. That included a bundle and a supplementary bundle filed on behalf of the claimant, a bundle provided by the Secretary of State, a copy of the decision in AB (cited above) and a copy of the Country Guidance decision in *SSH and RH (Legal Exit: Failed Asylum Seeker) Iran CG [2016] UKUT 00308 (IAC)*. At the hearing I received further documentation provided on behalf of the claimant consisting of two letters of 21 April 2017 written by the chairman of the UK branch of the KDPI, a statement written by the witness RD and copies of some photographs which had been placed on the claimant’s Facebook pages. Mr Mills did not raise any objections to the late production of the documentation.

The oral evidence

11. I have already touched upon certain of the evidence given. I do not need to set out, in full, what was said at the hearing but what appears here is a summary.

12. The claimant, my having checked that he and the interpreter understood each other, adopted his witness statement of 21 July 2016. He made references to some of the photographs appearing on his Facebook pages and said one of them, described as a “small photograph” was of him and another person holding a Kurdish flag. In cross-examination he referred to attending the various events referred to above. He had met RD in January 2016 and then “many times after that at meetings”. Although a friend assists him, he decides what is to be written and what is to be posted on his Facebook pages. He has accepted some supporters of the Iranian regime as Facebook friends (which I am told means they can view his Facebook pages without restriction) so that they can see that the Kurds “are still alive and have meetings and gatherings”. He had had to flee Iraq because of his name appearing on the list. He does not know how news of the discovery of the list had reached Iraq. He had only been to one such meeting before. A list of attendees would be kept so that the party in Iraq would know who was “joining and supporting in Iran”. He had leafleted on a few occasions but was not able to say how often or how regularly he had done so. Leafleting would take place only when an event was coming up.

13. I then heard from RD who confirmed he is the Deputy Leader of the KDPI. He had written the statement himself and his English was good enough to enable him to do that notwithstanding that he was using an interpreter at the hearing. The claimant had got in touch with the UK branch of the KDPI when he had arrived in the UK and he has since been very active. If he is granted refugee status he will automatically be accepted as a member of the party.

14. In cross-examination the witness said that, due to a policy change, persons without proper immigration status cannot be accepted as members of the Party in the UK. He had not meant to indicate, in his statement, that the claimant had only attended one meeting and one demonstration in the UK. He thought he had possibly attended three or four meetings. After the first meeting he had contacted the KDPI office in Paris (effectively the Head Office for Europe) and had asked them to confirm the claimant’s background. When members are approached by new arrivals it is necessary to carry out such a check. Paris had been asked to conduct a check in January 2016 but had only recently reverted to the witness to say that the party could support him. Their approval of him had not been included by RD in his statement but that omission was simply a mistake. The witness had been recognised as a refugee in the UK some 10 years ago.

My assessment of credibility

15. The truthfulness or otherwise of the account of events in Iran is in issue between the parties and is an important consideration in the context of this appeal. So, I have had to consider whether or not I can accept the claimant, to the lower standard set out above, as a credible witness. In undertaking that exercise I have taken full account of all of the oral evidence I have heard, all of the documentation which has been placed before me, and the competing submissions I have received. I have concluded that, in this regard, I am not able to accept the claimant as a credible witness. That is for the reasons I now set out below.

16. The claimant is illiterate. Such is not disputed. He says that he distributed leaflets in Iran but has also stated he knew little of the content of those leaflets. In his witness statement of 21 July 2016 he said “I have confirmed that I did not know the exact contents because I am illiterate” but went on to say that they had pictures of Dr. Ghassemlou who was a leader of the

KDPI until he was killed and that they also have pictures of a Mr Sharafkandi who was a fighter for Kurdish rights.

17. It is readily understandable that the claimant, as a person who is illiterate, would not be able to read, for himself, the content of the leaflets he was distributing. However, he does accept that conducting such leafleting is a dangerous exercise. Indeed, it is a core part of his account that what he was doing would attract significant disapproval on the part of the authorities and those associated with the authorities in Iran. Against that background I believe that he would have wanted to have verified to him what was said in the leaflets before deciding to distribute them so that, at least, he would fully understand the nature and extent of the risk he was taking. He had a friend who distributed the leaflets with him and I find it implausible that he would not have asked his friend to give him more precise information regarding the content of those leaflets.

18. To some extent the claimant's oral evidence, regarding his leafleting, was inconsistent with what he had previously indicated. He was not able, before me, to give any indication at all regarding the regularity with which he would undertake his leafleting. Further, his evidence was that all of the leaflets were, essentially, concerned with forthcoming (as I understand it) social and political events.

19. In his asylum interview, however, he said that he would distribute leaflets twice a month (question 46). He said that he did not know what was contained in the leaflet, making no mention of forthcoming events. I do feel, therefore, there are inconsistencies regarding the regularity of his leafleting and the content of the leaflets. These inconsistencies, on one view, might not seem all that significant but they are matters of detail about something of a very straightforward and simple nature and, therefore, something in respect of which consistency could reasonably be expected.

20. The centrepiece of the claim is that the claimant had been invited to a meeting, was intending to go to it, could then do so because of a visitor but, nevertheless, had come to the attention of the authorities because his name had appeared on a list of proposed attendees.

21. Clearly, if the claimant is asserting that attendance at such a meeting would of itself lead to significant adverse interest by the authorities then one would expect, logically, that attendance would be limited to only demonstrably trusted persons and that care would be taken not to create a record of who was in attendance or was likely to be in attendance. Against that background, it seems to me implausible that this claimant, as a mere supporter and leafletter would be invited to such a meeting in the first place. Even if I am wrong about that, however, I do find myself wholly in agreement with Mr Mills that it is really inconceivable, in the face of such risk, that a record of attendees would be voluntarily created by the very persons who would be at risk if the meeting were to be discovered or raided. I simply cannot accept that part of the claimant's account.

22. In light of the above, therefore, I have concluded that the claimant did not leaflet for the KDPI, that he did not attend any KDPI meetings, that his name did not appear upon any list of attendees and that the Ettelaat did not come looking for him as he claims. I find that, whilst it is possible that he harbours some general support for the Kurdish cause, he has done nothing in Iran which would bring him to the attention of the authorities.

23. I now turn to consider the credibility of what he and RD have had to say regarding his UK based claimed activity.

24. I have to treat what the claimant himself has to say about all of this with a degree of caution given my conclusion that he has sought to mislead with respect to events in Iran. As to RD, I do

have concerns about his evidence. In that context, it was to the effect that the claimant had been checked out by the Paris office and that, only shortly prior to the time RD had prepared his statement (21 April 2017) it had been confirmed that he was a genuine KDPI supporter. I think that, in fact, if such confirmation had been received RD, as the second ranking official in the UK branch of the Party, would have regarded that as being a matter of very considerable significance. Against that background I feel sure that he would have ensured that it was referred to, and prominently, in his statement. I did wonder whether the omission might be explicable as a result of any limitations in the witness's oral and written English but when I asked him about that he assured me that his command of English was sufficient. Additionally and in any event, his representatives have been content to submit his statement, in the form it is, on the claimant's behalf. This is something, therefore, which causes a degree of damage to RD's own credibility.

25. RD stated, in his oral evidence, that when there are new arrivals (presumably he meant persons who had just arrived in the UK and who had approached the KDPI and claimed to be members, supports or sympathisers) "we must check background with Paris". He also made mention of a "written statement" being sent to Paris. He said that that is done with respect to all such persons, presumably, for security reasons. It seems to me, in these circumstances, to make no sense for members of the KDPI in the UK to reach their own conclusions about such a person without waiting for the result of the Paris checks to be communicated to them. Otherwise, one might wonder why such checks would be carried out at all. However two letters said to have been written by the chairman of the UK branch of the KDPI had been produced for the first appeal hearing. Both of those letters, one dated 18 February 2016 and one dated 19 July 2016, had stated that the claimant had attended "most of our meetings/events since his arrival into the United Kingdom". It is hard to see why he would be permitted to do that, and why he would be trusted, without the results of the background checks which RD had referred to. Further, there is no evidence emanating directly from the Paris office stating that they do conduct such checks or that they were ever asked to conduct a specific check about the claimant.

26. I also note that, with respect to those two letters written by the chairman, one of them described him as being a "supporter" and the other describe him as being a "member". The difference between the two has never been explained.

27. There are, before me, some photographs, said to appear on the claimant's Facebook pages, demonstrating his attendance at some meetings or events. I was not urged to find that the photographs were staged and I am satisfied, to the lower standard, that the claimant has attended a small number of KDPI gatherings or conceivably other gatherings of Kurdish groups, within the UK. However, I do not accept that he is a genuine member or supporter of the KDPI, I do not accept that he has been vetted by an office in Paris and I do not accept that RD believes him to be a genuine member or supporter. Rather, I find that his limited attendance at such events (and on his own account he has not attended very many) has been with a view to his being able to present what he thinks might be helpful supportive evidence (such as the photographs).

28. There is then the Facebook activity. I am prepared to accept that the claimant does have a Facebook presence. He was not challenged as to his claim that he does and he has produced what appeared to be copies of certain of his Facebook pages. However, when asked why given that he is illiterate he likes to have a Facebook presence he was not able to give a proper reply. He simply gave a general indication to the effect that Facebook is a means of expressing an opinion. I do not accept that some of his Facebook friends are supporters of the regime. Both representatives agreed, before me, that to become a Facebook friend the person who they are seeking to befriend has to approve them. It is part of the claimant's case that internet activity is monitored by the Iranian authorities and that his internet activity will put him at risk. I think if he realised there might be

such risk at all he would be careful and cautious. The last thing I believe he would do, in those circumstances, is to allow persons who he knew or thought might be supports of the regime to become a Facebook friend and to then gain access to the whole of his Facebook account. I appreciate he offered an explanation as to why he would do this but I do not find that explanation to be at all plausible given that it would amount to his putting himself at unnecessary risk.

29. Whilst I accept that he does have a Facebook presence, and whilst I accept that at face value what appears on his Facebook pages would support the proposition is that he is a Kurdish activist or sympathiser or supporter, I find that the material has been put there with a view to him artificially enhancing his claim.

My reasoning in light of my findings

30. It follows from the above that I would conclude the claimant is not and never has been a wanted person in Iran. As such, I would reject his claim that he has already come to the attention of the authorities and that, on that account, he would be at risk on return.

31. The more difficult question is whether, given his activities in the UK and in particular his Facebook activities, he will be questioned upon return in circumstances where his response to that questioning or any internet research carried out by the authorities as a consequence of his responses, will lead to a real risk of persecution or serious harm.

32. The claimant, through his representatives, has placed much reliance upon the decision of the Upper Tribunal in *AB*. It was said therein:

“467. The mere fact of being in the United Kingdom for a prolonged period does not lead to persecution. However it may lead to scrutiny and there is clear evidence that some people are asked about their internet activity and particularly for their Facebook password. The act of returning someone creates a ‘pinch-point’ so that a person is brought into direct contact with the authorities in Iran who have both the time and inclination to interrogate them. We think it likely that they will be asked about their internet activity and likely if they have any Internet activity for that to be exposed and if it is less than flattering of the Government to lead to at the very least a real risk of persecution.”

33. I agree with Mr Mills that what is said in the headnote is important. It was made clear there that the material placed before the tribunal did not disclose a sufficient evidential basis for the giving of Country Guidance with respect to the risk which might be faced by persons who have been active on the internet. So, I do not regard what was said in *AB* as being binding upon me in the way that what is said in a Country Guidance decision will be.

34. I also have *SSH* and *HR*, cited above, which is a Country Guidance decision and which decides that an Iranian male in respect of whom no adverse interest has previously been manifested by the State, will not face a real risk of persecution or serious harm simply on account of having left Iran illegally and/or being a failed asylum seeker. It is worth noting, though, that the Upper Tribunal did seem to accept that there would be some questioning upon arrival at the airport regarding such persons (see paragraph 23 of the decision) and, indeed, Mr Mills accepted that too.

35. This claimant, of course, according to the evidence will be returning as a failed asylum seeker, as a person who exited illegally, as a person being returned on a temporary travel document and as a person who is of a minority ethnic group (a Kurd). I would conclude, in light of all of that, that there is as a minimum a real risk that he will be of sufficient interest to be questioned by the authorities upon return. The issue then is what will happen when he is so questioned.

36. It seems to me that it is extremely difficult to predict with any degree of certainty what such questioning might or might not involve. I do not consider there to be a real risk that the claimant's internet activity (that is to say his Facebook pages) will have already come to the attention of the authorities. That is because, since I have rejected his claim to already be a wanted person in Iran, there is no reason why the authorities would have him on their radar. But it was pointed out in *AB* that there was material suggesting that the regime was "twitchy" about internet activity. I think, as a matter of common sense, that is, to the necessary standard, likely to be so. I would accept then that, to the same lower standard, he will be asked about this. Since he cannot be expected to lie (something not disputed before me) the questioning is likely to reveal he has a Facebook account and is then likely to reveal his password. That, in turn, will reveal the content. I note Mr Mills "hanger on" argument but take the view that the Iranian regime when faced with a Kurdish failed asylum seeker who has exited illegally and who has sought asylum abroad and who has placed what will effectively be seen as oppositionist material on his Facebook pages, will not make that distinction. It may be an unattractive conclusion given the claimant's quite extensive dishonesty but I do conclude he is a refugee. On the same basis I conclude he has the protection of article 3 of the ECHR.

Decision

The appellants appeal is allowed.

Further, the appellant is granted anonymity under 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 to both the Appellant and Respondent. Failure to comply could lead to contempt of court proceedings.

Signed

**MR Hemingway
Judge of the Upper Tribunal
16 May 2017**

Dated

To the Respondent Fee Award

I make no fee award.

Signed

**MR Hemingway
Judge of the Upper Tribunal
16 May 2017**

Dated