



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

Appeal Number: PA/13237/2017

THE IMMIGRATION ACTS

**Heard at Liverpool
On 16 July 2018**

**Decision & Reasons Promulgated
On 21 November 2018**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MR ABDUL QADIR HASSANLU
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Wood, I A S (Manchester)

For the Respondent: Mrs H Aboni, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, who claims to be a national of Iran, has permission to challenge the decision of Judge Chowdhury sent on 15 February 2018 dismissing his appeal against the decision made by the respondent on 30 November 2017 refusing his protection claim. One of the reasons given by the respondent for rejecting his claim to be a national of Iran was that when fingerprinted in Germany he had given a different name but had said he was from Kirkuk, Iraq, and it was not considered he had given a reasonable explanation "for giving Iraqi national details in Germany" (he

had claimed it was because there was no interpreter available and his agent acted as interpreter).

2. In her decision, when assessing the appellant's claim to be a national of Iran, the judge concluded at paragraph 46 that it is "probable that [the appellant] was on the Iraqi side of the border".
3. I am persuaded that the judge's decision should be set aside for essentially two reasons. The first relates to what the judge stated at paragraph 44:

"44. Secondly, I also reject the evidence that his agent in Germany gave the immigration authorities Iraqi national details for the Appellant. I do not find, even on the lower standard of proof, that the German immigration authorities would use the Appellant's agent as an informal interpreter. Further it is entirely unclear what advantage it would bring to either the Appellant or the smuggler by stating that he was from the IKR rather than from Iran."

4. The judge's reasoning that it was "entirely unclear what advantage it would bring to either the appellant or the smuggler [the judge must mean the agent] by stating that he was from the IKR rather than from Iran" is problematic because (i) the details the appellant had given to the German authorities specified Kirkuk, which is not in the IKR; and (ii) Kirkuk was at that time identified by UNHCR and other organisations producing reports on Iraq as a contested area, so there was a prima facie advantage to the appellant's claim if he was in fact from Kirkuk. On its own the only other reason given in this paragraph for rejecting the appellant's claimed nationality - the lack of likelihood that the German authorities would permit an agent to interpret - is unduly speculative given the known strains on the German asylum system by having to process very large numbers of applicants. Further the other main reason given by the judge for rejecting the appellant's claim regarding his nationality, namely that he lacked fluency in Farsi, is rendered questionable by the accepted fact that in border areas Farsi would not necessarily be the "lingua franca", even on the Iranian side of the border.
5. My second main reason for setting aside the decision harks back to the matter which I identified at the outset, namely that in the course of rejecting the appellant's claim to be a national of Iran, both the respondent and the judge appear to have found that the appellant was in fact a national of Iraq. If that was indeed their finding, then it was incumbent on both to take note of the fact that the appellant might be at risk in his home area of Iraq and that if his home area was a contested area (as Kirkuk certainly was at the time) then there would need to be a consideration of whether he could internally relocate in Iraq; and further and in any event, there would need to be an assessment of whether he could realistically obtain a CSID. This was not a case when the respondent (or the judge) sought merely to rely merely on the appellant having failed to show what his nationality was.

6. As Mrs Aboni conceded, in such circumstances it was incumbent on the judge to have addressed risk on return to Iraq as well as risk on return to Iran.
7. I do not seek to suggest that the appellant has established his claim to be a national of Iran or to have been involved in border activities putting him at risk. Both these matters must be for the next judge to assess. However, I cannot exclude that the judge's erroneous approach to the issue of the appellant's claim to be a national of Iran may have affected her overall approach to assessment of the appellant's credibility. In such circumstances, I consider that it would be unsafe to seek to preserve any of the judge's findings of fact and I see no alternative to the case being remitted to be heard de novo by the FtT.

Directions

- (1) If the FtT Judge who rehears this case decides that the appellant is a national of Iran, then he or she will need to go on to consider whether the appellant has established a well-founded fear of being persecuted in Iran.
- (2) If the judge finds that the appellant is not a national of Iran, he or she will have to decide whether there is sufficient evidence to establish if he is a national of Iraq. If it is concluded the appellant is a national of Iraq, the judge will need to go on to consider whether the appellant would have a well-founded fear of being persecuted in Iraq, give whatever findings are made about his home area.

To conclude:

Notice of Decision

The decision of the FtT Judge is set aside for material error of law.

The case is remitted to the FtT.

No anonymity direction is made.

Signed

Date:16 November 2018



Dr H H Storey
Judge of the Upper Tribunal