



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00478/2019

THE IMMIGRATION ACTS

Heard at Field House
On 15th August 2019

Decision & Reasons Promulgated
On 10th September 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

S I P
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Acharya, legal representative instructed by Acharyas Solicitors

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iran whose appeal was dismissed by First-tier Tribunal Judge O'Hagan in a decision promulgated on 2nd April 2019.
2. The judge set out the background to the Appellant's case in paragraphs 3 to 6 inclusive of her decision. The judge noted that in a previous decision he had claimed to be involved with the KDPI and that appeal had been heard by Judge Butler who had promulgated a decision on 11th May 2017 and rejected the Appellant's claim saying that he did not find the Appellant's account to be credible and did not accept he was ever involved in smuggling either with his cousin or with the KDPI or both.

3. The judge noted that on 1st August 2018 the Appellant had made fresh submissions no longer seeking to rely on the matters that formed the basis of his previous claim; rather his claim was that he had converted to Christianity.
4. The judge went on to set out the case for the Appellant and the evidence given at the hearing noting the submissions made by both parties.
5. In paragraph 51 of the decision the judge did not accept the Appellant's account that he was a Christian convert. He set out his reasons for reaching that conclusion. These findings are not a matter of challenge and so I do not set them out here. What is relevant to say is that the judge found that the Appellant's activities had been fairly low level but he accepted that he had posted material on Facebook (paragraph 69) and he noted the authorities do monitor online activity and they may have become aware of the Facebook post. On balance he considered this a possibility which he could not sensibly ignore and although the matter was unclear he considered what the position would be if those activities were known to the Iranian authorities. He found that the opportunistic nature of the Appellant's activities would be apparent in Iran and it followed that the Appellant had no profile there and was not known as a member of the Christian community. His activity in this country had been recent and limited and amounted to no more than what was done to bolster a claim. The judge acknowledged (paragraph 71(x)) that 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 was low and the reaction of the authorities was reasonably likely to be extreme. He applied that guidance to the facts of this case and did not consider that the Appellant would be at risk on return by virtue of his Kurdish ethnicity or for any reason. In paragraph 73 he said that having considered all the matters he was not satisfied that the Appellant had discharged the burden of proving he faced a substantial risk of serious harm in his home country.
6. Grounds of application were lodged and the Appellant relied upon Upper Tribunal country guidance on the risks faced by Kurdish asylum seekers returning to Iran in **HB (Kurds) Iran CG [2018] UKUT 00430 (IAC)**. It was said that the judge had failed to engage fully with the guidance given therein and the correct approach would have been to consider how the religious Facebook posts would be viewed by the Iranian authorities. Given the Appellant's status as a Kurdish refugee it was said that the judge should have considered whether the Iranian authorities would adopt a "hair trigger" approach to suspicion of the Appellant which would result in him being further interrogated and persecuted for his Facebook postings. The expert evidence quoted at paragraph 114 of the decision stated that "It is part of the routine process to look at an internet profile, Facebook and emails of a returnee".
7. Permission to appeal was initially refused by Judge Haria in a decision dated 26th April 2019 but was granted by Upper Tribunal Judge Smith in a decision dated 17th June 2019. Judge Smith said that before addressing the two grounds it was important to appreciate two matters. The first is that this is the Appellant's second appeal, the first having been based on smuggling activities on behalf of KDPI. That claim was found not credible. The second is that this further claim was based on the

Appellant's conversion to Christianity which was also found not to be credible. There was no challenge to the findings in that regard. Instead the two grounds of challenge amalgamate the risk to the Appellant of coming under heightened scrutiny due to his ethnicity which would then reveal his Facebook entries (if those were not already known) in challenging his claimed Christian belief. For that reason, it was necessary to read together the paragraph setting out the findings based on the authorities becoming aware of the Facebook posts and those related to the risk of Kurds on return. Judge Smith considered that it was arguable when considering the country guidance, the judge had failed to appreciate the fact that the Appellant's Kurdish ethnicity following the guidance in **HB** would put him at risk of heightened scrutiny and if that occurred the authorities were aware of the Facebook post that might lead to risk on return.

8. Before me Mr Acharya relied on his grounds. There were a number of Facebook posts including one which said, "Jesus Christ I love you"; thus, the Appellant would come under heightened scrutiny. The judge had not looked at the position properly. Given the case law the decision of Judge O'Hagan should be set aside and I should remake the decision in favour of the Appellant. Paragraph 73 of the judge's decision did not say that the judge had considered the country guidance and that allied to the postings on Facebook this would demonstrate the Appellant to be not at risk.
9. For the Home Office it was said that the judge had covered all the necessary matters including the issue raised by the Appellant. Paragraph 73 was important because the judge had set out the posts on Facebook and referred to **HB** and had then gone on to say that he had "considered all these matters." I was asked to uphold the decision.
10. I reserved my decision.

Conclusions

11. The Appellant's appeal is a narrow one. As Judge Smith said his further claim based on his apparent conversion to Christianity was found not to be credible and there was no challenge to the findings in that regard. The judge was clearly aware of recent case law and noted at paragraph 71(x) as stated above that the Iranian authorities demonstrated what could be described as a "hair trigger" approach to those suspected or perceived to be involved in Kurdish political activities or support for Kurdish rights. It means that the threshold for suspicion is low and the reaction of the authorities is reasonably likely to be extreme. The judge went on to explain in the next paragraph (paragraph 72) that he did not consider that the Appellant would be at risk on return by virtue of his Kurdish ethnicity or for any other reason. The judge went on in paragraph 73 to say that having considered all these matters he was not satisfied that the Appellant had discharged the burden of proving that he faced a substantial risk of serious harm in his home country. He had fabricated his claim.
12. The appeal point is that because the Appellant is of Kurdish origin and because there are clear postings on Facebook he would come under heightened suspicion and this would lead inexorably to a well-founded fear of persecution.

13. The judge, however, did set out very fully the reasons why he was not accepting that the Appellant had proved a real risk of persecution on return. He acknowledged that the Appellant had made Facebook postings. The judge accepted that the authorities might become aware of his Facebook posts and proceeded on the basis that the position would be that those activities may well be known to the Iranian authorities. The judge accepted that the Appellant as a Kurd, would be scrutinised very carefully by the authorities. He concluded, in all the circumstances, that he had not proved that he faced a substantial risk of harm in his home country.
14. In my view there is nothing perverse or irrational about these findings. The judge was entitled to take the view that the Iranian authorities would interview the Appellant, would know of his Facebook settings and still conclude there was no real risk of him suffering serious harm at their hands - no doubt because they are well used to dealing with failed asylum seekers who have made a false claim to have converted to Christianity and who are essentially economic migrants. The judge was not presented with any compelling evidence before him that someone of the Appellant's profile was likely to be targeted by the authorities because of his Facebook postings. The judge carefully assessed all the evidence before him and was entitled to take the view that in all the circumstances there was no *real* risk that the Iranian authorities would proceed to target him or harm him in any way.
15. It follows that there is therefore no error in law in his findings. As such the decision must stand.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

I shall maintain the anonymity order.

Order Regarding Anonymity - 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 their family. This order applies both to the Appellant and to the Respondent. Failure to comply with this order could lead to contempt of court proceedings.

Signed
Deputy Upper Tribunal Judge J G Macdonald

Date 3rd September 2019