



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

Appeal Number: PA/10425/2017

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice Centre
On 22nd March 2019**

**Decision & Reasons
Promulgated
On 3rd April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**AD
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss S Khan of Counsel instructed by Aman Solicitors
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Brookfield (the judge) of the First-tier Tribunal (the FtT) promulgated on 4th December 2018.

2. The Appellant is an Iranian citizen born 22nd June 1992. He made an asylum and human rights application in the UK on 27th January 2016. He feared persecution and ill-treatment if returned to Iran because he is of Kurdish ethnicity and he had been recruited in Iran to carry out KDPI activities. He distributed leaflets between June 2014 and 27th September 2015 when he left Iran. He had joined the KDPI in the UK.
3. The application was refused on 3rd October 2017 and the appeal heard by the FtT on 21st May 2018 and 26th November 2018.
4. The judge found, as had been accepted by the Respondent, that the Appellant is an Iranian national of Kurdish ethnicity. The judge found that the Appellant was not a genuine supporter or member of the KDPI. Sur place activities undertaken in the UK would not be known to the Iranian authorities, and the Appellant would be returned to Iran as a failed asylum seeker with no political or other profile. The appeal was dismissed on all grounds.

The Application for Permission to Appeal

5. Four Grounds of Appeal were relied upon. Ground 1 contends that the judge erred in failing to have regard to objective evidence. Reference was made to paragraph 11(iv) in which the judge found the Appellant's account of his recruitment to the KDP to be neither reliable or credible. The judge did not find it credible that the KDPI would recruit any supporter or member in Iran without thoroughly vetting them. The Appellant relied upon the Respondent's Country Information and Guidance Version 2.0 published July 2016 and referred to section 8.2 and submitted that there was no evidence that the KDPI thoroughly vets new people, but relies upon pre-existing members to recommend people who are reliable.
6. The Appellant contended that the same applied to the judge's conclusions at paragraph 11(v) in which the judge found that it was not credible that the Appellant would be made aware of the identities of three supporters or members of the KDPI within a short time of meeting one of these members.
7. The Appellant referred to paragraph 11(xxiii) in which the judge found it was incredible that an individual said to be "in charge of spies" for the KDPI would store and hand over bundles of leaflets at his place of employment, to supporters such as the Appellant. It was submitted that the judge had erred by not taking into account that there was no objective evidence which states that members of the KDPI are restricted to only one role within the party or how the KDPI's spies operate.
8. Ground 2 contends the judge erred in law by making a misdirection as to the evidence. At paragraph 11(viii) the judge found that the failure by the Iranian authorities to detain the Appellant's family members, in the absence of the Appellant, was inconsistent with objective evidence. It was

submitted that this was wrong in law, as the objective evidence indicated that family members were sometimes detained, not always.

9. It was submitted that the judge erred at paragraph 11(xii) by finding the Appellant failed to mention in his witness statement dated 4th August 2017 that he had been fingerprinted in France. It was submitted that the judge was wrong in law to suggest that the Appellant was trying to conceal details of his journey to the UK. It was explained that the purpose of that statement was only to outline the reasons why the Appellant was claiming asylum, and the statement was made in response to the Preliminary Information Questionnaire provided by the Respondent, and the Appellant was not asked to provide details of his journey to the UK at that time.
10. Ground 3 contends that the judge erred in law by failing to follow the principles in HJ (Iran) [2010] UKSC 31. At paragraph 11(xxx) the judge found that the Appellant could delete his Facebook account or posts which contain anti-Iranian regime material. It was submitted that the judge was wrong in law because this would involve the Appellant taking steps to hide his own views and he could not be expected to behave in that way to avoid a risk of being persecuted.
11. Ground 4 makes reference to the country guidance decision HB Iran CG [2018] UKUT 430 (IAC) which was promulgated on 12th December 2018. It was accepted that this decision was promulgated after the FtT decision was promulgated on 4th December 2018 but it was argued that this case was authority for the proposition that simply on the findings made by the judge, that the Appellant is an Iranian Kurd and has posts on Facebook that are anti-regime, his appeal ought to be allowed. The country guidance decision although promulgated after the FtT decision, relied upon evidence that was in existence up to May 2018, and therefore that evidence existed at the date of the FtT hearing.

Permission to Appeal

12. Permission to appeal was granted by Judge Andrew in the following terms;
 - “2. I am satisfied that in view of the guidance in HB (Kurds) Iran CG [2018] UKUT 00430 (IAC) in view of the judge’s findings the Appellant may be at risk on return to Iran”.
13. Following the grant of permission the Respondent did not lodge a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Directions were issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision must be set aside.

My Analysis and Conclusions

14. At the oral hearing before me Miss Khan relied and expanded upon the grounds contained within the application for permission to appeal. Mr Tan argued that the FtT had not materially erred in law.

Ground 1

15. I do not accept that the judge disregarded background evidence when reaching the conclusions contained at paragraph 11(iv) and (v). The CIG published in July 2016, referred to in the Grounds of Appeal, at paragraph 8.2.1 which is at B75 of the Appellant's bundle, indicates that a person who wants to become a KDPI Party member must go through two months of training in the party's training centre in KRI. During these two months aspirants are being taught about the party programme and ideology and they would also receive practical military training. They would receive physical training.
16. It is explained that the process of recruitment of new members in Iran is that potential recruits are watched by the party members for a while. If a person is assessed to be a qualified and trustworthy candidate, he will be approached by the party member watching him and asked if he is interested in joining the party. If the candidate accepts the invitation and the party finds it necessary he will be sent to KRI to receive training. The profile of recruits is that the KDPI focuses on recruitment of young people, particularly university students and educated men and women.
17. The judge did not find the Appellant's account credible that he met a KDPI member in June 2004 and in the same month was delivering KDPI leaflets. The judge found the Appellant's own evidence suggested the KDPI had very limited time to vet him before he was allowed to assist in their activities. In my view the judge was entitled to find that the Appellant's account was not reliable or credible, and did not fail to take into account background evidence when reaching that conclusion.
18. I find that the same applies to the conclusions reached by the judge at paragraph 11(v) in which the judge found it incredible that the Appellant was made aware of the identities of three members or supporters of the KDPI within a very short period after his introduction.
19. The judge found this was not credible, as the Appellant's loyalty to the KDPI could not be adequately assessed within the timeframe he describes in meeting the KDPI members. In my view this was a finding open to the judge to make, and is in line with the background evidence referred to in the CIG of July 2016, relied upon by the Appellant.
20. With reference to paragraph 11(xxiii) it is contended that there is no background evidence to state that members of the KDPI are restricted to any role within the party. The judge does not find that KDPI members are restricted to one role within the party. It is contended there is no background evidence as to how the KDPI's spies operate and that is not disputed. The judge did not find it credible that an individual said to be in charge of spies for the KDP would keep bundles of leaflets that would incriminate him, at his place of business. The judge considered the evidence in the round and this was a finding open to make on that evidence.

Ground 2

21. I find no error of law disclosed. The complaint is that the judge had made a finding inconsistent with objective evidence. I will refer to that evidence as background evidence.
22. The evidence in question is the CIG published in July 2016 at section 11.1.1. The judge has quoted from that section and has not stated that family members would always be detained in the absence of the suspect. The judge specifically makes reference to the authorities “would interrogate the family members and sometimes detain them for a while and use torture to make them confess about the whereabouts of the wanted person”. I do not find that there is a misdirection as to the evidence.
23. With reference to paragraph 11(xii) the judge did note the failure by the Appellant to mention being fingerprinted in France in his statement dated 4th August 2017. It is correct that the Appellant did not mention this. It is claimed that the judge was wrong in law to do so because the witness statement was made in response to the Preliminary Information Questionnaire and the Appellant was not asked to provide details of his journey. I do not find the judge was wrong in law. The Appellant specifically mentioned his journey to the UK at paragraph 13 of the witness statement, in which he described leaving Iran on 25th September 2015 with the help of an agent and he made his way to the UK arriving on 27th January 2016. Therefore, the Appellant did refer to his journey in his witness statement, and the judge was entitled to note that he had failed to record being fingerprinted.

Ground 3

24. I do not find that the judge erred in law in failing to follow the principles in HJ (Iran). This is because the judge made a finding that the Appellant is not a genuine supporter or member of the KDPI. Therefore, the Appellant in deleting his Facebook posts would not be taking steps to hide his own views, because the judge has found that those views are not genuinely held. The Appellant is therefore not being asked to hide genuine views in order to avoid prosecution.

Ground 4

25. The judge cannot be criticised for failing to follow country guidance that had not been published. I do not find that findings made by the judge would put the Appellant at risk, having considered the risk categories in HB Iran CG. That guidance confirms that Kurds in Iran face discrimination but such discrimination is not in general at such a level as to amount to persecution or Article 3 ill-treatment. The Iranian authorities regard Kurds with suspicion and they are reasonably likely to be subjected to heightened scrutiny on return to Iran. However, the mere fact of Kurdish

ethnicity, without a valid passport, even if combined with legal exit, does not create a risk of persecution or Article 3 ill-treatment.

26. Kurdish ethnicity is a factor of particular significance when assessing risks. One of the relevant factors is a period of residence in the KRI which is not the case with the Appellant. Another risk factor is whether the Appellant was involved in Kurdish political groups or activity and the judge found that not to be the case with the Appellant. Low level political activity such as possession of leaflets or supporting Kurdish rights involves a risk of persecution. However, the judge has made specific findings that the Appellant was not involved with the KDPI in Iran, he has joined the KDPI in the UK to enhance his asylum claim and he is not a genuine KDPI supporter or member. The judge found that the Appellant's sur place activities would not be known to the Iranian authorities and gave adequate reasons for this finding.
27. In conclusion, I find that the judge has comprehensively considered the Appellant's account, has not made any findings which could be described as perverse or irrational, and has considered all material evidence. The judge has made findings which were open to make on the evidence and given adequate reasons for those findings.
28. The grounds upon which permission to appeal was granted, disclose a disagreement with the conclusions reached by the judge, but they do not, in my view, disclose a material error of law.

Notice of Decision

The decision of the FtT does not disclose a material error of law. I do not set aside the decision. The appeal is dismissed.

An anonymity direction is made.

Direction 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 his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

29th March 2019

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date

29th March 2019

Deputy Upper Tribunal Judge M A Hall