



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

Appeal Number: PA/12065/2018

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 16<sup>th</sup> May 2019**

**Decision & Reasons Promulgated  
On 17 May 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**YJB  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr C Timson, instructed by UK & Co Solicitors

For the Respondent: Mr Bates, Home Office Presenting Officer

**DECISION AND REASONS**

1. The First-tier Tribunal ("FtT") has made an anonymity order and for the avoidance of any doubt, that order continues. YJB is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

2. This is an appeal against the decision of First-tier Tribunal (“FtT”) Judge Cox promulgated on 11<sup>th</sup> June 2018. The FtT Judge dismissed the appellant’s appeal against the decision of the respondent dated 31<sup>st</sup> October 2018, to refuse his claim for international protection.
3. The appellant is a national of Iran. He was born on 1<sup>st</sup> January 1996 at the Altash camp in Ramadi, Iraq. He claims that at the age of 6 or 7, his family moved to the Barika refugee camp in Iraq. The fact that the appellant lived at the Barika refugee camp was accepted by the respondent. The appellant claimed that in or about September 2016, he left Iraq and travelled to the UK via Turkey, Greece and France. He arrived in United Kingdom on 12<sup>th</sup> March 2018 and made his claim for asylum.
4. The respondent accepted that the appellant’s father was a member of the KDPI. The appellant’s case is that his parents had travelled to Iraq during the war between Iran and Iraq. The respondent accepted that the appellant has provided an internally consistent account of his family leaving Iran, and of life in the Barika refugee camp. His account was also consistent with the external background material available. The claim for international protection made by the appellant had two strands to it. First, he could not return to Iran, because of his father’s previous political activities and membership of the KDPI. Second, he could not return to Iraq as he has no rights, or lawful status there.
5. The Judge records at paragraph [7] of her decision, that it was common ground between the parties at the hearing of the appeal, that the issue for the FtT Judge was a narrow one. The issue was whether the appellant would be at risk upon return to Iran as a result of links to his father. However, the FtT Judge notes at paragraph [15], that it was submitted by the Presenting Officer that the appellant could return to Iraq.
6. At the hearing of the appeal, the appellant relied upon a UNHCR Refugee Certificate, issued to him on 13<sup>th</sup> September 2016, and valid until 13<sup>th</sup>

September 2017. The document is said to confirm that the appellant has refugee status in Iraq, but that is renewable every year. The appellant claimed that the document had been sent to him by his uncle, and that everyone in the camp had such documents. In evidence, the appellant claimed that he had not approached the Iraqi Embassy to renew the status document, and said he would not do so, as Iraq is not his country of nationality.

7. At paragraph [12] of her decision, the FtT Judge records the following evidence given by the appellant about his father's activities:

"He confirmed that his father had not been approached at any time in the camp about his involvement with the KDPI and said that he was unsure if his father was politically active adding that owing to his age, he was unsure if he was active. He said that many in the camps would sit and discuss politics, and that his father did do that, but was much less involved. The appellant confirmed that he had never had any involvement with the KDPI. He said he did not even like them."

8. The findings and conclusions of the FtT Judge are set out at paragraphs [25] to [46] of the decision.
9. At paragraph [33], the FtT Judge notes that the objective evidence makes clear that the status of those in the camp as identified by the appellant, does mean they have no right or pathway to citizenship in Iraq. The FtT Judge however rejected the submission made on behalf of the appellant that as the appellant has been granted UNHCR refugee status, it must follow that the UK is bound to accept that the appellant is a refugee.
10. At paragraph [35], the FtT Judge states:

"I find that the appellant is therefore a Kurd, he has not illegally exited but has not been in Iran. I find that he could establish his Iranian citizenship as his UNHCR document confirms that, and I find that he could obtain a laissez-passer. The authorities would, as Mr Azmi notes in his skeleton, have the details of the appellant from having issued the laissez-passer. The registration of his birth in the refugee camp will assist in the identity information required. The appellant can obtain that via the UNHCR at the camp, or his relatives, as he did his certificate before me."

11. At paragraph [36] of the decision, the FtT Judge again notes that the appellant's father left with many others a very long time ago. She noted that the objective evidence shows that the authorities in Iran do indeed, on occasion, contact those they consider to be politically active, or opponents, even when they are outside of Iran. She noted however that there is no evidence at all, that the appellant's father has been troubled by the authorities. Insofar as the appellant is concerned, the FtT Judge states, at [36], as follows:

".. He did not of course leave Iraq as a result of any such risk or concern. I find that there is no interest at all in the appellant's father from the Iranian authorities as a result of activities that took place. The membership of the KDPI dates back almost 40 years. I do not find the father and his past activities cause the appellant to be of heightened interest or (*sic*) to therefore be at risk. The appellant has his family living without difficulty from the Iranian authorities in Iraq."

12. The FtT Judge found that the appellant would be questioned, but noted that there was no evidence that the questioning would be of a kind, or in a place, where ill-treatment could be expected. The FtT Judge considered the guidance set out in SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00306 (IAC), and found that there are no additional factors beyond illegal exit and Kurdish ethnicity. The Judge states, at [38], "*.. His position is straightforward he has been born in a camp, he has no political links and his father I find was a member of the KDPI and is of no interest to the authorities. On the full factual matrix I do not find that that is a risk that the appellant faces. I do not find that he would be interrogated or treated in any way so as to place him at risk and succeed in his appeal.*".

#### The appeal before me

13. The appellant refers in the grounds of appeal to the more recent country guidance set out in HB (Kurds) Iran CG [2018] UKUT 00430 (IAC). That country guidance case was heard by the Upper Tribunal in February and May 2018, prior to the hearing of the appellant's appeal, but promulgated shortly before the decision of FtT Judge Cox. That more

recent country guidance, was plainly capable of having an impact upon the outcome of the appeal, but was not referred to by the FtT Judge.

14. Permission to appeal was granted by FtT Judge Hodgkinson on 19<sup>th</sup> March 2019. The matter comes before me to consider whether the decision of the FtT involved the making of a material error of law, and if so, to remake the decision.
15. Before me, Mr Bates accepts that the failure to having regard to the country guidance decision in HB (Kurds) Iran CG, discloses a material error of law capable of affecting the outcome of the appeal. He concedes, rightly in my judgment, that in the circumstances, the decision of the FtT cannot stand. He concedes that the decision of the FtT contains a material error of law and should be set aside.
16. As to disposal, there is in my judgement no reason why I should not re-make the decision. Mr Bates accepts that the factual background is uncontroversial. The appellant is an Iranian national, of Kurdish ethnicity, who was born in a refugee camp in Iraq. The respondent has accepted that the appellant's father was a member of the KDPI. He submits that in re-making the decision, the question for me is whether the appellant will be at risk upon return, in light of the guidance set out in HB (Kurds) Iran CG. Iranian Kurdish asylum-seekers are not at risk on account of their Kurdish ethnicity alone. However, Mr Bates acknowledges that since 2016, the Iranian authorities have become increasingly suspicious of, and sensitive to, Kurdish political activity. Those of Kurdish ethnicity are thus regarded with even greater suspicion than hitherto, and are reasonably likely to be subjected to heightened scrutiny on return to Iran. He also acknowledges that Kurds involved in Kurdish political groups or activity are at risk of arrest, prolonged detention and physical abuse by the Iranian authorities. The threshold for suspicion is low, and the reaction of the authorities, is reasonably likely to be extreme. Mr Bates submits that each case must be determined upon its own facts, but is prepared to accept that on the facts here, and having in mind the standard of proof,

there appears to be a reasonable likelihood that the appellant will face more than reasonable questioning upon returning to Iran, such as to cross the threshold required to establish a consequent risk of persecution.

17. On the uncontroversial facts here, I find that the appellant has discharged the burden of proof of having a well-founded fear of persecution for a Convention reason, and that the removal of the appellant to Iran would cause the United Kingdom to be in breach of its obligations under the 1951 Convention.
18. It follows that I allow the appeal on Refugee Convention grounds. For his part, Mr Timson did not pursue the appeal on Article 2, 3 and 8 grounds, and the appeal is dismissed on human rights grounds.

### **Notice of Decision**

19. The appellant's appeal against the decision of FtT Judge Cox is allowed and the decision of the FtT Judge is set aside.
20. I allow the appeal on asylum grounds.
21. I dismiss the appeal on Article 2, 3 and 8 ECHR grounds.

Signed

Date

16<sup>th</sup> May 2019

**Deputy Upper Tribunal Judge Mandalia**

### **TO THE RESPONDENT**

#### **FEE AWARD**

I have allowed the appeal but as no fee is payable, there can be no fee award.

Signed

16<sup>th</sup> May 2019

**Deputy Upper Tribunal Judge Mandalia**