



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

Appeal Number: PA/ 12287/2018

THE IMMIGRATION ACTS

Heard at Bradford

On 29 May 2019

**Decision & Reasons
Promulgated
On 4 June 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**ARESH [A]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Bashow, instructed by Parker, Rhodes Hickmotts
For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iran who born on 3 April 1990. By a decision dated 9 October 2018, the Secretary of State refused the appellant's application for international protection. The appellant appealed to the First-tier Tribunal which, in a decision promulgated on 2 January 2019, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. The chronology surrounding the hearing and the promulgation of the decision is not in dispute. The hearing before the First-tier Tribunal took

place on 11 December 2018. The decision was promulgated, as I recorded above, on 2 January 2019. On 12 December 2018, the country guidance case of *HB (Kurds) Iran (illegal exit: failed asylum seeker)* CG [2018] UKUT 430 was promulgated by the Upper Tribunal. The appellant submits that the First-tier Tribunal (Judge Kelly) should have sought submissions from the parties as to the relevance of the new country guidance, reconvening the hearing if necessary, before promulgating his decision. At [41], Judge Kelly wrote:

“The appellant claims, in the alternative, that he is at risk of being questioned on return about his attendance at a protest outside Sheffield City Hall and are being ill-treated by the Iranian authorities as a result. I am not however satisfied that the appellant has substantiated his claim that the photographs of his participation in that protest had been posted on his (or anyone else’s) Facebook page given that he did not produce any documentary evidence at the hearing to support that claim. Moreover, the protest he attended appears to been related to a Kurdish political prisoner held in Turkey and does not therefore appear to have involved any direct or indirect criticism of the Iranian regime.”

3. Ms Bashow, who appeared before the First-tier Tribunal and the Upper Tribunal, submitted that Judge Kelly’s failure to address the most recent country guidance of *HB* had led him into material error as the guidance made it clear that the Iranian authorities may be interested to receive evidence of any of their citizens abroad advocating Kurdish rights in any form, and not just in direct opposition to the Iranian state. *HB* at [93] refers to the likely hostility of the Iranian authorities to anyone brandishing a Kurdish flag or literature advocating Kurdish rights. The photographs produced by the appellant and shown him holding a flag associated with PJAK, an Iranian Kurdish political party. In a broader attack upon the First-tier Tribunal’s decision, the grounds of appeal also criticise the judge’s alleged failure to follow country guidance concerning illegal exit from Iran and also raise the issue of the likely interrogation which the appellant, a Kurd who has left the country illegally, may face upon return.
4. I am satisfied that Judge Kelly has produced rigorously analysed and thorough decision. I see no reason at all to interfere with his principal findings of fact. Further, I am satisfied that the decision is not at odds with the country guidance of *SSH (illegal exit: failed asylum seeker) Iran* CG [2016] UKUT 308 (IAC) or *BA (Demonstrators in Britain – risk on return) Iran* CG [2011] UKUT 36 (IAC). Moreover, Ms Bashow’s submission, summarised above, that the judge’s decision is not consistent with the most recent country guidance of *HB* somewhat tenuous. However, the fact remains that the appellant wishes to make further submissions in the light of *HB* and, by promulgating his decision without providing an opportunity to the parties to make those submissions, the judge has fallen into error. It cannot be said that *HB* is unarguably wholly irrelevant to the circumstances of this appellant.

5. I discussed with the representatives the possibility of remitting this appeal to be remade in the First-tier Tribunal by Judge Kelly. Given that, save as identified in [4] above, his decision and, in particular, his findings of fact are entirely sound, I consider that returning the appeal to Judge Kelly to remake the decision is the best way in which to proceed. I preserve all of the findings of fact, save for what the judge states at [41]. Ms Bashow told me that the appellant has fresh evidence which he wishes to adduce concerning his recent activity on Facebook. Initially, I was minded not to allow any fresh evidence to be put before the First-tier Tribunal. On reflection, however, I consider that it is in the interests of justice that Judge Kelly considers this fresh evidence also; if he does not do so, it seems likely that the appellant will make representations to the Secretary of State in respect of a fresh claim with all the delays to the determination of his claim which such a course of action would inevitably entail.

Notice of Decision

The decision of the First-tier Tribunal is set aside. All of the findings of fact shall stand save for the contents of paragraph [41] of the decision. The appeal is returned to the First-tier Tribunal (**Judge David Kelly**) for that tribunal to remake the decision. Both parties may rely upon fresh evidence provided copies of any documentary evidence, including witness statements, are sent to the First-tier Tribunal and to the other party no less than 10 days prior to the next hearing.

Signed

Date 29 May 2019

Upper Tribunal Judge Lane