



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

Appeal Number: PA/12398/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 9th May 2019**

**Decision & Reasons Promulgated
On 28th May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

**P I
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Mottersaw, Turpin & Miller LLP (Oxford)

For the Respondent: Mr Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iran who was born on 15 January 1991. His application for asylum was made on 2 August 2018. His application was refused on 5 October 2018. The matter came before Judge Birk at Birmingham on 4 January 2019. She dismissed the appeal. Permission to appeal was granted by Deputy Upper Tribunal Judge Doyle on 26 March 2019 on the following basis:
 - “2. On balance there is sufficient in the grounds to make out an arguable case that the First-tier Tribunal Judge erred in the approach to the guidance in TF (Iran) v Secretary of State for the Home Department [2018] CSIH 58 when assessing the appellant’s

claim to have a well-founded fear of persecution because of his religion. The Judge's assessment of supporting evidence from church members in the UK lies between [45] and [50] of the decision. It is arguable that the Judge's findings in relation to the appellant's claimed Christianity are inadequately reasoned.

3. The grounds are arguable.”
2. Mr Bramble accepted that the grounds include a claim that the Judge gave inadequate consideration and materially erred by failing to follow country guidance on the relevance of the Appellant's Kurdish ethnicity in assessing the risk of persecution.

Conversion

3. In summary, the Appellant was saying that he finds it difficult to say whether he has converted. He believes in Jesus and is happy amongst Christians and at the Church. He is not a practising Muslim. In Iran he would continue to believe in Jesus and would want to continue attending Church and learning about Christianity even though he knows it would be risky. He did not rely on his attendance at Church earlier and had not gone through a conversion process. The evidence in support of his claim y goes back over a period from 2012 to 2018 from a variety of individuals who identified him as a regular attender and participant in the Church and community activities.
4. The Judge found [44]:

“He is not a convert and has not been baptised.”
5. The Judge rejected some of the written evidence as the Appellant does not claim to have evangelised or proselytised and has not attended an Evangelical Church, but a Baptist Church. The Judge finds at [45]:

“45. ... that the Appellant's lack of conversion means he will not be considered an apostate. Not being an active Muslim is in itself not a risk factor on return. I find that having an interest in the Christian religion since 2012, with a view to considering himself to be a Christian, but without indicating that he intends to be baptised at any stage does not establish a genuine interest nor conversion to another faith. Having taken into account his own description of his religious interest and the many letters of support, I find that his commitment to attending at the church in the UK as described by him is more to do with the community and friendship that it has shown him in the UK rather than to be about genuinely changing his religion. I seriously doubt that he would continue to attend church in Iran. I do not find that he can be considered or would be considered a Christian convert in Iran.”
6. In summary, Mr Bramble submits that the Judge has applied a holistic approach and has not imported into the assessment of his faith the concern she had in relation to his ethnicity and the problems that may flow from that.

7. Ms Mottershaw submits that it is not appropriate to peer into someone's sole. There was important evidence from the Church members and it is unclear why the Judge has rejected his account. The issue is perception.
8. I agree with Mr Bramble that the Judge had made findings available to her on the evidence that the Appellant had not converted and had not shown a genuine interest in Christianity, but was more interested in the community support and friendship that was available by attending church. She was entitled to say "I seriously doubt that he would continue to attend church in Iran". She was entitled to reject the various views of those who had filed letters of support for the reasons she gave. She did not import her views on ethnicity into the faith claim.

Ethnicity

9. In relation to the Appellant's ethnicity, the Judge summarises HB (Kurds) Iran CG [2018] UKUT 00430 (IAC) stating that:

"30. ... HB makes it clear that the mere fact of being of Kurdish ethnicity with or without a valid passport and even if combined with illegal exit does not create a risk of persecution or a breach of Article 3. It is a risk factor where it is combined with other factors which may create a real risk of persecution or Article 3 ill-treatment. A relevant risk factor in this appeal would be involvement in Kurdish political groups or activity, even if the expressions are peaceful dissent, speaking out about Kurdish rights, or organised activity in support of Kurds. This can be low level political activity.

31. The assessment of risk involves an assessment of the likelihood of such activities being discovered by the Iranian authorities and the nature of the activity and material available and how that is likely to be regarded and viewed by the Iranian authorities."

10. The Judge extracts the headnote from BA (demonstrators in Britain – risk on return) Iran CG [2011] UKUT 38. The Judge notes the evidence of the Appellant's attendance at a limited number of political events and his use of social media showing him at those events which support Kurdish rights outside the Iranian Embassy during which he was holding a placard and chanting and where there was local Iranian TV taking coverage. The Judge noted at [36] the background information about the Iranian government's crackdown on online freedom of expression intensifying.

11. The Judge summarised the evidence at [37] as meaning:

"that it can be gleaned that not all political activity will be under surveillance and merely participating in some political action abroad is insufficient to place a person at risk on return of persecution or ill-treatment".

12. The Judge made the following finding at [38]:

"38. I find that over a number of recent years that the Appellant has participated in no more than 5 demonstrations and 4 political

meetings. I find that he has been a member of the crowd in all events that he has attended. He is not prominent on the photographs that he has produced as he is one of many. He is not a regular participant in demonstrations. He has no role or membership to any political organisation or party. I find that his political profile is extremely low. There is little evidence that when he has been a participant that those events have attracted any great media attention in the UK or Iran. I find that the Appellant has not demonstrated that any pictures of himself have or are likely to come to the attention of the Iranian authorities. I find that there is little reason as to why he came under scrutiny upon return since he is not a university student, he had no political profile before he left Iran, I have not accepted that he is at risk due to his father's background nor the account he gave about being pursued in Iran, the length of time that he has been in the UK has not been demonstrated to lead to a heightened risk and his illegal exit is not a great risk factor."

13. Ms Mottershaw's submission is that the Judge materially erred in thinking that his ethnicity had to be linked to something else to create heightened suspicion. He should not have to lie about his internet activity or political activity here. As it is accepted he had attended demonstrations and there was internet activity, because of the heightened scrutiny, these factors would come out and there was therefore a real risk of harm.
14. Mr Bramble submitted that there was a thorough consideration of the facts and the Judge relied on the relevant background evidence and case law.
15. I agree with Ms Mottershaw that the Judge has misapplied HB and in particular headnote (7) which states:

"Kurds involved in Kurdish political groups or activity are at risk of arrest, prolonged detention and physical abuse by the Iranian authorities. Even Kurds expressing peaceful dissent or who speak out about Kurdish rights also face a real risk of persecution or Article 3 ill-treatment".
16. His ethnicity will raise the concerns of the Iranian authorities. They will then be reasonably likely to apply a higher level of scrutiny toward the Appellant. He should not be required to lie about his activities here. There is no delineation as to where the political activity occurred or what level is required.
17. In those circumstances, I am satisfied that the Judge materially erred in law on the basis of the Appellant's ethnicity.

Decision on further progress of the appeal

18. Ms Mottershaw submitted I should set the matter aside and remit it. Mr Bramble submitted that I could retain the matter in the Upper Tribunal as there was no fact-finding issue. I have all the information.

19. I agree with Mr Bramble. It is not necessary for me to reconvene the hearing or remit it. I have the relevant evidence and simply have to remake the decision. The Appellant has attended demonstrations and been active on the internet in support of Kurdish issues. He should not be required to lie about that on return. Due to his ethnicity upon return, he will be questioned by the authorities about his activity here, and upon him revealing what he has done, there is a real risk he will be arrested, subjected to a prolonged detention, and physically abused by the Iranian authorities.

Notice of Decision

20. I am satisfied the Judge made a material error of law.

21. I set aside the decision.

22. I remake the decision by allowing the Appellant's appeal.

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 their 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.

Deputy Upper Tribunal Judge Saffer
23 May 2019

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Deputy Upper Tribunal Judge Saffer
23 May 2019