



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: UI-2021-001779

PA/51459/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On the 25 May 2023

Before

UPPER TRIBUNAL JUDGE PITT

Between

**AAH
(ANONYMITY DIRECTION MADE)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr J Walsh, Counsel instructed by Davjunnell Solicitors

For the respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard at Field House on 10 May 2023

DECISION AND REASONS

1. This is an appeal against the decision issued on 19 May 2021 of First-tier Tribunal Judge Higgins which refused the appellant's asylum and human rights appeal.
2. The appellant is a national of Iran. He was born in 2002.
3. The appellant entered the UK illegally on 25 April 2019. He claimed asylum the same day. The application was refused on 7 September 2020. The appellant appealed and his appeal came before First-tier Tribunal Higgins on 14 May 2021.
4. The appellant's asylum claim was that he was of Kurdish ethnicity and had worked as a kolber (smuggler) taking alcohol across the Iran/Iraq border. He maintained that in August 2018 the kolber group he was in was

ambushed by the Iranian authorities. The appellant managed to escape but two members of the group were captured. The appellant went into hiding, surmising that his name would become known to the authorities from the two people who had been captured. Shortly afterwards, a summons arrived at his family home requiring his attendance at court. The appellant's family arranged for him to leave the country and, as above, he came to the UK in April 2019 and claimed asylum.

5. First-tier Tribunal Judge Higgins found that the appellant was Kurdish and that he had worked as a kolber smuggling alcohol across the border. She did not find the appellant's account of his kolber group being ambushed in August 2018 was credible or accept that the appellant had come to the particular attention of the authorities on any basis. She proceeded to refuse the appeal, finding in paragraph 20:

"The above aspects of the Appellant's evidence lead me to the conclusion that his story of being caught up in an ambush which resulted in his being identified by the Iranian authorities as an illegal kolber is not reasonably likely. Whilst he may have worked as a kolber, I find that he did so without being identified, and he has not come to the attention of the Iranian judicial authorities as he claims. It follows that he would not be viewed on return to Iran in any other way than as a returning failed asylum seeker, and would not face any risk as a result."

6. There is no challenge to the credibility findings. The appellant's sole ground maintains that the First-tier Tribunal decision was not lawful where it did not take into account when assessing risk on return the combination of:

- the appellant's Kurdish ethnicity
- his being a kolber smuggling alcohol
- having exited illegally
- being returned from the UK, a country known to allow Iranian opposition groups to function.

7. I was referred to HB (Kurds) Iran CG [2018] UKUT 00430 (IAC). The headnote to that case states:

1. SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 308 (IAC) remains valid country guidance in terms of the country guidance offered in the headnote. For the avoidance of doubt, that decision is not authority for any proposition in relation to the risk on return for refused Kurdish asylum-seekers on account of their Kurdish ethnicity alone.
2. Kurds in Iran face discrimination. However, the evidence does not support a contention that such discrimination is, in general, at such a level as to amount to persecution or Article 3 ill-treatment.
3. 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.

4. However, the mere fact of being a returnee of Kurdish ethnicity with or without a valid passport, and even if combined with illegal exit, does not create a risk of persecution or Article 3 ill-treatment.
5. Kurdish ethnicity is nevertheless a risk factor which, when combined with other factors, may create a real risk of persecution or Article 3 ill-treatment. Being a risk factor it means that Kurdish ethnicity is a factor of particular significance when assessing risk. Those "other factors" will include the matters identified in paragraphs (6)-(9) below.
6. A period of residence in the KRI by a Kurdish returnee is reasonably likely to result in additional questioning by the authorities on return. However, this is a factor that will be highly fact-specific and the degree of interest that such residence will excite will depend, non-exhaustively, on matters such as the length of residence in the KRI, what the person concerned was doing there and why they left.
7. 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.
8. Activities that can be perceived to be political by the Iranian authorities include social welfare and charitable activities on behalf of Kurds. Indeed, involvement with any organised activity on behalf of or in support of Kurds can be perceived as political and thus involve a risk of adverse attention by the Iranian authorities with the consequent risk of persecution or Article 3 ill-treatment.
9. Even 'low-level' political activity, or activity that is perceived to be political, such as, by way of example only, mere possession of leaflets espousing or supporting Kurdish rights, if discovered, involves the same risk of persecution or Article 3 ill-treatment. Each case however, depends on its own facts and an assessment will need to be made as to the nature of the material possessed and how it would be likely to be viewed by the Iranian authorities in the context of the foregoing guidance.
10. 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

is low and the reaction of the authorities is reasonably likely to be extreme.

8. In line with paragraphs 1, 2 and 4 of the headnote of HB, the appellant had not argued before the First-tier Tribunal that his Kurdish ethnicity even when combined with his illegal exit was sufficient to show that he would face serious mistreatment on return. The appellant had been entitled, however, according to Mr Walsh, to consideration of the guidance in paragraphs 3, 5 and 6 of HB on:
 - the increased suspicion of Kurds,
 - risk of heightened scrutiny of Kurds on return
 - Kurdish ethnicity still being a factor which might show risk if combined with other factors,
 - residence in the Kurdish Region of Iran (KRI) being likely to lead to additional questioning on return depending on the length of residence and what the person was doing there and why they left
9. This was not a case where the appellant had been found to be a “mere” Kurd who had exited Iran illegally. In addition to those factors, he had lived all his life in the KRI. Further, it was accepted that he had been a kolbar smuggling alcohol. The expert report before the First-tier Tribunal set out in paragraph 110 the intense adverse interest of the Iranian authorities in kolbar activity. The expert report had also highlighted in paragraphs 144 and 145 that returning from the UK where opposition groups were allowed to function would also be a factor capable of adding to the risk of adverse treatment.
10. It was common ground that the appellant would be expected to explain the reasons for his illegal exit from Iran, give his reasons for claiming asylum abroad and to be truthful when doing so; see PS (Christianity - risk) Iran CG [2020] UKUT 00046 (IAC). He would therefore have to disclose that he was a Kurd who had lived in the KRI all his life and was kolbar who had smuggled alcohol who had exited illegally and gone to the UK to claim asylum.
11. It was my view that the appellant’s profile as found by the First-tier Tribunal (set out in paragraph 6 above) had to be assessed against the country guidance (set out in paragraphs 7 and 8 above) and the relevant sections of the country expert report (set out in paragraph 9 above). The assessment conducted by the First-tier Tribunal in paragraph 20 of the decision did not do this. It was not sufficient to take into account only his ethnicity and being a failed asylum seeker. Had all of the factors in his profile been assessed together against the country guidance and expert report the appeal might have been decided differently.
12. I therefore found that the decision of the First-tier Tribunal disclosed an error on a point of law such that it had to be set aside to be remade. The parties were in agreement that the nature of the error of law and the extant findings on the appellant’s profile meant that it was appropriate for the reassessment of risk on return to take place in the Upper Tribunal and

there was also agreement that this could be done on the papers using the existing documents and submissions on the error of law.

13. My assessment was that the appellant's profile was sufficient to show a real risk of adverse treatment on return to Iran. HB confirms that the appellant's Kurdish ethnicity will make it likely that he will be subject to heightened scrutiny on return and is a factor which combined with others is capable of creating a risk of persecution or Article 3 ill-treatment. In addition there is the factor of the appellant being from the KRI, something that is also likely to lead to additional interest in the appellant on return. He is from Sardasht, near the border with Iraq, and has always lived in the KRI. On return, the information disclosed to the Iranian authorities will include those matters as well as his work as a kolber smuggling alcohol who left in order to seek asylum in the UK. It was my view that these were factors that were capable of exciting a higher degree of interest in the appellant. The expert report shows that the Iranian authorities have an intensely adverse approach to kolbars, putting significant security in place to limit their operations. My judgement was that the combination of the different aspects of the appellant's profile were sufficient when considered against the country materials to show a real risk that he would face mistreatment on return that amounted to persecution and a breach of Article 3 ECHR.

Notice of Decision

14. The decision of the First-tier Tribunal discloses a procedural error and is set aside to be remade.
15. The appeal is remade as allowed.

Signed: S Pitt
Upper Tribunal Judge Pitt

Date: 11 April 2023