



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005257
First-tier Tribunal No:
PA/53850/2021
LP/00136/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 16 May 2023

Before

UPPER TRIBUNAL JUDGE REEDS

Between

S A
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S. Khan, Counsel instructed on behalf of the appellant.

For the Respondent : Ms Z. Young, Senior Presenting Officer

Heard at Bradford IAC on 17 April 2023

Order Regarding Anonymity

Anonymity is granted because the facts of the appeal involve a protection claim. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission against the decision of the First-tier Tribunal (Judge Clegg) (hereinafter referred to as the "FtTJ") who dismissed the

appellant's protection and human rights appeal in a decision promulgated on the 8 August 2022.

2. Permission to appeal that decision was sought and permission was initially refused but on renewal was granted by UTJ Kopieczek on 16 December 2022.
3. The background to the appeal is set out in the case papers. The appellant is a citizen of Iran of Kurdish ethnicity. He entered the UK and applied for asylum on 3 December 2019. The basis of his claim for protection was that he would be at risk of persecution in Iran due to his political opinion, based on his support for the Kurdish Democratic Party of Iran (hereinafter referred to as the "KDPI"). His claim was that he had a friend who was a member of the KDPI, who had introduced the appellant to the principles of the party and also recruited him to distribute leaflets. It was said that after having distributed leaflets in 2019, the appellant's friend did not return home and the following day the appellant's home was searched by the Iranian police and leaflets were discovered. It was believed that his friend had been arrested and had given information about the appellant. He left Iran and travelled to Turkey by lorry then travelled across Europe and entered the UK in December 2019.
4. Since being in United Kingdom the appellant has attended demonstrations organised by the KDPI and also had posted material on his Facebook posts in which he voices criticism of the Iranian regime. His claim was that he would be arrested and be at risk of ill-treatment as a result of his support for the KDPI and due to his sur place activities.
5. In a decision taken on 20 July 2021 the respondent considered his claim and whilst the respondent accepted the appellant's nationality and ethnicity, his claim that he supported and delivered leaflets for KDPI members was not accepted. Further, the respondent did not accept that the appellant came to the attention of the Iranian authorities, nor is it accepted that he would face the risk of persecution if returned as a result of his activities.
6. The appellant appealed that decision, and it was heard by the FtT on 21 July 2022. The FtT identified 2 issues in the appeal firstly, whether the appellant came to the adverse attention of the authorities in Iran due to his political activities as a supporter of the KDPI and secondly, whether the appellant had established that he would be at risk upon return to Iran.
7. Dealing with the 1st issue identified, the FtT set out his assessment between paragraphs 18 (a) –(f) where the FtT set out his conclusion that he did not find that the appellant had come to the adverse attention of the Iranian authorities by virtue of his support for the KDPI. The appellant's grounds do not challenge those findings.
8. As to the 2nd issue, the FtT accepted that the appellant had provided evidence of his Facebook page which he found to "unquestionably feature public posts which are critical of the Iranian regime" and was also satisfied from the photographic evidence that whilst the appellant was in the UK he had attended "multiple demonstrations in opposition to the Iranian government and in support of Kurdish rights" (see [19]). The FtT accepted that the demonstrations were organised by the KDPI and that the appellant confirmed in evidence that he was holding a Kurdish flag and the demonstrations were in front of the Iranian embassy. Whilst the FtT did not accept that the appellant carried out activities for the KDPI whilst in Iran or that he was a genuine supporter, the FtT found that the appellant

“does have some background knowledge of the KDPI and he may have sympathy with the aspirations of Kurdish rights” (at [21] and [29]). The FtTJ concluded that the appellant was not a leader or organiser of the demonstrations, that there was no evidence that the protests ever received media attention and the FtTJ did not accept there would be a real risk of persecution arising from his illegal exit and his very limited involvement in protests in the UK (at paragraph [22]). When considering the Facebook posts, the FtTJ consider that they were uploaded to bolster his asylum claim and that he would be able to delete those posts and therefore would not be at risk on return. The FtTJ did not find that the appellant would be perceived as a KDPI supporter upon return; having deleted the Facebook account, and that he had no profile or activity which had come to the attention of the Iranian authorities. Whilst the judge accepted that he was sympathetic to the plight of the Kurdish people generally and had background knowledge of the KDPI and held beliefs that the Kurdish people in Iran and elsewhere deserve better lives, he was not satisfied that the appellant would be perceived as a KDPI supporter on return. He dismissed the appeal.

9. The appellant sought permission to appeal, and it was granted by Upper Tribunal Judge Kopieczek on 16 December 2022. The UTJ stated, “there is argument merit in the contention that the FtTJ’s conclusions about risk on return in the light of those findings of fact that he made which are in favour of the appellant, are not consistent with current country guidance, in particular HB(Kurds) Iran CG [2018] UKUT 00430 (IAC).”
10. At the hearing before the Upper Tribunal, Ms Khan of Counsel appeared on behalf of the appellant and Ms Young, Senior Presenting Officer appeared on behalf of the respondent . It was explained by the advocates that it was agreed that the decision of the FtTJ involved the making of an error on a point of law for the reasons set out in the original grounds provided and as summarised in the renewed grounds. Ms Young referred to the rule 24 response dated 14 February 2022 which had been filed on behalf of the respondent where it had been accepted that the FtTJ had materially erred in law based on the 2 grounds of appeal advanced in the written grounds and as set out in the grant of permission by Upper Tribunal Judge Kopieczek. It is therefore accepted by the respondent that the errors were material to the outcome for the reasons set out in the appellant’s renewal grounds. It was conceded on behalf of the respondent that the decision should be set aside and also that in light of the grounds which were accepted by the respondent that the appeal should be allowed, and the decision remade by the Upper Tribunal substituting an order that the appeal should be allowed.
11. Given that the parties are in agreement that the decision of the FtTJ erred in law for the reasons set out in the original grounds, it is not necessary to set out in any detail why that concession was properly made. The first ground of challenge related to the appellant’s profile. As set out earlier there was no challenge to the findings made by the FtTJ that the appellant had not come to the attention of the authorities whilst in Iran and the grounds were based on his profile as a result of the sur place activity carried out subsequently. It was not in dispute between the parties that the appellant had carried out political activities in the UK including Facebook posts which were critical of the Iranian regime and that he had attended demonstrations in opposition to the Iranian government and in support of Kurdish rights as organised by the KDPI and that he held a Kurdish flag in front of the Iranian embassy. Whilst there was reference to the appellant attending

“multiple demonstrations” in the decision of the FtTJ, Ms Khan referred to the evidence given by the appellant that he had attended 9 demonstrations.

12. Ms Khan had set out in the grounds that whilst the FtTJ did not find that he was a genuine supporter of the KDPI, the FtTJ had accepted that “the appellant had some background knowledge of the KDPI and that he may have sympathy with the aspirations of Kurdish rights” which had been set out at paragraphs 21 and 29. Whilst the FtTJ may have found that the Facebook posts were uploaded to bolster his asylum claim, it was not stated that his attendance at the demonstrations were with that in mind or were self-serving and that in light of the FtTJ’s findings of fact at paragraphs 21 and 29 that he had knowledge of the KDPI and had sympathy with the aspirations of Kurdish rights, the attendance of demonstrations were part of genuine political views.

13. It is accepted on behalf of the respondent that those findings of fact were relevant to the appellant’s profile and when seen against the backdrop of the decision in HB (Kurds) (as cited above). The head note of that decision in reads:

(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.

14. Furthermore the grounds relied upon SSH and HR (illegal exit; failed asylum seeker) CG[2016] UKUT 308. It set out that even low level activity if discovered would involve the risk of persecution or article 3 ill-treatment and that the Iranian authorities had developed a “hair trigger” approach to those returnees suspected or perceived to be involved in Kurdish political activities or support for Kurdish rights. Paragraph 23 of the decision set out the questioning that would take place to establish if there were any areas of concern from the authorities.
15. The relevant case law demonstrates that the mere fact the person who is an Iranian national of Kurdish ethnicity who is returned as a failed asylum seeker will not create a risk of persecution. It is also right that the FtTJ was entitled to find on the evidence that the appellant would not come to the attention of the authorities in Iran as a result of the activities carried out there based on the unchallenged findings.
16. The advocates however agree that the issue is what would occur on return and that it is established from the authorities that the appellant would be returned on a ETD which does not itself create the risk but gives rise to questioning by the Iranian authorities which will include his Kurdish ethnicity and his background. It is accepted on behalf of the respondent that the appellant has identified himself with opponents of the regime by demonstrating in the UK. As Ms Khan submitted and as Ms Young agreed, even if the authorities would not know of his attendance at the demonstrations as found by the FtTJ or the material on Facebook, there is a reasonable likelihood that they would question him on return and if asked about his views on Kurdish issues and whether he attended demonstrations in the UK, he must be assumed to answer truthfully (see ground 2). If questioned, he would not be expected to lie and in view of the finding that the appellant has sympathies with the plight of Kurdish people generally and has attended multiple protests in support of Kurdish rights, it is accepted on behalf the respondent that he cannot hide his views and not be expected to lie about his views as to the plight of the Kurds in Iran or that he attended a number of demonstrations organised by the KDPI. Both parties highlight that it is the perception of the authorities that has to be assessed and that in the light of the positive findings of the FtTJ relating to that issue, that would be sufficient to give rise to a real risk of persecution or article 3 ill-treatment on return to Iran where “the threshold is low, and the reaction of the authorities is extreme” (applying the “hair trigger approach”).
17. For those reasons, on the particular facts made in relation to this appellant they were sufficient to demonstrate that the appellant would be at risk on return to Iran.

Notice of Decision

18. The decision of the FtTJ involved the making of a material error of law; it is set aside. It is remade as follows: the appeal is allowed on asylum and Article 3 grounds.

Upper Tribunal Judge Reeds
Judge of the Upper Tribunal

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Immigration and Asylum Chamber

17April 2023