



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-001766

First-tier Tribunal No:
PA/54063/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 18 November 2024**

Before

**UPPER TRIBUNAL JUDGE SMITH
DEPUTY UPPER TRIBUNAL JUDGE LOKE**

Between

**A A
[ANONYMITY DIRECTION MADE]**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Georget, Counsel instructed by Barnes, Harrild, Dyer solicitors

For the Respondent: Ms C Newton, Senior Home Office Presenting Officer

Heard at Field House on Monday 11 November 2024 via CVP

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant (A A) 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

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge Abebrese dated 22 September 2023 (“the Decision”) dismissing the Appellant’s appeal against the Respondent’s decision dated 18 September 2022 refusing the Appellant’s protection and human rights claims.
2. The Appellant is a national of Iran of Kurdish ethnicity. He claims to be at risk from the Iranian authorities because of his participation in illegal activities in Iran and on account of his *sur place* political activities in the UK.
3. The Judge found the Appellant’s core claim to be inconsistent with background evidence and to lack credibility. As the Judge did not accept that the Appellant had been involved in political activity, he found that the Appellant would not be of interest to the Iranian authorities on return.
4. The Appellant appeals the Decision on two grounds as follows:

Ground 1: the Judge erred in his approach to credibility by misinterpreting the background evidence, misunderstanding the Appellant’s evidence and failing to follow a structured approach.

Ground 2: the Judge failed to follow the correct approach to consideration of the Appellant’s *sur place* activities having regard to the judgment in YB (Eritrea) v Secretary of State for the Home Department [2008] EWCA Civ 360 (“YB (Eritrea)”) and erred in his application of the guidance in HB (Kurds) Iran CG [2018] (“HB”). It is also said that the Judge failed to follow the approach laid down in HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31 (“HJ (Iran)”)

5. Permission to appeal was refused by First-tier Tribunal Judge D Brannan on 26 March 2024 in the following terms so far as relevant:

“..3. The criticisms of the approach to credibility appear to relate to how the judge took into account country evidence that the Respondent relied on in the reasons for refusal. While the grounds of appeal provide a detailed explanation I cannot find any such explanation in the Skeleton Argument provided for the hearing. I am not satisfied any arguable error of law in relation to this has been shown. The grounds also assert the judge misunderstood the evidence as the Appellant was a child at the time of the activities in Iran. The judge was aware of this and there is no arguable error of law identified in the grounds.

4. Superficially, the decision appears to lack reasons regarding the *sur place* claim. However in fact the brief reasons are adequate given the evidence before the judge in the statement of the Appellant dated 26 April 2023. In this he said he was not attending protests and could not post on Facebook because he is illiterate. The Judge’s consequent conclusion that

the Appellant was only doing these things to bolster his claim is not an arguable error of law in the circumstances. The reasons why the Appellant faces no risk on return and has no convention reason are therefore adequate.”

6. On renewal of the application to this Tribunal permission was granted by Upper Tribunal Judge Sheridan in the following terms:

“1. It is arguable that the appellant’s account was not in fact inconsistent with the objective evidence. It is also arguable that the judge erred by not taking into consideration that the appellant was a child when he left Iran. Ground 1 is therefore arguable.

2. The judge arguably failed to consider evidence indicating that the appellant may have a genuine commitment to Kurdish rights. Arguably, had this been considered, the judge might have found that the appellant has opinions that he would refrain from expressing in Iran due to a fear of persecution and that, as a consequence, the principles in *HJ (Iran)* apply. Ground 2 is therefore arguable.”

7. The appeal comes before us in order to decide whether there is an error of law. If we determine that the Decision does contain an error of law, we then need to decide whether to set aside the Decision in consequence. If we set the Decision aside, we must then either re-make the decision or remit the appeal to the First-tier Tribunal to do so.

8. We had before us a bundle running to 574 pages (pdf) ([B/xx]) containing the documents relevant to the appeal before us, and the Appellant’s and Respondent’s bundles before the First-tier Tribunal.

9. There has been no Rule 24 Reply from the Respondent. However, at the outset of the hearing, Ms Newton indicated that the Respondent conceded that there is an error of law in the Decision. Having heard from her in relation to the substance of that concession (see below), we accepted that it was appropriately made. We heard briefly from Mr Georget as to the concession and disposal. We then indicated that we found an error of law in the Decision which we would therefore set aside.

10. We accept that the Decision must be set aside in its entirety with no findings preserved. For that reason, we accepted the parties’ submissions that it was appropriate to remit this appeal having regard to the Tribunal’s practice direction. This is because there will need to be a full de novo hearing of the appeal including findings of fact on all issues.

11. We also indicated that we would provide more detailed reasons for our conclusion in writing which we now turn to do.

DISCUSSION

12. In relation to the first ground, Ms Newton agreed that the Judge had erred in his understanding of the background evidence, in particular a report from the Danish Immigration Service entitled “Iranian Kurds: On Conditions for Iranian Kurdish Parties in Iran and KRI, Activities in the Kurdish Area of Iran, Conditions in Border Area and Situation of Returnees from KRI to Iran – 30 May to 9 June 2013” published September 2013 (“the Danish Report”). Although the Danish Report does not itself appear in the bundle, it is relied upon by the Respondent in her decision under appeal.

13. The Judge made findings about the consistency of the Appellant’s claim with the background evidence (or lack of it) at [20] of the Decision as follows:

“I have considered the documentary and oral evidence before me and I make the following findings. I am of the view that the Appellant has not provided evidence to show that there is a reasonable degree of likelihood that he would be persecuted if he were to return to Iran for the following reasons. The Appellant claims that his paternal uncle and father distributed leaflets and CD’s for the KPDI Peshmerga [sic] and that he has also been asked to do the same. This evidence I find is inconsistent with the objective evidence in relation to how the KPDI operates. The report claims that this practice was used until 2013 and the Appellant in his evidence claims that this practice continued during the period 2013-2018 when he was involved in this activity. I did not find this credible because he does not provide a plausible explanation as to why the KPDI would have continued to use this method of operation post 2013. I do not find it credible that the Peshmerga would have continued to use trained combatants to deliver leaflets and CD’s here they are [sic] volunteers who would be willing to carry out this task it is just simply not plausible and I find that it is unlikely that the Appellant would have been involved in this activity.”

14. Those findings follow what is in essence a recitation of the Respondent’s case at [11] of the Decision based on [31] of the Respondent’s decision ([B/382-383]) which reads as follows:

“Your evidence is that there were KDPI Peshmerga in the mountains who provided leaflets and CDs to be distributed, which is inconsistent with the above objective background information. You were asked if you knew why Peshmerga would be handling such materials, and you said, ‘Peshmerga are also member of the party and leaders or high figure they don’t do these things, they are done my [sic] peshmerga and they are all members.’ (AIR 2 29). This is not considered a reasonable explanation because it provides no rationale for using Peshmerga trained military combatants to deliver 10-15 CDs or leaflets to your father when there are willing sympathisers who would voluntarily do so. You were then asked if you could explain why you were given papers and CDs when the above objective background information states this would be sent on USB and then hard copies created and distributed locally; you said, ‘I am talking about several years ago that was how they delivered material’ (AIR2 30). Your legal representatives clarified further that ‘There were no USBs at that time’ (FR2). This is not considered a reasonable explanation because you were doing this work with your father and then your uncle until you left Iran

towards the end of 2018 (AIR1 97-98, WS 17-18). The report referring to the use of USBs is dated 30 May – 9 June 2013 and you provided no explanation why leaflets and CDs would be used during the period 2013-2018 when you continued to help.”

The source of that paragraph is said to be the Danish Report.

15. As the Appellant points out in his grounds, and Ms Newton accepted, what is said about the situation regarding communications in 2013 based on a report published in 2013 cannot be used to undermine the Appellant’s case about the position thereafter. As Ms Newton also drew to our attention, and as pleaded in the Appellant’s grounds [2.1.2.2] of the Danish Report discusses distribution of flyers etc by sympathisers but does not say that Peshmerga are not involved in such activities.
16. We have a certain amount of sympathy for the Judge who did not have the Danish Report in evidence. It is referred to in the Respondent’s decision under appeal and also in the Respondent’s own Country Policy and Information Notes which appear at [B/134-269] (see specifically references in the May 2022 CPIN entitled “Iran: Kurds and Kurdish Political Parties” at [B/178-244]). No doubt that was the point which Judge Brannan had in mind when mentioning the lack of reference to the points pleaded in the grounds in the Appellant’s skeleton argument. However, having relied on the Respondent’s decision, it was incumbent on the Judge when reaching his findings to look at the background evidence (in this case the CPIN citing from the Danish Report) to ensure that the evidence supported the position taken by the Respondent.
17. As it is, we are satisfied that, as Ms Newton said, the Danish Report refers to sympathisers distributing flyers etc but does not say that Peshmerga do not do so and the fact that USBs had started to be used in 2013 at the time of the Danish Report does not mean that they were universally used thereafter.
18. Turning then to ground two, we can deal with this shortly. As Ms Newton pointed out, the guidance in HB indicates that the Iranian authorities subject returnees to heightened scrutiny. In this case, even if the Judge had been entitled to find that the Appellant had himself not been involved in political activities in Iran, it was also part of the Appellant’s case that his uncle and his father before that had been involved in those activities. That is not considered by the Judge. In any event, there is an overlap between the first ground and the second ground in this regard if, as we have concluded, the Judge’s finding about the Appellant’s involvement in political activities in Iran is itself unsafe.
19. Whilst we therefore understand why Judge Brannan refused permission as he did on the second ground, we accept that the Judge’s findings about sur place activities depend also on his conclusion about

the Appellant's political activities in Iran. Further, as Judge Sheridan pointed out when granting permission, depending on the findings about the Appellant's political activities in Iran, there may be an issue arising in relation to whether the Appellant is a genuine supporter of the Kurdish parties on return and whether he would not pursue his beliefs because of a fear of persecution (thereby engaging the principle in HJ (Iran)).

20. For completeness, we add that we would not have found an error in relation to the application of YB (Eritrea) had we not been persuaded of the error on the first ground. It is readily accepted in current case-law and country guidance that the Iranian authorities can and do monitor political activities by Iranians in the UK. The issue in this case is whether they would have any reason to be interested in the Appellant's (very limited) activities unless he has been involved in political activities in the past.

CONCLUSION

21. For the reasons set out above, the Decision contains an error of law. We therefore set that aside in its entirety and remit the appeal to the First-tier Tribunal for a full de novo hearing.

NOTICE OF DECISION

The Decision of First-tier Tribunal Judge Abebrese dated 22 September 2023 involves the making of an error of law. We set aside the Decision in its entirety. We remit the appeal to the First-tier Tribunal for rehearing.

L K Smith
Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 November 2024