



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No.: UI-2024-002372
First-tier Tribunal No:
PA/51016/2023
LP/01268/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 30 September 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

MSH
(ANONYMITY ORDERED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Mukerjee, Counsel instructed by Rodman Pearce Solicitors

For the Respondent: Mr Parvar, Senior Home Office Presenting Officer

Heard at Field House on the 18th September 2024

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the 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 his 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.

DECISION AND REASONS

Introduction

1. The Appellant is a citizen of Iran and is of Kurdish ethnicity. The respondent refused his protection claim on the 2nd February 2023 and his appeal against that refusal was dismissed by First-tier Tribunal Judge Nixon on the 24th March 2024. The appellant was granted permission to appeal against Judge Nixon's decision, hence the matter came before me.

Background

2. The essence of the appellant's claims before the First-tier Tribunal was that he had a well-founded fear of persecution on return to Iran due to (a) his father's involvement with a proscribed Kurdish independence party, the KDPI, (b) the risk of his expression of anti-regime political opinions in the UK having come to the adverse attention of the Iranian authorities, (c) his desire to continue expressing such genuinely held political opinions in the future, and (d) the risk of his having resided in the Iraqi Kurdish region as a child coming to the adverse attention of the Iranian authorities. The main issue in the appeal was whether the appellant was a credible witness of truth. Given the date of the decision against which the appeal was brought, that issue fell to be determined on a balance of probabilities.

Findings of the First-tier Tribunal

3. In summary, the First-tier Tribunal Judge found that "even giving him leeway as a child/young witness", the appellant had given, "an inconsistent and incredible account" [23]. The judge next considered whether the appellant's attendance at two demonstrations in the United Kingdom and/or his posts on Facebook that criticized the Iranian regime gave rise to a discrete risk of persecution on return. She however found that those activities would not have come to the adverse attention of the Iranian regime given that (amongst other things) he appeared to be "trying to blend in the crowd" at demonstrations" [28] and that his Facebook account was in a different name [29]. The judge also found it likely that he had, "posted pictures anti the Iranian regime in order to bolster his claim", and that, "there is no valid reason why he cannot delete his Facebook account in order to mitigate his position" [29]. Given the above, the appellant was not at risk of persecution on return, notwithstanding (as was accepted) that he was of Kurdish ethnicity and had left Iran illegally [30]. Finally, the judge found that virtually all the appellant's family and social ties were to Iran and that he had very few ties of any sort to the United Kingdom.

The grounds of appeal.

4. The grounds of appeal can be conveniently summarized as follows (Note: I have renumbered the grounds after discounting paragraph '1' of the original, which was included only by way of introduction to the substantive grounds, which begin at paragraph 2):
- (1)The judge acted unfairly in refusing an application by the appellant to adjourn the hearing of the appeal so as to enable him to download all his social media activities on Facebook.
 - (2)The judge overlooked “core evidence” and/or failed to provide cogent reasons in respect of the appellant’s evidence.
 - (3)The judge failed to make findings on material matters/consider core evidence, especially the fact that the appellant had lived in KRI of Iraq between the ages of 5 and 16, “along with other factors”;
 - (4)The judge failed to take into account core evidence or provide cogent reasons in respect of the appellant’s sur place activities, including the fact that (a) the appellant did not have any interest in politics prior to coming to the UK, (b) the significant number of followers on his Facebook page together with the fact that he participated in demonstrations outside the Iranian consulate, and (c) that the appellant could not be expected to lie about his true name if questioned on return.
 - (5)The judge failed to make a finding as to why the appellant would not be at risk on return given that she, “does not reject that the A is genuinely demonstrating”.
 - (6)The above errors “infect” the judge’s “cursory” assessment of the appellant’s private life claim under paragraph 275ADE of the immigration rules.

Permission to appeal has been refused on the first ground but is granted on the others.

Analysis

5. Before moving on to the main thrust of Mr Mukerjee’s submissions (those concerning the judge’s failure to consider the claimed risk on return by reason of the accepted fact of his childhood residence in Iraq for around 11 years) it is first necessary to consider those grounds that attack the judge’s credibility findings (grounds 2 and 4, as I have numbered them). In my judgement, the matters listed under those grounds (paragraphs 3 and 5 in the original) amount to nothing more than a series of counter arguments to the sustainable reasons that were given by the judge for her findings. Many of those counter arguments implicitly acknowledge that the judge considered the evidence in question, but go on to criticise her for allegedly failing to consider it “properly” (paragraphs 5.2, 5.3 and 6.1 for example) and/or for not accepting the alternative interpretation of the evidence that they advance (paragraphs 3.2, 3.4, 3.5, and 5.1 for

example). Moreover, as Mr Parvar correctly pointed out, the judge did not find, as alleged at paragraph 3.3 of the grounds, that it was implausible for the Iranian authorities to be able to enter a KDPI dominated area to locate and kidnap the appellant's father. Rather, she found that it was "unlikely" to have occurred in the circumstances described by the appellant. Such a finding is not therefore inconsistent with background country information speaking to the activities of the Iranian intelligence services in the Kurdish region of Iraq. Moreover, it is clear from reading the decision as a whole that the main reason why the judge concluded that the appellant had failed to substantiate his account of his father being kidnapped by the Iranian authorities was that it was based on speculation arising from his understandable lack of knowledge of events that had occurred when he was a child. It follows that the suggestion in the grounds that the judge failed to consider the appellant's explanation for lack of such knowledge (his youth), and/or that the judge used such lack of knowledge as the basis for making 'adverse credibility findings' is misconceived. The judge was simply saying, as was indeed the case, that the appellant was unable to provide direct evidence in support of his speculative conclusion that his father had been kidnapped due his youth at the time of the events in question. That was not an adverse credibility finding. It was simply a finding that the appellant had been unable to substantiate his claim. I therefore hold that these grounds amount to nothing more than a quarrel with factual findings that were reasonably open to the judge on the evidence.

6. The fifth ground of appeal (paragraph 6 of the original grounds) is predicated upon an assertion that the judge "did not reject" the appellant's implicit claim that he was "genuinely demonstrating", and that the judge was thus required to consider whether the appellant would be at risk of persecution were he to continue demonstrating on return to Iran. However, the premise of this ground is based upon a selective reference to the judge's findings, whilst ignoring her overall finding concerning the lack of sincerity with which the appellant has expressed his political opinions in the UK. Thus, whilst it is true that the judge did not make an explicit finding concerning the appellant's motivation in attending demonstrations in the UK, she specifically found that the appellant, "has posted pictures [on his Facebook account] that were anti Iranian regime in order to bolster his claim", and that he had not given any "valid reason" (such the posts being genuine rather than contrived) why he should not delete them [29]. It is thus artificial to suggest that the judge's finding that the appellant had an ulterior motive in posting his claimed political opinion on Facebook was not equally applicable to his motivation in expressing that opinion at the demonstrations at which he was found to be, "trying to blend in the crowd" [28]. I therefore reject the premise upon which this ground of appeal is based.
7. The principle focus of Mr Mukerjee's submissions, however, related to ground 3: the failure of the judge to consider whether the appellant would be at risk on return by reason of him having resided in Iraq for around 11 years as a child. Mr Mukerjee correctly identified the fact that (a) this issue

had been expressly identified at paragraph 3.1 of the Appeal Skeleton Argument, (b) the respondent had accepted the fact of the appellant's childhood residence in Iraq (if not the claimed reason for it), (c) a period of residence in the KRI by a Kurdish returnee is one of the risk factors identified by the Tribunal in **HB** (Kurds) Iran CG [2018 UKUT 00430 (IAC)], and (d) the judge failed to consider it. Mr Mukerjee then proceeded to make what he himself acknowledged to be, "a bold submission", namely, that these factors alone should result in the appeal being allowed outright. In other words, he suggested that the facts that he had identified admitted of only one outcome, namely, the allowing of the appeal. I reject that submission. As the Tribunal made clear in **HB**, former residence in the KRI, "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" [emphasis added]. The question for me, therefore, is whether the undoubted failure of the judge to consider this issue is one that potentially affected the outcome of the appeal.

8. A linked (and entirely legitimate) criticism of the judge's decision is its failure to make any mention of the existence of the country expert report by Dr Kaveh Ghobadi, which was specifically commissioned by the appellant's representatives to address the risk of persecution on his return to Iran. It is therefore necessary for me to examine whether the contents of that report may have had an impact upon the issue of whether the appellant's accepted former childhood residence in the KRI gave rise to a risk of persecution by association.
9. Dr Ghobadi begins his report, as one would expect, by setting out his understanding of the factual basis of the appellant's claim. It is clear from paragraph 3.1 of his report that Dr Ghobadi understood that this included a claim that the appellant's father had worked with the KDPI in Iran, that he fled to Iraq in 2010, that he was followed shortly afterwards by the appellant (then aged 5 years), that the appellant had resided there with his mother and father for at least some 8 or 9 years, and that he had returned to Iran at some point after his father had subsequently disappeared.
10. Insofar as it is relevant to the risk of persecution due to the appellant's former residence in the KRI, Dr Ghobadi's conclusion appears at paragraphs 13 and 31 of his report. In answer to a question from the appellant's legal representatives - "Will our client be deemed as a person with political profile by the Iranian authorities because of his father's political activities? - Dr Ghobadi responded as follows [13]:

The answer to this question is not straightforward due to the arbitrary treatment by the Iranian authorities of activists, including members and supporters of Kurdish opposition groups. That said, in my view, given the Appellant's age, it is not very likely that he will be deemed as a person with political profile by the Iranian

authorities. However, he can still be at risk of serious harm from the Iranian regime as the son of a person who was involved with the KDPI [emphasis added]

Then, in answer to a further question from the legal representatives - “Will our client receive adverse attention on return due to his contact with the KDPI whilst in Iraq which was formed through his father?” - Dr Ghobadi responded as follows [31]:

As I discussed in the previous section, it is not very likely that the Appellant’s contact with the KDP when he was child, would bring him to the adverse attention of the Iranian authorities. However, it is worth mentioning that the Iranian regime in the past has usually put pressure on family members of dissidents partly to make them stop their critical activities [emphasis added].

11. Given that both the respondent and the judge found - for reasons that I find to be entirely proper - that the appellant had failed to substantiate his father’s claimed association with the KDPI, and that such claimed association was not therefore connected to family’s decision to relocate to the KRI when he was a child, the only possible conclusion to which the judge could have come had she considered Dr Ghobadi’s report (as she ought to have done) was that it was not reasonably likely that the appellant’s childhood residence in the KRI had brought him to the adverse attention of the Iranian authorities. Thus, far from it being the case that this evidence would inexorably have led the judge to allow the appeal on this basis, I am satisfied that it could not and would not have made any difference to her decision to dismiss it.
12. Having considered each of the grounds of appeal, I am satisfied that they either do not disclose an error of law or, in the case of the appellant’s childhood residence in Iraq, that the identified error of law was immaterial to the First-tier Tribunal’s decision to dismiss the appeal.

Notice of Decision

13. The appeal is dismissed, and the decision of the First-tier Tribunal therefore stands

Judge Kelly: David Kelly
2024

Date: 26th September

Deputy Judge of the Upper Tribunal