IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001427

First-tier Tribunal No:
PA/55937/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 14 January 2025

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

SA
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr S Winter, instructed by Katani & Co Solicitors
For the Respondent: Ms E Blackburn, Senior Home Office Presenting Officer

Heard at Edinburgh 19 December 2024

Order Regarding Anonymity

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 First-tier Tribunal Judge Kempton dismissing his appeal against the decision by the Secretary of State to dismiss his asylum claim and to refuse his human rights claim. That decision was promulgated on 29 February 2024.

2. In summary, the appellant's case is that he is an Iranian citizen of Kurdish ethnicity and that he had been involved in smuggling activities and that he had been undertaking activities in that respect. That activity is known in Farsi as being a kolbar.

3. The Secretary of State did not accept his case, although it was not in dispute that he was an Iranian citizen of Kurdish descent. Nor does it appear that it was in dispute that he had undertaken smuggling activities as a kolbar. What was in dispute was whether this had come to the adverse attention of the authorities before he left Iran or whether it was likely to come to adverse attention on return; the Secretary of State's case being that his account of what happened to him in Iran was not to be believed and that he would not be at risk on return either for that reason, or on account of any of the demonstrations he said he had attended or any other activities undertaken in the United Kingdom.

4. The judge heard evidence from the appellant and she also had before her importantly a report from Dr Rebwar Fatah specific to the appellant. Dr Fatah is an expert on Iran and Iraq, whose testimony is well-known to the Upper Tribunal from a number of country guidance cases.

5. The judge accepted Dr Fatah's expertise and quoted extensive sections from his report in her decision. The judge concluded that any kolbar would likely be at risk on account of his imputed political opinion at paragraph 49, but did not accept that this appellant would be at risk and she did not accept at paragraph 50 the causal nexus between him transporting elicit substances and his alleged assault and subsequent escape back to the village.

6. At [53] and [54] the judge wrote:

> "53. That being said, on return to Iran, the appellant need not be undocumented, as he said he had a passport, but he no longer has it. He could obtain a new oner or a laissez passer. If that is the case and he has never left his village, that begs the question why he needed a passport in the first place. I cannot believe that he would need a passport to go to the Iraqi border as a Kolber. Why did he apply for a passport? That is another unanswered question."

7. She then wrote:

> "54. If the appellant is not wanted for any other matter, then on return, his presence will not be a major alert to the authorities. There is no evidence that he is a wanted person."

8. The judge then went on to consider that his sur place activities would not have brought him to adverse attention.

9. The appellant sought permission to appeal on the grounds that the judge had failed properly to apply the relevant country guidance set out in HB (Kurds) Iran CG [2018] UKUT 00430 and SSH & HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308. It is submitted that on return the appellant would be questioned and he would not be able to lie, would have to admit that he was a kolbar and had attended political demonstrations in the United Kingdom and on the basis of Dr Fatah's evidence, that, would put him at risk of being detained and ill-treated, that is the second set of questioning referred to in SSH and HR.

10. The Secretary of State replied to the grant of that permission in a letter pursuant to Rule 24 resisting the grant and submitting that the judge's decision should be upheld. The appellant replied to that by way of a response, which had been provided in a skeleton argument rather than the letter pursuant to Rule 25.

11. I heard submissions from Mr Winter and Ms Blackburn. Although I bear in mind that an appellate Tribunal should not interfere lightly with the findings of fact reached by a lower Tribunal, I conclude that in this case the judge, despite having directed herself in line with SSH and HR and in line with HB, did in fact apply those cases. She does not ask herself what was likely to happen in terms of questions that would be asked either when the appellant was being documented to obtain an emergency travel document from the Iranian Consulate or at the point of return.

12. It is sufficiently clear in both SSH and HR and HB that that was an issue to be considered. It is also implicit in what is said in SSH that questions would be asked about an individual's activities in the United Kingdom. It is also evident that that person cannot be expected to lie and that prior activities in Iran would be asked about.

13. In this case the appellant cannot be expected to lie. He would be expected, as he has disclosed, that he had been attending demonstrations. Albeit that that would be at a relatively low level. But, importantly, in the words of Dr Fatah's evidence he would have to admit that he had been a kolbar.

14. Given the evidence of Dr Fatah as to how the Iranian authorities treat such individuals, it is a matter to which the judge should have turned her mind, but did not do so.

15. It therefore follows that in failing to focus on the risk to the appellant on return, and the questions he would face in light of the facts as established that the judge erred and accordingly, I am satisfied the decision should be set aside to be remade.

16. Having given the preceding paragraphs as an extempore decision, I asked if the parties were content to proceed with remaking the decision without adjourning. They both agreed to do so. I then heard submissions from both representatives.

17. Mr Winter submitted that the appellant would be asked about his activities both in Iran and in the United Kingdom. On the basis of Dr Fatah's report indicating how kolbars are perceived, that would be sufficient, when he disclosed his other activities, to trigger the adverse interest of the Iranian authorities, given their hair-trigger attitude to Kurds.

18. Ms Blackburn relied on the refusal letter, submitting that the appellant would not be a risk on return.

19. After indicating that I would remake the appeal by allowing it, I reserved the remainder of my decision.

Remaking the decision

20. In an asylum or a humanitarian protection case it is for an appellant to demonstrate albeit to the lower standard, that he is at risk of serious harm on return to his country of origin.

21. In assessing the risk to the appellant, I bear in mind the relevant Country Guidance cases.

22. It is sensible to consider first HB, the headnote of which provides:

> *(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.*

23. In HB the Upper Tribunal held at [97]

> 97. What is not disputed is that a returnee without a passport is likely to be questioned on return. Such is the expert evidence before us and such is recognised in current country guidance, for example, *SSH and HR* . It is not within the scope of this decision to revisit existing country guidance in

terms of the procedures for obtaining a laissez-passer or in relation to questioning on return, notwithstanding that both parties, to a greater or lesser extent, sought to explore those issues.

24. I note also that the headnote in XX(PJAK) [2022] UKUT 23 provides:

> *The cases of BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC); SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 308 (IAC); and HB (Kurds) Iran CG [2018] UKUT 430 continue accurately to reflect the situation for returnees to Iran. That guidance is hereby supplemented on the issue of risk on return arising from a person's social media use (in particular, Facebook) and surveillance of that person by the authorities in Iran.*

25. BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC) is authority for the finding that the Iranian government is unable to monitor all returnees involved in UK demonstrations. A decision maker must analyse the level of involvement of an individual, including the nature of sur place activities.

26. In XX (PJAK) the Upper Tribunal stated:

> …
> 94. We also refer to the second headnote:
>
> "2(a). Iranians returning to Iran are screened on arrival. A returnee who meets the profile of an activist may be detained while searches of documentation are made. Students, particularly those who have known political profiles are likely to be questioned as well as those who have exited illegally."

27. In the light of the above, I am satisfied that that the appellant will, either as part of the documentation process or on return be asked about what he did in the United Kingdom and that he will be asked also about what he did in Iran.

28. It will be evident that he had claimed asylum and is a Kurd. He will have to disclose also his activities, albeit at a low level, and as a kolbar, about which Dr Fatah wrote in his report in detail. I am satisfied that Dr Fatah does have relevant expertise, and it was not submitted to me that I should not attach weight to his evidence, as did Judge Kempton. The relevant parts of Dr Fatah's opinion are set out in that decision, and there is no need to repeat them, save for the following:

> 170. Under the pretext of "fighting trafficking of goods", a practice that is in breach of Iranian law, the Islamic Republic's security forces target kolbaran without any warnings beforehand. Iran Human Rights Monitor provides that the kolbaran are targeted despite the fact that no report has been published to date that shows that kolbaran are armed.

> 171. One of the reasons for the targeting of the kolbaran by the Iranian border guards is that they view these individuals with suspicion due to their perceived links with Kurdish oppositional groups who operate in the region.

29. I am satisfied from this that prior activities as a kolbar will raise suspicions with the Iranian authorities on return, given how they view them. Taken together with the fact that the appellant will have to disclose his political activities in the United Kingdom, I conclude that on the particular facts of this case, taking these two factors together and the "hair-trigger" approach of the Iranian authorities, that there is a real risk of the appellant being detained on arrival and subjected to ill=treatment of sufficient severity to constitute persecution; and, that will be on account either of his ethnicity or his perceived political opinions.

30. Accordingly, I am satisfied that the appellant has a well-founded fear of persecution in Iran and I allow his appeal on asylum grounds. I find also that removing to Iran would, for the same reasons, be contrary to article 3 of the Human Rights Convention, and I therefore allow his appeal on Human Rights Grounds. As the appellant is entitled to be recognised as a refugee, he cannot succeed on humanitarian protection grounds, and I therefore formally dismiss his appeal on those grounds.

Notice of decision

(1) The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

(2) I remake the appeal by allowing it on asylum and human rights grounds.

(3) I dismiss the appeal on humanitarian protection grounds.

Signed Date: 13 January 2025

Jeremy K H Rintoul
Judge of the Upper Tribunal