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**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/10134/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 27 July 2015**

**Determination Promulgated
On 13 October 2015**

Before

**UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE A M BLACK**

Between

**S K
(ANONYMITY ORDER MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr K Scott, Solicitor, of Pickup Scott, Solicitors.

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This matter comes before us for consideration as to whether or not there is a material error of law in the determination of First-tier Tribunal Judge Sweet ("the FTTJ") promulgated on 27 February 2015, in which she dismissed the Appellant's appeal against the refusal of asylum and humanitarian protection and under Articles 2, 3 and 8 of the European Convention on Human Rights.

2. We also maintain the anonymity direction made at the asylum pre-hearing review on 2 February 2015 because we want to eliminate any possibility, however remote, of the Appellant being put at risk because of publicity about his claim for international protection.

Background and Submissions

3. The Appellant's nationality is in dispute. He claims to be an Iranian citizen. The Respondent accepts the Appellant is a Kurd but is undecided as to whether he is from Iran or Iraq. She made a decision to remove the Appellant "to Iran or Iraq".
4. The Appellant entered the UK clandestinely and was apprehended by the police. He claimed asylum on 28 July 2011. His claim was refused by the Respondent but he was granted discretionary leave until 28 November 2013 because he was a minor.
5. On 27 November 2013 the Appellant applied for further leave to remain in the UK but this was refused on 10 November 2014. The hearing of his appeal took place on 17 February 2015. The FTTJ noted at paragraphs 30 and 33 that the Appellant accepted, through his representative, Mr Scott, that none of the grounds under the Refugee Convention were engaged. In so doing, the FTTJ makes reference in her decision to the Appellant's representative's oral submissions and skeleton argument. The FTTJ noted that the Appellant's claim was based on the fear of harm from his uncle. The FTTJ accepted the Respondent's representative's submissions on the Appellant's adverse credibility. She made no findings as to the Appellant's nationality. Notwithstanding the concession with regard to the Refugee Convention at the hearing, the Appellant's representative made further submissions at the hearing that the Appellant was at risk of persecution on return as a member of the Kurdish community. The FTTJ noted some objective material but found that the Appellant was not at risk on return and that his asylum claim failed; further she found that Articles 2 and 3 were not engaged by the Respondent's decision. She also dismissed his appeal against the refusal of humanitarian protection and under Article 8.
6. The Appellant appealed to this Tribunal on various grounds: the FTTJ had failed to make findings with regard to his nationality; there was no proper assessment of credibility and she had failed to consider the asylum claim against the background material.
7. In view of these grounds, we invited the Appellant's representative to address us with regard to the purported concession to the FTTJ that the Refugee Convention was not engaged. We granted a short adjournment to enable him to take instructions. On his return, Mr Scott told us he did not seek to amend the grounds of appeal to this Tribunal. He told us that, relying on his skeleton argument before the FTT, he had submitted to the FTTJ that the Appellant was no longer a child and therefore not a member of a particular social group; he said that, to that extent, the Appellant could not rely on the Refugee Convention. However, he had indicated in

his skeleton argument that the Appellant was at risk on return as a result of his being a Kurd. Mr Scott submitted to us that that issue was live before the Tribunal and that the FTTJ had given inadequate consideration to risk on return as a result of the Appellant's ethnicity, both under the Refugee Convention and in accordance with Article 3. He submitted that, whilst the FTTJ had taken into account the absence of evidence of the Appellant experiencing mistreatment or harm in Iran, she had failed to consider the risk on return to either Iran or Iraq at the date of hearing. Nor, he said, had the Judge made a proper finding as to which country he would be returned.

8. Mr Scott accepted that the FTTJ had not been provided with evidence or background material relating to risk on return to Iraq; she had only been provided with background material relating to the situation in Iran. However, he said, that material was sufficient to demonstrate that he was at risk in Iran as a result of his being a Kurd.
9. It was submitted to us by Mr Scott that the FTTJ had simply accepted the Home Office Presenting Officer's (HOPO's) submissions on the credibility of the Appellant as a witness. However, he submitted, the Appellant had provided reasonable explanations for his failure to contact his family in Iran and the remaining parts of paragraph 34 of the decision were insufficient for an assessment of credibility. Mr Scott accepted the FTTJ did not necessarily have to make findings as to the Appellant's nationality but noted that it was one of the issues in dispute.
10. For the Respondent, Mr Avery submitted that the Appellant's claim was related to the risk on return to Iran; there was no evidence with regard to the risk on return to Iraq. He submitted that the FTTJ had dealt with the appeal on the basis that the Appellant was Iranian albeit she had not made a finding to that effect. Mr Avery observed that the FTTJ had been in difficulties because she did not believe the Appellant's claim, there being no reasonable evidence of the Appellant's nationality apart from his own account; in such a situation it was difficult, if not almost impossible, for the FTTJ to make a definitive finding as to the Appellant's nationality. It was, he submitted, inevitable that no findings were made, given the quality of the evidence. He noted that the FTTJ had recorded the HOPO's submissions at length in her decision: she had set out her reasons, in paragraph 34, for concluding that the Appellant's evidence was not credible. He submitted that, given the limited evidence, the findings were adequate and supported.
11. As regards risk on return, Mr Avery submitted that there was no evidence of difficulties with the authorities; it had been suggested for the Appellant that, being a Kurd, he was at general risk on return. He submitted that, even at its highest, the risk was one of discrimination as a result of the Appellant's ethnicity, nothing greater. He submitted that the FTTJ had dealt with the matter adequately at paragraph 35 of her decision. He submitted that, even if there were an error of law, there was insufficient

evidence to demonstrate the Appellant was at risk of persecution or harm on return such as to engage the Refugee Convention and/or Articles 2 or 3.

12. In reply, Mr Scott conceded that not every Kurd was at risk but submitted that the FTTJ should have taken into account the Appellant's age and lack of family support on return. The US Department of State report supported the Appellant's claim to be at risk on those grounds and the FTTJ had failed to take it into account.

Discussion

13. We note the Appellant's skeleton argument which was before the FTTJ. It states that the Appellant accepts "he is no longer a child and not any longer "a member of a particular social group" ". It states the Appellant would be returning to Iran as a young man without any family support and at risk of ill treatment and that he would not be protected by the authorities. It further states that the Appellant "is at risk of ill treatment as a young man of Kurdish ethnicity without any family support and it is therefore a breach of article 3 of the ECHR if the Appellant is forced to return to Iran".
14. It is also claimed in the Appellant's skeleton argument that, if it was not accepted that the Appellant was from Iran, but was considered to be from Iraq, it would be a breach of Article 3 of the ECHR "if he is sent to Iraq because of the current situation in Iraq and the risks to life imposed by Isis or Islamic State and in particular because he is of Kurdish ethnicity".
15. Given the content of this skeleton argument, with its references to claimed mistreatment on the grounds of the Appellant's ethnicity, we find that this was a live issue before the FTT and that it was a matter to be resolved by the FTTJ in her decision.
16. However, the FTTJ made adverse credibility findings against the Appellant. She, in effect, adopted the oral submissions of the HOPO which she had set out at some length at paragraphs 26-29 of the decision. We are satisfied that the FTTJ conducted an assessment of the Appellant's evidence because she noted in her paragraph 34 various matters of concern to her with regard to the Appellant's evidence in addition to accepting the HOPO's submissions. These concerns included the implausibility of various aspects of the Appellant's evidence and the lack of medical evidence to support his account of previous harm sustained in his claimed country of origin. We consider that the FTTJ's findings with regard to the credibility and reliability of the Appellant's account are sustainable on the evidence and adequate. They are not perverse.
17. Given the FTTJ's findings on credibility, we do not criticise the lack of any finding on the issue of the Appellant's nationality, particularly as there was no evidence on this issue apart from that of the Appellant himself which was found to be unreliable.

18. The FTTJ's findings with regard to the Appellant's credibility are relevant also to her findings on the issue of risk on return. It was submitted in the Appellant's skeleton argument that the Appellant would return as a young man without family support. It would not have been appropriate for the FTTJ to proceed on the basis of that account given her credibility findings. Mr Scott referred us to the US Department of State report, which was before the FTTJ, but this is insufficient for a finding that the Appellant, being a Kurd, would be at risk of persecution or harm contrary to the Refugee Convention and/or Articles 2 or 3. This report does not support a claim that the Appellant would be at risk of persecution or harm as a result of his being a failed asylum seeker and/or his ethnicity. The FTTJ's decision that "his asylum claim fails, as therefore does any claim under Articles 2 and 3" is sustainable on the background material and evidence before her. Her reasons for her conclusions on this issue are adequate, given the lack of support from the background material provided by the Appellant. Given the FTTJ did not find the Appellant's evidence credible, it was open to her to find, implicitly, that he would not be returning to Iran, his claimed country of origin, as a vulnerable young man without family support. We find therefore that there is no material error of law in the FTTJ's decision and reasons insofar as the risk on return to Iran is concerned.
19. Mr Scott told us he accepted that the FTTJ did not have before her any background material or evidence to demonstrate the Appellant was at risk of harm on return to Iraq. There can therefore be no material error of law on that issue either.

Decision

20. The decision of the First-tier Tribunal did not give rise to a material error on a point of law.
21. We do not set aside the decision.
22. We dismiss the appeal.

Signed
Deputy Upper Tribunal Judge A M Black

Date 12 October 2015

Anonymity Direction

Pursuant to Rule 14 of the *Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269)* we make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. We do so in order to avoid a

likelihood of serious harm arising to the appellant from the contents of his protection claim.

Fee Award

No fee has been paid or is payable and there can be no fee award.

Signed
Deputy Upper Tribunal Judge A M Black

Date 12 October 2015