



IAC-PE-AW-V1

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

Appeal Number: AA/11611/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 27<sup>th</sup> August 2015**

**Decision & Reasons Promulgated  
On 12<sup>th</sup> October 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LEVER**

**Between**

**RKH  
(~~ANONYMITY NOT RETAINED~~)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Davison of Counsel  
For the Respondent: Mr Tarlow

**DECISION AND REASONS**

**Introduction**

1. The Appellant born on 19<sup>th</sup> September 1994 is a citizen of Iran. The Appellant was represented by Mr Davison of Counsel. The Respondent was represented by Mr Tarlow a Presenting Officer.

**Substantive Issues under Appeal**

2. The Appellant had arrived in the United Kingdom on 7<sup>th</sup> December 2010 and claimed asylum. His asylum claim was refused by the Respondent on 1<sup>st</sup> April 2011 but the Appellant was granted discretionary leave until 19<sup>th</sup> March 2012 based upon his age. The Appellant had then submitted a further application for leave on 5<sup>th</sup> March 2012 which had also been refused by the Respondent.
3. The Appellant had appealed that decision and his appeal was heard by First-tier Tribunal Judge Wiseman sitting at Hatton Cross on 7<sup>th</sup> April 2015. The judge had allowed the Appellant's asylum appeal and also allowed his appeal under the protected rights of the ECHR.
4. The Respondent had filed application for permission to appeal on 22<sup>nd</sup> April 2015. Permission to appeal had been granted by First-tier Tribunal Judge Heynes on 8<sup>th</sup> May 2015 on the basis as claimed within the Respondent's application that it was arguable the judge had erred to address country guidance or to support findings about risk on return with adequate reasoning.
5. Directions had been set for the Upper Tribunal firstly to decide whether an error of law had been made or not in this case and the matter comes before me in accordance with those directions.

### **Submissions on Behalf of the Respondent**

6. Mr Tarlow referred to the Respondent's Grounds of Appeal and in particular noted that the judge had made no reference to the country guidance case of **SB [2009]** which was significant in this case.

### **Submissions on Behalf of the Appellant**

7. Mr Davison submitted that the question of military service had been raised in the skeleton argument although conceded it was not a matter raised by the Appellant. It was said that the judge in particular at paragraph 82 had looked at the risks on return and that the findings made were findings that were open to the judge. It was further said that the judge had considered more up-to-date information within country material than would have been available in the case of **SB**.
8. In response Mr Tarlow submitted that if the judge was intending to move away from established country guidance case then he needed to provide reasons for such and none have been given.
9. At the conclusion of the hearing I reserved my decision to consider the documents and the submissions raised. I now provide that decision with my reasons.

### **Decision and Reasons**

10. The Appellant had been accepted as an Iranian Kurd who was a minor when he claimed asylum in the UK. His claim had been refused by the

Home Office but because of his age he had been granted twelve months' discretionary leave. His further application for leave on asylum grounds had been refused.

11. The judge had noted that the Appellant's claim to have left Iran out of a fear of persecution was limited to a single incident where the Appellant claimed he was approached in his home village by members of Etelaat who wished him to essentially become a spy but his mother had forbid him so to do and he had fled because he feared the consequences. The Respondent had for a number of reasons provided within the original refusal letter of 1<sup>st</sup> April 2011, taken issue with the credibility of the Appellant's account. It was further noted that the solicitors' letter sent with the further application merely reiterated the fear based upon that sole feature already considered and the generalised suggestion that the Appellant would face discrimination for being a Kurd. There had been no further evidence submitted.
12. The judge did not deal with the issue of credibility or otherwise of the Appellant's account even though that had plainly been challenged by the Respondent. The judge noted that given there was no evidence other than the evidence from the Appellant and the challenges from the Respondent it was extremely difficult to decide between the two positions (paragraph 80). That may have been the case. However the lack of corroborative evidence is far from unusual in asylum cases and it was incumbent upon the judge to deal with issues of credibility in the circumstances of this case. He did not do so and that failure amounts to an error of law.
13. That error may not necessarily have been material given that the judge noted the following at paragraph 86:

"Even if the Appellant was approached by the security services as he claimed there is in my view not the slightest chance that that will be a relevant factor on his return. A brief couple of conversations with a 16 year old boy in a remote and secluded village of no more than 100 households, that took place well over four years ago stands not the slightest chance of having been recorded or noted in any way. The individuals concerned would have no doubt just moved on to try to influence someone else."
14. At paragraph 81 the judge concluded that whether the incident occurred or not: "I do not believe it creates any risk for the Appellant on return".
15. The judge however then looked at risk on return and concluded there was such a risk to the Appellant based on presumably cumulative factors outlined by him at paragraph 82 namely:
  - (a) Leaving Iran illegally.
  - (b) Leaving at an age where military service was pending.
  - (c) Kurdish ethnicity.
  - (d) Would be regarded because of his Kurdish ethnicity as someone with anti-Government sympathies.

16. The judge did not provide reasons why “There seems little doubt he left Iran illegally”. He had made no findings on credibility in respect of claimed circumstances in Iran which may have led to a presumption or conclusion one way or the other in terms of exit. Further the circumstances of his claimed journey to the UK had additionally been challenged by the Respondent.
17. Finally the Appellant’s skeleton argument at paragraph 27 acknowledged that Iranian male citizens who had not turned 17 did have permission to leave the country. The Appellant claimed (and it was not challenged) that he was only 16 when he had left. It was incumbent therefore in all of those circumstances for the judge to provide some reasoning as to why he concluded that there was little doubt the Appellant had left illegally.
18. The question of evasion of military service was never raised by the Appellant nor by his representatives in their covering letter with the second application. Indeed the only submission to that effect was within the Appellant’s skeleton argument and seemingly at odds with their own reference from country material referred to above. Again the judge needed to explain how the Appellant would be at risk because he would be perceived as having evaded military service.
19. In terms of the Appellant’s ethnicity (and Sunni religion) whilst that was not in issue the judge again failed to provide reasons why the Appellant would face persecutory treatment or be regarded as anti-Government simply for being Kurdish particularly given that the representatives themselves had put this aspect of the claim no higher than “discriminatory”.
20. In terms of the risk on return for those identifiable features the judge had referred himself to background material. He had stated at paragraph 84 that the material provided instances of cases where individuals were detained whilst their background was checked and “It is impossible to discount the possibility of ill-treatment during such enquiries”. He further concluded that because of the factors referred to above the reasonable likelihood of ill-treatment or prosecution in one form or another could not be excluded.
21. Firstly as identified above the judge had not provided any credibility findings or adequately explained why he found all the above factors were present.
22. Secondly the background material he referred to was largely concerned with those who had a profile or visibility.
23. Thirdly he appears to place the test of reasonable likelihood in a negative way rather than applying the correct burden and standard of proof.
24. Finally the judge made no reference to the country guidance case of **SB Iran CG [2009] UKAIT 00053**.

25. Whilst he was looking at material postdating that decision he does not identify whether circumstances had worsened since 2009 to the extent that he should depart from the country guidance case nor provides any other reason for departing from the case. **SB** was promulgated following recent elections in Iran and a crackdown on dissidents. It was further noted at headnote (ii) that Iranians facing enforced return do not in general face a real risk of persecution or ill-treatment, even if they left illegally. Having exited Iran illegally is not a significant risk factor although if it is the case that a person would face difficulties with the authorities for other reasons such a history could be a factor adding to the level of difficulty. As noted above the judge had discounted in its entirety the Appellant would face any risk for his alleged reason for having fled the country in the first place. In respect of the other features he raised the judge provided little or no reasoning for relying upon those factors to the point of suggesting that they provided “significant difficulties”.
26. For all the above reasons the judge’s reasoning on the question of risk on return was inadequate and flawed and amounted to a material error of law.

**Decision**

27. There was a material error of law made by the judge in this case such that the decision of the First-tier Tribunal needs to be set aside and that decision remade.
- ~~28. No anonymity direction is made.~~

Signed

Date

Deputy Upper Tribunal Judge Lever

**TO THE RESPONDENT**  
**FEE AWARD**

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

Signed

Date

Deputy Upper Tribunal Judge Lever