



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

Appeal Number: PA/02967/2016

THE IMMIGRATION ACTS

**Heard at Bradford
On 19 June 2017**

**Decision &
Promulgated
On 25 August 2017**

Reasons

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**BA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Cleghorn, instructed by Halliday Reeves, Solicitors
For the Respondent: Ms Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, BA, is a citizen of Iran and was born in 1991. His appeal was subject to a decision in the Upper Tribunal by Upper Tribunal Judge O'Connor which was promulgated on 14 March 2017.

2. Upon the making of a transfer order, the appeal has been transferred to me for disposal. The resumed hearing in the Upper Tribunal took place on 19 June 2017 when the appellant gave oral evidence with the assistance of a Kurdish Sorani interpreter.
3. The appellant was cross-examined regarding the answers which he had given at the screening interview. In answer to question 3.3 (*Please outline your journey to the United Kingdom*) the appellant had replied:

“I left around three years ago. I went to Sulaymaniyah city I started working. A year ago I went back to my country. I leafleted for the Kurdish party. I went back to Sulaymaniyah. I left a month ago and went to Turkey Istanbul. I stayed there for three or four days. I was put in a lorry. I changed lorries. Three or four times. Sometimes I was put in a flat. I was in a flat controlled by agents and put in a lorry.”
4. The appellant was asked what documents he had used in Sulaymaniyah for his stay there of two years. The appellant replied that he had resided in a “little village” near the border. The appellant said, “I could cross the border easily since there were a number of villages on the border”. The appellant said that he had to report at a registration department every month. The appellant was asked more than once in cross-examination why he had not stayed in Sulaymaniyah. He replied, “if someone’s in trouble, there is a treaty between the IKR and Iran. I would be returned to Iran. The peshmergas are in breach of the treaty. I would have been handed over to the Iranian government”.
5. I have considered the evidence of the appellant according to the appropriate standard of reasonable likelihood. The burden of proof is on the appellant to show that there are substantial grounds for believing there to be a real risk that he would be persecuted or ill-treated if returned to Iran. I have considered what he said in evidence very carefully. I have also considered it in the context of the preserved findings of the First-tier Tribunal (see paragraph 15 of Judge O’Connor’s decision: the First-tier Tribunal have accepted the appellant to be an Iranian national and of Kurdish ethnicity but have rejected every other aspect of his claim save for his assertion that the appellant had left Iran legally – “a matter upon which there had been no finding”). The appellant has been an unreliable witness before the First-tier Tribunal. It is appropriate to consider the evidence which he gave to the Upper Tribunal in the context of the First-tier Tribunal’s assessment of his credibility. In particular, there was no reason at all, in my opinion, to reverse the First-tier Tribunal’s rejection of the appellant’s claim to have been involved in Kurdish politics. The appellant’s statement at 3.3 of the screening interview, therefore, in which he claims that he had “leafleted for the Kurdish party” I find to be untrue. I also do not find truthful the appellant’s claim made under cross-examination before the Upper Tribunal that he had been compelled to leave Sulaymaniyah because he might be regarded as “someone in trouble”. I do not find that he left Sulaymaniyah for that reason. I find

that it is reasonably likely that he left Sulaymaniyah because he wished to travel to the United Kingdom for reasons wholly unconnected with a fear of the Iranian government to which he has never shown opposition. I find that the appellant's claim that he had to leave Sulaymaniyah because of his fear of some treaty between the Iranian government and the Kurdish authorities is wholly fabricated. I find that the appellant's claim that he had to travel clandestinely with an agent is bound up with his claim to have fled for fear of the Iranian authorities and I reject that part of his claim also. Given the appellant had nothing to fear at all from the Iranian authorities and appears to have been content living in Sulaymaniyah, I can identify no rational motivation which would have caused him to leave Iran illegally and, in doing so, expose himself to risk. Having considered the evidence as a whole, I find the appellant has failed to establish that he did leave Iran illegally.

6. I am grateful to Ms Cleghorn for the extensive skeleton argument which she provided and for her oral submissions. I have considered those submissions very carefully together with all the evidence including the expert report of Roya Kashefi. I note that Ms Cleghorn's submissions are predicated on the basis that (i) the appellant is of Kurdish ethnicity and (ii) that he left Iran illegally; (iii) that he may be at risk having travelled to the United Kingdom where he has claimed asylum. It follows from what I have found above that the appellant has not established (ii); I do not find that he left Iran illegally. I have considered the risk which may be posed to this appellant by reference to the recent country guidance case (*SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 308 (IAC)*). The headnote of *SSH* reads as follows:

[(a) An Iranian male whom it is sought to return to Iran, who does not possess a passport, will be returnable on a laissez passer, which he can obtain from the Iranian Embassy on proof of identity and nationality.

(b) An Iranian male in respect of whom no adverse interest has previously been manifested by the Iranian State does not face a real risk of persecution/breach of his Article 3 rights on return to Iran on account of having left Iran illegally and/or being a failed asylum seeker. No such risk exists at the time of questioning on return to Iran nor after the facts (i.e. of illegal exit and being a failed asylum seeker) have been established. In particular, there is not a real risk of prosecution leading to imprisonment.

I do not disagree with Judge O'Connor's observation that "*SSH* does not provide country guidance on the issue of risk to Kurds". However, it is clear from *SSH* [50] that the authorities in Iran, operating a sophisticated security and surveillance system, are "looking for persons who have a particular profile, criminal and/or political". The appellant does not have such a profile. He does not even have, in my finding, the profile of a person who has left Iran illegally. It may be the case that the appellant has disposed of any passport which he has possessed and that he may need to be returned by a document issued by the Iranian Embassy. However, the appellant has failed to establish that there would be no exit record relating to him in Iran. Indeed, I was directed to no evidence which

would provide details of the immigration procedures operated in Iran, in particular for those leaving the country legally. Moreover, I note from the country guidance of *BA* (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC) that “while returning from Britain is a present and increased risk factor the mere fact that an appellant is returning from Britain does not lead to a risk of persecution”. Ms Cleghorn, in her skeleton argument at [8], submits that, “therefore, returning from Britain can be considered as something which would, at least to an extent, further pique the interest of the authorities, in addition to already being identified as having illegally exited Iran”. The second part of that sentence does not apply to this appellant. I see no reason, on the facts in this case as I have found them, to go behind the clear country guidance provided on this point in *BA*.

7. Given that the appellant did not leave Iran illegally and in light of the fact also that he has failed to show that, even if he returns on a document issued by the Iranian Embassy in London, he would not be regarded as a person who has left illegally, he will not, having no criminal or political profile before the Iranian authorities, face the real risk of being interrogated and ill-treated during interrogation upon return or at any other point whilst living in his home area of Iran. I have, however, considered the possibility that, because the appellant is a Kurd (not in itself without any other profile a risk factor) he may yet be interrogated upon return. I have predicated my analysis on the background material relating to the sophistication of the Iranian security system. Although a sophisticated operation, the Iranian security forces would not appear to have limitless resources. I find that those forces are likely to seek to concentrate their efforts upon those returnees whom they consider likely to pose a real threat to the Iranian state. This appellant does not pose such a threat. I do not, therefore, consider it likely that the Iranian authorities will waste time and resources interrogating or ill-treating this appellant when the only possible motive for their doing so is that he is a Kurd. I find it likely that the Iranian authorities will know at the outset of any questioning of him that the appellant does not pose any kind of threat which they would need to investigate. Ms Cleghorn submitted that, even an individual who has no political or criminal profile, may be forced under torture and interrogation to confess to, for example, an involvement in Kurdish opposition politics when he or she had no such involvement. In response to that, I say, first, that it is not likely that the appellant will be interrogated in such a manner and, secondly, that if he is questioned, the appellant may be expected to tell the truth, namely that he is an economic migrant to the United Kingdom who has failed in his attempt to deceive the United Kingdom authorities with his false story of involvement in Kurdish politics. I do not find that the revelation of that truth will expose the appellant to risk.
8. In the light of my findings and by assessment of risk, I find that the appellant’s appeal should be dismissed.

Notice of Decision

9. This appeal is dismissed.

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

Unless and until a 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 their 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.

Signed

Date 10 August 2017

Upper Tribunal Judge Clive Lane

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 10 August 2017

Upper Tribunal Judge Clive Lane