



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/05279/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Bradford

On 6 April 2017

Decision &

Promulgated

On 9 May 2017

Reasons

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

S H

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Marwala, instructed by Barnes Harrild & Dyer, Solicitors

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, S H, was born in 1995 and is a citizen of Iran. The appellant arrived in the United Kingdom on 1 December 2015 from France and claimed asylum. His claim was refused by the Secretary of State in a decision which is dated 9 May 2016. The appellant appealed to the First-tier Tribunal (Judge Atkinson) which, in a decision promulgated on 28 September 2016, dismissed the appeal. The appellant now appeals, with permission to the Upper Tribunal.

2. The appeal turns on the Tribunal's treatment of the expert evidence of Professor Joffe who had produced a number of reports between 2012-2016 in respect of the likely risk which the appellant would face on return to Iran. Judge Atkinson referred to the reports of 2012, 2014 and August 2016 but he did not make any specific reference to a report of March 2016. The appellant asserts that the failure of the judge to deal with the March 2016 report was a material error. That report had noted that, "over the past eighteen months tensions have continued to run high throughout Iranian Kurdistan." *Inter alia*, the appellant claims that he will face the risk of persecution upon return to Iran simply on account of his Kurdish ethnicity. The March 2016 Joffe report also noted that the government in Iran had disproportionately targeted minority groups including Kurds and that "generalised tensions inside Kurdistan were demonstrated by three days of violent demonstrations in Mahabad in early May 2015." Professor Joffe considered that Kurdistan was subject to "constant low levels of violence which, on occasion, break out into open defiance towards the Iranian authorities ... the result is that any Kurd returned to Iran must anticipate the serious risk of official discrimination or persecution simply on the grounds of his membership of an ethnic group."
3. Judge Atkinson [29] referred to the most recent country guidance available from the Upper Tribunal, *SSH (illegal exit: failed asylum seekers) Iran CG* [2016] UKUT 00308:
 - (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.
4. At [30-34] Judge Atkinson wrote this:
 30. Ms Singh submitted that it was open to me to depart from that guidance [**SSH**] in the light of the expert evidence of Mr Joffe in his report dated 26 August 2016 and his previous generic reports of 2012 and 2014. It was submitted that the case **SSH** failed to deal with the position of Kurds, did not have the benefit of Mr Joffe's evidence and that the August 2016 report identified matters that had not been properly addressed. I reject those submissions for the following reasons.
 31. Personally, the Upper Tribunal clearly had the circumstances relating to the position of Kurds in mind given that both **SSH** and [his co-appellant, **HR**] were accepted to be Kurds.

32. Second, that whilst the Upper Tribunal do not have the benefit of evidence of Mr Joffe (sic) his most recent report of August 2016 in effect amounts to little more than a disagreement with the Upper Tribunal about the level of risk faced by Kurds at the generic level. Mr Joffe does not forward any evidence of specific cases of returnees being seriously mistreated on the basis of being failed asylum seekers even if of Kurdish origin and in the absence of other, adverse, factors.
 33. I follow therefore the guidance of the Upper Tribunal in **SSH and HR**. I find that the appellant is a single male of Kurdish origin in respect of whom no adverse interests have previously been manifest. Accordingly on return he will not face a real risk of serious harm as a failed asylum seeker or as a person who had exited Iran illegally.
 34. I find the appellant has not discharged the burden of proof of having a well established fear of persecution for a Convention reason I therefore dismiss the appeal on the basis of the Refugee Convention.
5. There are a number of challenges to the judge's reasoning in the grounds of appeal. First, the appellant asserts that it is a material error of law for the judge to have omitted any reference to the March 2016 report (from which I have quoted above). I do not find that that ground has merit. Having read all the reports of Professor Joffe submitted in this appeal, it is clear that he has, in effect, built upon his previous reports as he has successively submitted addendum and updating reports. As a consequence, his opinion, expressed in the March 2016 report that any Kurd returned to Iran "must anticipate serious risk of official discrimination or persecution" on the grounds of his ethnicity was not expressed only and exclusively in the March 2016 report but was an opinion which is fundamental to the entirety of Professor Joffe's evidence. Furthermore, there is no suggestion that Judge Atkinson did not address the question of the appellant's ethnicity as a risk factor in his analysis, as the passages from the decision which I have quoted set out above make entirely clear. Judge Atkinson did not, therefore, err in law by not making specific reference to the March 2016 report; Judge Atkinson has addressed the very issue which the appellant now complains he failed to address from that March 2016 report.
 6. Secondly, the appellant asserts that the Tribunal in *SSH* was not concerned specifically with Kurdish ethnicity as a sole risk factor upon return to Iran but also did not have the benefit of Professor Joffe's reports that had been before Judge Atkinson. In addition, the appellant asserts that the Tribunal in *SSH* did not pay proper attention to the deteriorating security and domestic situation in Kurdistan which was outlined in Professor Joffe's evidence.
 7. At [34] the Tribunal in *SSH* wrote this:

It was not suggested to us that an individual faces risk on return on the sole basis of being Kurdish. It was however agreed that being Kurdish was relevant to how a returnee would be treated by the authorities. For example, the Operational Guidance Note refers at 3.12.14 to the government disproportionately targeting minority groups, including Kurds, for arbitrary arrest, prolonged detention and

physical abuse. No examples however have been provided of ill-treatment of returnees with no relevant adverse interest factors other than their Kurdish ethnicity, and we conclude that the evidence does not show risk of ill-treatment to such returnees, though we accept that it might be an exacerbating factor for a returnee otherwise of interest. Accordingly we conclude that it has not been shown that a person in the position of these appellants faces a real risk on return to Iran either on the basis of what would happen to them when questioned at the airport or subsequently if they were convicted of an offence of illegal exit. With regard to HR specifically, it does not appear to be disputed that he is Kurdish and that he is undocumented: hence we see no reason for remittal. Prosecution for illegal exit is an outcome not generally experienced by such returnees, and where it does occur, the most likely sentence in relation to the illegal exit charge would be a fine. It has not been shown that there would be a real risk of prosecution under Article 500 for propaganda against the state on the basis of having made an asylum claim which was found to be false. Accordingly these appeals are dismissed.

8. In the light of what is said by the Upper Tribunal at [34] of *SSH*, I do not accept the assertion made by the appellant in the present appeal. I do not accept that the comments of the Tribunal at [34] are *obiter*; indeed, the Tribunal has directly addressed Kurdish ethnicity as a risk factor. The fact that the Tribunal records that it was “not suggested to us” that Kurdish ethnicity *per se* was a risk factor is not, in my opinion, an indication that the Tribunal did not consider that its decision covered the position of ethnic Kurds. It was simply the Upper Tribunal recording the fact that that there was no evidence before it to show that Kurdish ethnicity *per se* would expose an individual to risk. Further, I accept that the Tribunal in *SSH* may not have had the same expert evidence as was before Judge Atkinson in the present appeal but it did have expert evidence from Professor Joffe which, as I have noted above, asserts that Kurdish ethnicity is a risk factor. In the light of that fact, it cannot be successfully argued that the Tribunal in *SSH* did not consider Kurdish ethnicity or that Judge Atkinson had new and different evidence which was not before the Tribunal in *SSH* and which should have led him to discard the guidance offered in *SSH*. I find that the risk factors argued before Judge Atkinson were in essence the same as those before the Tribunal in *SSH*. On the basis of very similar or the same evidence (Professor Joffe) which the Tribunal in *SSH* had rejected, Judge Atkinson gave clear and cogent reasons for following *SSH* and refraining to depart from it.
9. In the circumstances, I find that Judge Atkinson did not fail to deal with relevant evidence as the appellant asserts. I find that he addressed all the issues which were put before him. I find that he reached a conclusion to follow the country guidance of *SSH* in respect of the risk which the appellant claimed on account of his Kurdish ethnicity he would face on return to Iran. There is nothing in the March 2016 report of Professor Joffe which compels a different outcome to the appeal whilst the grounds of appeal have failed to persuade me that Judge Atkinson erred in law by following country guidance in this instance. The appeal is, therefore, dismissed.

Notice of Decision

10. 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 29 April 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 29 April 2017

Upper Tribunal Judge Clive Lane