



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

Appeal Number: PA/07555/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 10 April 2017**

**Decision & Reasons Promulgated
On 11 May 2017**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

S K A

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Tarlow, Home Office Presenting Officer

For the Respondent: Ms G S Peterson, instructed by CK Solicitors

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State, I shall refer to the parties as in the First-tier Tribunal. The Appellant is an Iranian national born in 2000. His appeal against the refusal of his protection claim was allowed by First-tier Tribunal Judge Andonian on 24th January 2017.
2. The Secretary of State appealed on the following grounds: Firstly, the judge recorded the evidence of the Appellant and the arguments put forward by the parties but failed to make any clear findings of fact on the

Appellant's account. Secondly, the judge allowed the Appellant's appeal under the Refugee Convention but failed to identify the basis upon which the Appellant has a well founded fear of persecution and failed to give adequate reasons for finding that the Appellant has such a fear. Thirdly, the judge referred to the most recent country guidance of SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 308 IAC, in which it was found there was no generalised risk on return to Iran for Kurds, but failed to make any finding on the Appellant's case. The judge had therefore misdirected himself and failed to apply relevant country guidance or, alternatively, failed to set out on what basis he could depart from it.

3. Permission to appeal was granted by First-tier Tribunal Judge Kelly on 15th February 2017 on the grounds that:

“It is arguable that whilst the Tribunal found that the appellant (as a 13 year old child) would be oblivious to the risk inherent in distributing leaflets on behalf of the KDP, it failed to make any finding concerning the plausibility of the KDP causing or permitting the Appellant to undertake that risk in the first place. It is also arguable that the Tribunal failed to identify the risk to the appellant on return to Iran given that he did not seem to have any direct evidence of him having come to the adverse attention of the Iranian authorities as a result of his claimed activities on behalf of the KDP. It is further arguable that in finding that the Appellant left Iran illegally because, ‘there is no evidence that he left Iran legally’, the Tribunal applied a reverse burden of proof. All three grounds of the application are thus arguable and permission was granted.”

Submissions

4. Mr Tarlow relied on the grounds and submitted that the judge had recited the facts in some detail but had failed to make findings on those facts. It was accepted that the Appellant was an ethnic Kurd from Iran and that he was a child. However, there were no findings as to the plausibility of a young boy distributing leaflets or whether the KDP would permit him to do so at such a young age. Even to the lower standard the Appellant had not shown he was in need of international protection. The judge had also erred in reversing the burden of proof in finding that there was no evidence the Appellant had left legally. The decision could not stand because there were no findings made on the facts and no reasons for why the Appellant was seeking international protection. Mr Tarlow submitted that if I found an error I should remit the matter to the First-tier Tribunal.
5. Ms Peterson submitted that the judge dealt with credibility at paragraphs 6 and 7 and found the Appellant's account to be credible. He had been distributing leaflets with his friends and had exited Iran illegally. The judge

had in mind a Convention reason, imputed political opinion, which he dealt with at paragraph 3 of the decision.

6. The basis of the Appellant's claim is that he has a fear of persecution because of his ethnicity, Kurdish, and his political opinion or imputed opinion because he distributed leaflets for the KDP. Also, the Appellant feared persecution on return because of what is set out at paragraph 24. The Appellant said that two of his work mates were arrested and he did not know what had happened to them.
7. Ms Peterson submitted that the judge had accepted the Appellant's account as credible and he dealt with the distribution of leaflets in some detail, stating at paragraph 10: "There is nothing incredible about this evidence in my view looking through the eyes of a 13 year old which I must and not an adult. Here was a child in effect who was bored in his village; there was nothing to do and he was asked by some friends to him distribute leaflets. He had not met any KDP members to advise him how and when to distribute and all he knew was that he wanted something to do, he did not understand the dangers of what he had done until later when two friends of his were arrested by the Iranian authorities for distributing leaflets."
8. Ms Peterson submitted that the judge had found the Appellant's account credible. He had distributed leaflets for the KDP. His friends had been arrested for doing the same. As a result, another friend had advised the Appellant to leave Iran and he did so illegally, on foot across the border into Turkey with the help of an agent, all organised and paid for by his father. Ms Peterson submitted the judge applied the country guidance of SSH and HR to those findings. She submitted that being of Kurdish ethnicity and leaving Iran illegally may not in itself result in persecution on return. However, the judge found that the Appellant would be at risk because of his imputed political opinion. He had distributed leaflets on behalf of the KDP, his two friends had been arrested and may well have given his name. Applying the lower standard the Appellant was a refugee and there was no arguable error of law in the judge's decision.

Discussion and Conclusions

9. The judge accepted the Appellant's account and dealt at length with what the Appellant said in relation to distributing leaflets for the KDP. His finding that the Appellant had distributed leaflets for the KDP was one which was open to the judge on the evidence before him and he gave adequate reasons for his conclusions. The point made in the grant of permission, that the judge failed to deal with the plausibility of the KDP causing or permitting the Appellant to take such a risk, was not relevant given the judge's findings at paragraphs 9 to 24. In those paragraphs, the judge deals with what the Appellant said about distributing leaflets and found that, not only did he distribute leaflets, but his friends were arrested and he was afraid that they would give his name.

10. This was not a case where the judge recited the Appellant's account, and the submissions, and failed to make findings of fact. I accept to some degree Mr Tarlow's criticism that the decision could have been clearer and the factual findings made clear but, on reading the decision as a whole, the judge accepted the Appellant's account and accepted that he had distributed leaflets on behalf of the KDP. He gave adequate reasons for coming to those conclusions. Accordingly, the Appellant has a well founded fear of persecution on account of his imputed political opinion.
11. The judge did not reverse the burden of proof. He made a finding, at paragraph 19, that the Appellant had left Iran illegally with no passport. That, as well as being Kurdish, would draw him to the attention of the authorities on return. The judge's statement, at paragraph 25, that "There is no reason for me to doubt that the Appellant exited Iran illegally. There is no evidence that he had left Iran legally in any way and entered through a port of entry" was not inconsistent with his previous finding and did not demonstrate that he had applied a reverse burden or proof. The judge accepted the Appellant's evidence of how he left Iran and there was no evidence to the contrary.
11. Accordingly, I am not persuaded by the grounds of appeal. The judge did make findings on the main issue in dispute and the majority of the decision deals with the Appellant's distribution of leaflets for the KDP. The judge concentrates on that issue because it is that issue which puts the Appellant at risk on return and that issue which engages the Convention. The judge's findings could have been clearer, but reading the decision as a whole, it was plain that the judge accepted the Appellant's account and found that he would be at risk on return because of his imputed political opinion.
12. Grounds 2 and 3 are not made out because the judge found there was a Convention reason and he gave adequate reasons for why the Appellant has a well founded fear. The judge did not find that the Appellant would be at risk because of his Kurdish ethnicity. He found that the Appellant would be at risk because he was a Kurd, he exited illegally and there was a reasonable degree of likelihood that the authorities would be aware that he had distributed leaflets for the KDP in the past. The Appellant would be at risk because of his imputed political opinion. The judge did not fail to apply relevant country guidance.
13. I find that there is no error of law in the judge's decision dated 24th January 2017. I dismiss the Respondent's appeal.

Notice of Decision

The 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 her or any member of her 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.

J Frances

Signed

Date: 10th May 2017

Upper Tribunal Judge Frances