



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06405/2017

THE IMMIGRATION ACTS

Heard at Bradford
On 15 June 2018

Decision & Reasons Promulgated
On 19 June 2018

Before

Deputy Upper Tribunal Judge Pickup

Between

Hoger Hasani
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Not represented

For the respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant claims to be a citizen of Iran with a date of birth of 5.2.93. His nationality is disputed by the respondent who, whilst suspecting that he is Iraqi does not positively asserted that he is a national of Iraq.
2. This is his appeal against the decision of First-tier Tribunal Judge Mensah promulgated 17.8.17, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 20.6.17, to refuse his claim for international protection.

3. First-tier Tribunal Judge Mailer refused permission to appeal on 6.11.17. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Canavan granted permission on 18.1.18.

Error of Law

4. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the decision should be set aside.
5. The appellant's claim is that he was born in Iran but moved to Iraq with his family at age 8, because his father was a member of the Komala Party. He claims to have become involved himself with the Komala Party in 2015. Previously, in 2013, he got into a fight for criticising Islam and posting insulting pictures about the prophet on Facebook. He claims that in 2015 he was shot at by what he believes to be an Islamic group and decided to flee Iraq for his own safety.
6. In addition to the decision in relation to nationality, the Secretary of State considered the appellant's claim inconsistent with country background information, did not accept the he had been involved with the Komala Party, and rejected his claim to have been involved in anti-Islamic activity or shot at by Islamic groups.
7. In her brief decision, Judge Mensah carefully considered the evidence adduced by the appellant to try to demonstrate his nationality and Komala membership. For cogent reasons set out in the decision between [18] and [27], the judge did not accept the claim to be Iranian and suggested that the weight of the evidence suggested that was that he was from Iraq, but did not make a definitive finding to that end. The judge also concluded that he did not work for the Komala Party. The judge dealt in particular with difficulties noted in relation to letters and emails purporting to support the claimed Komala membership. Because of her concerns, the judge issued directions: to the appellant to set out in detail his claimed contact with Komala, and to the respondent to respond to the alleged letter from Komala produced at the appeal hearing. After receiving and taking into account those responses, the judge was not satisfied that the letter was genuine and, taking other evidence into account, concluded that appellant's claim was not credible. In the circumstances, the appeal was dismissed.
8. The brief handwritten grounds assert that the appellant had not been given enough time to provide proof of his claim and that he would be killed if returned. In refusing permission Judge Mailer observed that the grounds did not engage with the tribunal's findings and that no application for adjournment had been made.
9. In granting permission, Judge Canavan noted that the appellant was acting in person without legal assistance and in those circumstances scrutinised the decision for any 'Robinson' obvious errors of law. Judge Canavan considered, as I also find, that Judge Mensah gave sustainable reasons why she rejected the appellant's factual account. Judge Canavan also stated, "I can see no arguable or obvious errors in her reasons for finding that the appellant is not likely to be an Iranian citizen."

10. However, in granting permission Judge Canavan pointed out that simply rejecting the appellant's account was insufficient to determine a protection claim and that it was incumbent on the judge to consider risk on return based on her findings of fact. "Even though she disputed his nationality the respondent made clear that she intended to remove the appellant to Iran. It is arguable that the judge failed to make findings relating to a material consideration i.e. risk on return to Iran in the context of her finding that the appellant is not likely to be an Iranian citizen."
11. In response to this issue, the Secretary of State in the Rule 24 reply submitted that the judge found that the appellant would not be at risk as he is from Iraq and is no more than an economic migrant who has fabricated an asylum claim to remain in the UK. "It is difficult to see how the FTTJ could have come to a different conclusion as the core basis on which protection was sought was rejected by the FTTJ."
12. The appellant was legally represented by counsel at the appeal hearing. It was never suggested and no submission was made on his behalf that he would be at risk on return to Iran because he might be Iraqi. It is important to bear in mind that neither the respondent nor the First-tier Tribunal Judge made any finding that he was Iraqi, only that he was not reasonably likely to be Iranian. The basis of his claim of being at risk was membership of the Komala Party in Iraq and anti-Islamic activity and sentiments also in Iraq. The judge did not accept any part of his claim, either as to political involvement or involvement with Islamic groups. It follows that if returned to Iran there could be no risk to him arising from those rejected claims.
13. There was nothing put before the tribunal to suggest that there is a risk on return to Iran arising solely from the finding that he had failed to demonstrate that he is Iranian. It does not feature in the further submissions of his representatives after interview; the grounds of appeal to the First-tier Tribunal; or the skeleton argument put before the First-tier Tribunal. He may be a Kurd and speak Kurdish Sorani, but this language is spoken in both Iran and Iraq. The CIG for Iran dealing with Kurds and Kurdish political groups, dated July 2016, and enclosed in the appellant's appeal bundle to the First-tier Tribunal, details that Kurds in Iran may face various forms of discrimination but there is no suggestion that this amounts to persecution. In SSH & HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC) the appellants were Kurds and the Upper Tribunal observed that it was not suggested that an individual faced risk on return on the sole basis of being Kurds. Being Kurdish was relevant to how the returnee would be treated by the authorities but no examples had been provided of ill-treatment of returnees with no relevant adverse interest factors other than their Kurdish ethnicity and the Upper Tribunal concluded that the evidence did not show a risk of ill-treatment to such returnees, though they accepted that it might be an exacerbating factor for a returnee otherwise of interest. On the circumstances of this case, I cannot see how being a Kurd and not having demonstrated that he is Iranian materially increases the risk to him. He is to be returned to Iran because he continues to assert that he is Iranian.
14. At the hearing before me, the unrepresented appellant continued to assert that he is Iranian and that he worked with the Komala Party. He claimed he could prove that,

but I advised him that any such evidence should have been submitted to the First-tier Tribunal hearing his appeal.

15. However, if he wishes now to assert any such risk, he can make those representations to the Secretary of State and may wish to try to make a fresh claim on the basis that he would be at risk on return for reasons other than the rejected Komala Party involvement. However, at this moment, even if the judge had specifically addressed the issue, it is difficult to see on what basis the judge could have found he was or would have been at risk on return to Iran on account of Iraqi nationality or even as a Kurd.

Conclusion & Decision

16. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.



Signed
Deputy Upper Tribunal Judge Pickup

Dated

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014.

Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

I make a no fee award.

Reasons: No fee is payable and thus I can make no fee award.



Signed
Deputy Upper Tribunal Judge Pickup

Dated