Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/04828/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11 February 2018	**On 21 February 2019**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

HZ
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr K Smyth, of Kesar & Co Solicitors
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant is an ethic Kurdish citizen of Iran, who was born in January 1997. He arrived in the UK in June 2012 and claimed asylum on 23 June 2012.

2. I summarise the basis of the appellant's asylum claim. His father was involved politically in what he now believes to be the KDPI Party (Democratic Party of Iranian Kurdistan). The appellant did not know what

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his father's job was in Iran. When he was 8 years old, his parents took him to live in the Kurdish region of Iran (KRI), where he was educated and where the appellant's father worked as a labourer. Approximately twice a week the appellant's father would be visited by two men in the evening who would stay for approximately 2 hours. The appellant's father and the men spoke in Farsi and the appellant would hear mention of the Iranian president. His father would also leave the family house twice a week after the family meal, but the appellant did not know where his father went or what he did. The appellant's mother would visit Iranian friends about twice a month who, according to the appellant's mother, were members of the KDPI, although there was no talk of politics during the visits.

3. Approximately two months before he arrived in the UK the appellant's father went to Iran for a week, on what the appellant thought was a trip to arrange accommodation for the family to return to that country. On reappearing in Iraq, however, the appellant's father was in an agitated state. The appellant recalled seeing his father in possession of a plastic bag that contained a lot of documents. During the next month the appellant's father always seemed angry when he spoke, and he spoke to people a lot on the telephone. During this time the appellant was informed that the family would be selling their home and returning to Iran when school finished in the summer. The family left Iraq a week after school finished for the summer. When they were travelling in a lorry the appellant's father apologised to the appellant for not telling him everything and said they were not returning to Iran. The appellant's father showed him a piece of paper which, according to what the appellant is recorded as saying at interview, was an Iranian arrest warrant. The document had an Iranian logo and it looked like an official document, although the appellant did not read it himself. His father said they were not returning to their village in Iran because of his political problems. The appellant's father told him that if he (the father) was ever arrested, he would have no choice but to hand himself over the authorities in order to protect the appellant. The appellant concluded that his father must have been working for an organisation that was opposed to the Iranian regime. So, instead of returning to Iran, the family went by train and later by lorry to Europe. The appellant travelled in a separate lorry to that of his parents and found himself in the United Kingdom, where he claimed asylum. The appellant believes the Iranian government will arrest him if he is removed to Iran as the son of a person who was sought by the authorities.

4. The respondent rejected the claim. Amongst other things, the respondent did not believe that an arrest warrant from Iran would have been given to the appellant's father by the Iranian authorities. Overall, the Secretary of State considered that the appellant could safely be returned to Iran.

The appeal before the First-tier Tribunal

5. The appellant appealed against that decision to the First-tier Tribunal. His appeal was heard by First-tier Tribunal Judge Dineen (the FtJ) on 20 August

2015 but was not promulgated until 13 April 2016. The FtJ's principle findings of fact and reasons supporting those findings are contained in paragraphs 42 to 47 of his decision. The FtJ was not satisfied that the appellant's father had been involved in activities against the Iranian regime. At paragraph 42, the FtJ found that the appellant's father had not been in possession of an Iranian arrest warrant, as had been claimed. This was because the evidence relating to such warrants, referred to in paragraph 27 of the refusal letter, rendered it incredible that the Iranian authorities would give the subject of a warrant a copy of it prior to arresting him "thus making it clear to him that he should abscond".

6. At paragraph 43, the FtJ found that the appellant's father had returned to a Kurdish area of Iraq and there was no evidence to suggest the Iranian authorities could execute a warrant against him there. In general, the FtJ was not satisfied that flight from Iraq to Europe "would have been necessary to avoid the consequences of such a warrant" (paragraph 43).

7. At paragraph 44, the FtJ found that, since the details of any involvement of the appellant's father in the activities of the KDPI had not been communicated to the appellant, the FtJ was not satisfied that the appellant's mother would have told him that people they regularly visited were involved in the activities of that organisation. The accounts given by the appellant of visits by the KDPI to the family home and of evenings away from the home spent by his father, were not, the FtJ said, specifically linked to any evidence of political activity and were consistent with many other explanations, including social activities by the appellant's father. At paragraph 46, the FtJ found he could not be satisfied that if the appellant's father had been involved in KDPI activity, the latter would have returned to Iran with the intention of making arrangements for his wife and child to move back there with him.

8. Having made those findings, the FtJ turned, beginning at paragraph 48, to the issue of risk on return. The FtJ said that he had considered the country guidance decision in SB (Risk on return – illegal exit) Iran CG [2009] UKAIT 00053. According to the FtJ, that decision indicated that "there would be no risk to an asylum-seeking person returning to Iran merely on account of being a failed asylum seeker, unless there were a further risk factor such as having been involved in criminal proceedings in Iran before leaving".

9. At paragraph 50, however, the FtJ noted a report from Amnesty International, mentioned in the respondent's refusal letter, that asylum seekers were "interrogated on return, whether or not they have been political activists in Iran or abroad". At paragraph 51, the FtJ found that it must be "highly likely that the appellant would be asked whether he had applied for asylum in the UK, and what grounds he had given for seeking asylum". Assuming that the appellant must be expected to respond truthfully, "this would, perhaps somewhat paradoxically, mean that he would, regardless of the truth of such claim, have to state that he had claimed that his father was a KDPI activist".

10. According to the FtJ, this was sufficient to put the appellant at real risk. The FtJ therefore allowed the appellant's appeal on asylum and human rights grounds.

The grant of permission, the error of law decision, the remaking decision and the remittal from the Court of Appeal

11. The respondent sought permission on the basis that the facts of the case fell "squarely within the country guidance case law" of SB, that there were no further risk factors advanced by the appellant, and that, on the FtJ's reasoning, anyone who claimed asylum in the UK would be at risk from the authorities.

12. Permission to appeal was granted by First-tier Tribunal Judge Holmes on 4 May 2016. At paragraph 3, Judge Holmes considered it arguable that the FtJ had failed to follow the current country guidance, without giving any adequate reasons for departing from it. The judge also raised, on his own volition, the issue of whether the delay in promulgating the FtJ's decision rendered the hearing unfair.

13. The 'error of law' hearing was heard by Deputy Upper Tribunal Judge Hutchinson (the Deputy Judge). In a written decision dated 20 June 2016 the Deputy Judge found that the FtJ's decision, allowing the appeal, contained "an error of law capable of affecting the outcome of the appeal and that part of the decision is set aside". She stated that the "decision on risk on return will be re-made by the Upper Tribunal".

14. The Deputy Judge's reasons for finding an error of law are set out in the preceding paragraphs of her decision. On the basis that the FtJ's findings, regarding the lack of any KDPI involvement on the part of the appellant's father, were to stand, the Deputy Judge accepted the submission of the respondent's representative that "the most that the [appellant] could say was that he unsuccessfully applied for asylum on the basis that he claimed that his father was involved in political activity but this claim had not been accepted" (paragraph 13). The Deputy Judge found that the FtJ was not entitled to allow the appeal for the reasons given and that this constituted a material legal error. The Deputy Judge also dealt briefly with the delay in the FtJ's decision and concluded that such delay did not amount to an error of law. Having found that the findings of fact in relation to credibility and the appellant's circumstances in Iran could stand, the Deputy Judge adjourned the hearing.

15. The "re-making" hearing took place on 21 September 2016. The Deputy Judge heard oral evidence from the appellant on the issue of risk on return, and considered an expert report from Professor Joffe. That report, however, was "predicated on the basis that the appellant's account was true, which it is not" (paragraph 18). The Deputy Judge accepted Professor Joffe's conclusion that the appellant's return "as a failed asylum

seeker in itself did not expose him to a particular danger" (ibid). After further findings in relation to Professor Joffe's report, the Deputy Judge examined in detail the appellant's case under Article 8 of the ECHR. She concluded that the appellant's removal from the United Kingdom would not disproportionately interfere with his Article 8 rights. In a decision issued on 4 October 2016, the Deputy Judge dismissed the appellant's appeal on asylum and human rights grounds. The appellant sought permission to appeal to the Court of Appeal.

16. Ground 1 of the grounds of appeal to the Court of Appeal contended that the Deputy Judge had committed a "jurisdictional error" in refusing, at the re-making hearing, to re-visit her error of law decision, insofar as that decision preserved the findings of the FtJ. It was contended that the Deputy Judge had wrongly assumed that she had no discretion to re-visit her error of law decision, even though the proceedings in the Upper Tribunal were not at an end. Ground 2 attacked the reasoning of the FtJ for his factual findings. The attack included the submission that the FtJ had failed to consider or assess the appellant's evidence in the context of his age at the relevant times.

17. In a written decision of 1 December 2017, Beatson LJ granted permission on the "jurisdiction ground" and the related ground 3, which was that the Upper Tribunal's decision could not stand "because it was infected by the UT's jurisdictional error and in consequence its error in failing to consider and determine where the FtT's credibility assessment was sound in law".

18. Beatson LJ, however, refused permission in respect of the challenge to the FtJ's factual findings. He said:-

> "The FtT judge gave reasons for finding the appellant's account to be incredible at [42] (not credible that the authorities would give the subject of a warrant a copy of the warrant before arresting him thus giving him time to abscond), [43] (flight from Iraq to Europe was not necessary to avoid consequences of an Iranian warrant), [45] (no link of visits by others to the family home to evidence of political activity), and [46] (not satisfied that, if father was involved in KDPI activity, he would have returned to Iran). The FtT judge found these features of the applicant's (sic) evidence not to be credible for the reasons he gave. There was no obligation on him to give the further explanations listed at paragraph 29 of the skeleton argument."

19. On 12 February 2018, by consent, the Court of Appeal allowed the appellant's appeal and remitted the matter to the Upper Tribunal "for reconsideration of the grounds of appeal in respect of which permission to appeal to the Court of Appeal was granted by Lord Justice Beatson". In the accompanying statement of reasons, settled by the Treasury Solicitor, the parties were said to be "agreed that the matter be remitted back to the Immigration and Asylum Chamber of the Upper Tribunal for re-hearing of the [appellant's] appeal by the Tribunal in respect of grounds 1 and 3 only". A panel of the Upper Tribunal consisting of Mr Justice Lane,

President of the Upper Tribunal (IAC), and Upper Tribunal Judge Blum, heard the remitted appeal on 12 June 2018.

The Upper Tribunal's decision

20. In its decision promulgated on 5 July 2018 the Upper Tribunal panel approached the remittal from the Court of Appeal on the basis that the Court of Appeal had set aside the Deputy Judge's decision, to the extent that she was to be taken as having held, at the re-making hearing, that she did not have jurisdiction to re-visit the "delay" ground. The Deputy Judge's re-making decision therefore also had to be treated as set aside. It did not appear to the Upper Tribunal panel that any issue was taken by the Court of Appeal regarding the setting aside of the FtJ's decision as to risk on return. If his factual findings (at paragraphs 41 to 47) were sound, then his assessment of risk was plainly flawed.

21. Accordingly, at that hearing on 12 June 2018, the panel heard submissions from the parties as to whether the FtJ's findings at paragraphs 41 to 47 of his decision could be allowed to stand, in the light of the delay in promulgating that decision. At the hearing, the Upper Tribunal panel went through the paragraphs in question. In each case, Mr Smyth, representing the appellant, was unable to advance any coherent reason why the findings were, in any way, rendered questionable by the delay between the FtJ's hearing the appeal and promulgating his decision. The panel therefore had no hesitation in coming to the same conclusion that the Deputy Judge reached in her error of law decision.

22. The Upper Tribunal panel then considered an application under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to adduce evidence that was not before the First-tier Tribunal. This evidence comprises a witness statement of the appellant, in which he gave an explanation as to how it came to be that he was recorded by the Home Office, in connection with his asylum claim, as having described the document shown to him by his father as an arrest warrant. The issue of whether this was an arrest warrant or, perhaps, some form of summons, was a material reason why the respondent, and, later, the FtJ rejected the appellant's assertion that his father had been involved in KDPI activities in Iran.

23. In connection with the rule 15(2A) application, the panel heard oral evidence from Mr Turner, who, together with his wife, are the appellant's foster carers. Mr Turner explained how the significance of the description of the document (both in English and Kurdish Sorani) had not been appreciated by the appellant or Mr Turner until after the first set of Upper Tribunal proceedings. Around this time, there had been a family barbeque, at which a friend (who, it appears, is Kurdish) had explained the distinction and its significance. Mr Turner then did some internet research on the subject. The upshot was that, according to Mr Turner and the appellant, at the time the appellant was recorded by the Home Office as referring to an arrest warrant, he assumed that this was the correct term

for the document that he had seen and he did not, at that time, have any reason to doubt it. The panel were impressed by Mr Turner, as a witness and satisfied that, in the particular circumstances of this case, there had not been unreasonable delay in producing the evidence in question. The panel therefore decided to grant the rule 15(2A) application concerning the issue of the document which he said his father showed him. For this reason, the Upper Tribunal panel indicated that the FtJ's findings regarding the appellant's father would not necessarily be material to the outcome of the appeal. The re-hearing was adjourned to enable the Upper Tribunal to consider further oral and written evidence. The panel indicated that it would be for the Upper Tribunal to determine the factual matrix, in the light of the rule 15(2A) and other evidence, along with evidence as to the general position (as regards both risk on return to Iran and Article 8), as existing at the present time.

The further evidence and the hearing on 11 February 2019

24. The appellant's representatives served a substantial Supplementary Appellant's Bundle. This included, *inter-alia*, further statements from the appellant, Heather Turner, Stephen Turner, a witness statement from [AH] (the Kurdish friend from the barbeque), and a large number of additional statements and letters of support from other family members of the foster carers and their friends, and friends of the appellant. Also included was a Refworld document published by the Immigration and Refugee Board of Canada 'Iran: Court summonses and arrest warrants, including issuance procedures, methods of delivery, description of the documents and the information they contain; prevalence of fraudulent court documents', dated 29 September 2014. At the hearing Mr Bramble served a copy of HB (Kurds) Iran CG [2018] UKUT 00430 (IAC), promulgated on 20 December 2018, and the Country Policy and Information Note (CPIN) 'Iran: Kurds and Kurdish political groups', version 3.0, January 2019.

25. I heard oral evidence from the appellant, from Mr and Mrs Turner, and from Mr A Pinnock, a friend of the Turners. I will refer to their evidence only in so far as it is necessary and relevant to my decision. It is however important to note at the outset that the appellant was asked about his answer to question 61 of his asylum interview, conducted on 20 August 2012, when he described his departure from the Kurdistan region of Iraq. The appellant said his father showed him a letter called, 'Amir Bil Kabiz'. Later, in answer to question 89 of the asylum interview, the appellant repeated this term and, in parenthesis next to the term, the interviewing officer wrote "arrest warrant". The appellant explained that, the time of his substantive asylum interview, he did not know what the term meant but that he knew the document had been issued by the Iranian government and sent to his father. The appellant explained that, during the asylum interview, he and the interpreter had a discussion just between themselves concerning the nature of the document. As a result of this conversation the interpreter suggested that the document was likely to be an arrest warrant. The applicant was, at the time of his asylum interview, a

minor and did not appreciate the relevance of designating the document as an arrest warrant. The appellant again explained that the term used in his interview, and subsequently in his statements, was one suggested by the interpreter which he freely adopted. In cross-examination the appellant agreed that he accepted the original translation, but explained how a discussion with Mr [H] during a foster family barbecue made him aware that the document may have been a court summons rather than an arrest warrant.

26. I heard very helpful submissions from both representatives and reserved my decision.

Findings and reasons

27. The understanding that the document shown to the appellant by his father was an "arrest warrant" was a material reason relied on by the FtJ in rejecting the appellant's claim that his father had been politically active. At the hearing on 12 June 2018 the Upper Tribunal panel were persuaded to allow further evidence to be admitted relating to the appellant's use of the term "arrest warrant". In a witness statement dated 10 May 2018 the appellant explained that his father never specifically used the word "arrest warrant". His father told the appellant that the authorities were after him because of his political activities and the appellant was aware that the document his father showed him was "an official document." The document was written in Farsi and, although the appellant could read Farsi, he was too young to understand what it meant. The appellant claimed that the term "arrest warrant" was suggested by an interpreter when he arrived in the UK in an attempt to clarify the nature of the document, and the appellant had gone along with that term ever since. He did not previously appreciate the difference between a court summons and an arrest warrant. In his oral evidence before the Upper Tribunal panel Mr Turner described how, during a family barbecue, the appellant was discussing his case with Mr [H]. Mr [H], who is a Kurdish Iranian who had been granted asylum in Norway, explained that the document may have been a court summons, or that, if it was an arrest warrant, the appellant's father may have been able to obtain it through payment of a bribe. Mr [H] repeated these assertions in a witness statement dated 20 June 2018. In his oral evidence before the panel on 12 June 2018 Mr Turner explained how he conducted some Internet research into the possible nature of the document, and in his evidence before me on 11 February 2019 Mr Turner described how he tried to look for the document using the term detailed in the asylum interview, but was not sure of the correct spellings and didn't get far.

28. When evaluating this new element of the appellant's account, it is important to appreciate that the FtJ did not actually make any adverse credibility finding against the appellant personally. If one carefully analyses the FtJ's findings at paragraphs 42 to 47, whilst it is apparent that he did not find it credible that the Iranian authorities would give the

appellant's father a copy of an arrest warrant prior to arresting him, the FtJ did not suggest that the appellant himself was lying when he described his father showing him a document. The FtJ's other findings, from paragraphs 43 to 46, are to the effect that the description given by the appellant of the family uprooting itself and leaving Iraq, and of the biweekly visits to the appellant's father, did not necessarily point to any political activity by the father. The FtJ's finding at paragraph 47 was that there was no satisfactory evidence, on the lower standard of proof, that the appellant's father was involved in activities against the Iranian regime as the appellant had suggested. Nowhere does the FtJ actually conclude that the appellant himself has been untruthful. This observation was accepted by the Presenting Officer, Mr Bramble, in his submissions. Mr Bramble stated that "there has never been an issue as to the appellant's own credibility" and Mr Bramble indicated that he did not challenge the appellant's credibility. For my part I found the appellant to be an impressive witness. His account has been measured and without any perceptible attempt at embellishment. He has consistently maintained that he has no firm knowledge of his father's activities or why the Iranian authorities would be interested in his father. The appellant also gave his evidence before me in a direct and straightforward manner and without any hesitation.

29. I find the appellant's account of the circumstances in which he came to adopt the term "arrest warrant" to be inherently plausible. Having observed and presided over countless judicial hearings where individuals were questioned about their asylum claims through interpreters, the appellant's description of having a brief conversation with the Home Office interpreter during his asylum interview, clarifying the nature of the document shown to him by his father, rings true. It is very often the case that an interpreter will ask an individual to clarify what they mean to ensure the translation is accurate, and that there is often no objection and no specific recording by the person asking the questions. I bear in mind that, at the time of the appellant's asylum interview, he was a child of 15, and that he has consistently maintained throughout his asylum application and the appeal process, that he did not have any opportunity to consider the document in detail, merely noting that it appeared to be an official document as it had an Iranian logo on it. I find it inherently plausible that a child of 15, with limited knowledge of Farsi, would innocently adopt and maintain a suggestion made to him by an official interpreter relating to the nature of the document. The Upper Tribunal panel previously found the evidence from Mr Turner, relating to the circumstances in which the possibility that the document was not an arrest warrant became known to the appellant, at a family barbecue, had the ring of truth about it, and that Mr Turner was a credible witness. There was no challenge to Mr Turner's credibility by Mr Bramble.

30. The FtJ's finding in relation to the arrest warrant was a central reason for his rejection of the appellant's claim that his father had been politically active and had been sought by the Iranian authorities. The new evidence, which I have found credible, suggests the appellant's father showed him

an official Iranian document, but that the document was not necessarily an arrest warrant. I have considered the 2014 Refworld document published by the Immigration and Refugee Board of Canada. This indicated that summonses are issued by the competent court and forwarded by the police to the person in question. It also indicated that a neighbour might accept to receive the summons on behalf of the suspect. Based on this background evidence the document shown to the appellant by his father could credibly have been a court summons. Whilst it remains impossible to determine the actual nature of the document I am satisfied, on the lower standard of proof, and having regard to the emphasis placed by the appellant's father on the document as an indicator of the adverse attention of the Iranian authorities, that it is likely to have been a court summons.

31. In light of the above it becomes necessary to revisit the other findings by the FtJ at paragraphs 43 to 46. The FtJ's finding at paragraph 43 were made in the context of the document being an arrest warrant rather than a summons. I do not find however that this makes any material difference to the FtJ's reasoning. If the Iranian authorities were unable to execute an arrest warrant in Iraq, they would similarly be unable to issue a summons. The FtJ's finding that the Iranian authorities would have been unable to execute either document in Iraq is entirely reasonable. There does not, at first glance, appear to be any reason why the family could not have remained in Iraq if the appellant's father feared being targeted by the Iranian authorities. The appellant was however a child at the time and was clearly unaware of the full circumstances surrounding the father's visit to Iran and the decision to leave Iraq. I note, on the appellant's account, that the region of Iraq in which he and his family were living was relatively close to the Iranian border. There is no evidence as to whether the appellant's parents were entitled to lawfully reside in Iraq, or whether their immigration status was precarious and secure. In these circumstances, and mindful that the burden of proof continues to rest on the appellant, I do not find the flight from Iraq materially undermines the appellant's claim that his father had been targeted by the Iranian authorities and that the family were sufficiently concerned for their wellbeing that they had to leave the life they had established in Iraq.

32. At paragraph 44 the FtJ was not satisfied that the appellant's mother would have told him that the people they regularly visited were involved with the KDPI given that the details of his father activities with, presumably the same organisation, were not disclosed to him. I find this to be a neutral point. If the appellant's father was involved with the KDPI there would be obvious safety and safeguarding concerns if his minor son knew of the details. From a security point of view, it would make sense not to disclose one's involvement in an organisation targeted by a government authority to a child. Whilst the disclosure by the appellant's parents about their friends' involvement with the KDPI would equally be a potential safety concern, the appellant was told nothing about their involvement in the organisation and politics was never raised when the appellant and his

mother visited. In these circumstances I do not find this point undermines the appellant's claim that his father is likely to have been politically active.

33. At paragraph 45 the FtJ found that the accounts of visits by the two men to the family home, and of the evenings the appellant's father spent away from that home, were not specifically linked to any evidence of political activity, and was consistent with many other explanations, including social activity by the appellant's father. The appellant's description must however be considered in its full context. The appellant was never informed of the reasons for the visit, which is unusual if the visit was purely social. The appellant heard the name of the Iranian president being mentioned. If the meetings were related to political activity, and specifically a Kurdish separatist movement, this would be consistent with the appellant's father's subsequent fear that the Iranian authorities had an adverse interest in him. Whilst I cannot exclude the possibility that the visits and the appellant's father's absence from the family home could be for other reasons, I find, having considered the evidence before me holistically and applying the lower standard of proof, that the visits did relate to political activity.

34. At paragraph 46 the FtJ was not satisfied that, if the appellant's father was involved in KDPI activity, that he would have returned with the intention of making arrangement for the family to move back there. Certainly if one was involved with an organisation banned in Iran, one would be very cautious in moving back there with one's family. The natural inference from the appellant's account of his father's visit to Iran however suggests that his father may have believed it was, for whatever reason, safe for the family to return to the country but that, during his visit, he became aware that the authorities had an adverse interest in him and that it was not therefore safe. I do not find this reason undermines the appellant's claim that his father was likely to be involved with the KDPI.

35. Having considered the appellant's evidence 'in the round', and noting that the KDPI is a banned organisation in Iran (see, most recently, HB, I find, on the lower standard of proof, that the appellant's father was involved with the KDPI, that he and his family fled from Iraq after he visited Iran and became aware that the Iranian authorities had an adverse interest in him, and that the family subsequently fled to Europe.

36. I must now consider whether these facts would expose the appellant to a real risk of persecution if he were removed to Iran. Mr Bramble helpfully accepted, and I did not consider it to be in any event disputed, that the appellant is a Kurdish national of Iran who lived in the KRI (Kurdish Region of Iraq) from the age of 8 until 15 when he left. The decision in HB, which held that SSH and HR (illegal exit: failed asylum seeker) Iran CG [2018] UKUT 00430 (IAC) remains valid country guidance, indicates, *inter alia*, that although Kurds in Iran face discrimination this, in general, is not at such a level as to amount to persecution or Article 3 ill-treatment, and that the mere fact of being a returnee of Kurdish ethnicity with or without a

valid passport, and even if combined with illegal exit, does not create a risk of persecution or Article 3 ill-treatment. Since 2016 the Iranian authorities have however become increasingly suspicious of, and sensitive to, Kurdish political activity and those of Kurdish ethnicity are regarded with even greater suspicion than hitherto and are reasonably likely to be subjected to heightened scrutiny on return to Iran. Kurdish ethnicity is therefore a risk factor which, when combined with other factors, may create a real risk of persecution or Article 3 ill-treatment. Another risk factor is a period of residence in the KRI by a Kurdish returnee. This is reasonably likely to result in additional questioning by the authorities on return. However, this is a factor that will be highly fact-specific and the degree of interest that such residence will excite will depend, non-exhaustively, on matters such as the length of residence in the KRI, what the person concerned was doing there and why they left. The Tribunal found that Kurds involved in Kurdish political groups or activity are at risk of arrest, prolonged detention and physical abuse by the Iranian authorities. Headnote 10 reads, “The Iranian authorities demonstrate what could be described as a 'hair-trigger' approach to those suspected of or perceived to be involved in Kurdish political activities or support for Kurdish rights. By 'hair-trigger' it means that the threshold for suspicion is low and the reaction of the authorities is reasonably likely to be extreme.”

37. Although the appellant’s father was involved in political activity, and was targeted by the Iranian authorities as a consequence, the appellant himself has not been politically active. He was only 8 years old when he left Iran, and was still a minor throughout his, admittedly lengthy, residence in the KRI. He is however Kurdish and, given his length of residence outside Iran, is likely to be subject to heightened scrutiny on return to Iran. Given that his father was specifically targeted by the Iranian authorities, and given that the appellant cannot be expected to lie about his identity or his parentage, I find there is a real risk that, on return, when questioned, the Iranian authorities will become aware that the appellant’s father is a person of adverse interest to them.

38. HB does not deal with the treatment of family members of Kurdish political activists of interest to the authorities. Mr Bramble however drew my attention to the Country Information and Policy Note (CPIN) ‘Iran: Kurds and Kurdish political groups’, version 3.0, January 2019. Although there is no consensus in the sources quoted at 10.5.1 to 10.5.6, with one source stating that descendants of politically active parents will not in principle face any risk, there are nevertheless a number of individuals and organisations that consider that family members of activists could be sought out and could face arrest and interrogations by the authorities, depending on the particular facts, and that the consequences for the family member could be serious. Having regard to the appellant’s Kurdish ethnicity and the fact that he resided in the KRI for a number of years, albeit as a minor, and having found his father was politically active and was specifically targeted by the Iranian authorities, and having regard to the ‘hair trigger’ approach of the Iranian authorities as described in

headnote 10 of HB, and the content of the CPIN note at 10.5 relating to the treatment of the family members of activists, I am persuaded, on the lower standard of proof, that the appellant would be exposed to a real risk of ill-treatment during any questioning on his return to Iran. I consequently allow his appeal on asylum grounds.

Article 8

39. In the Reasons for Refusal Letter the respondent accepted that the appellant had established a private life in the UK. Mr Bramble accepted that the relationship between the appellant and the Turners, his foster family, constituted family life. Indeed, the voluminous and unchallenged evidence points to an exceedingly strong relationship between the appellant and his foster family. Having found however that the appellant faces a real risk of serious ill-treatment if returned to Iran, it is not necessary for me to consider the nature and quality of the appellant's private life, or the impact on his relationship with the Turners if removed, in any further detail. This is because his exposure to a real risk of serious ill-treatment will, on any rational analysis, constitute 'very significant obstacles' within the terms of paragraph 276ADE(1)(vi), and would constitute such a powerful factor in the proportionality assessment under Article 8, having regard to all the factors in s.117B of the Nationality, Immigration and Asylum Act 2002, such as to outweigh the public interest factors. I consequently allow the appeal under Article 8 as well.

Notice of Decision

The appeal is allowed on asylum grounds
The appeal is allowed on Article 8 human rights grounds

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 Blum

Date 19 February 2019