



**Upper Tribunal
(Immigration and Asylum Chamber)**
PA/01907/2018

Appeal Number:

THE IMMIGRATION ACTS

Heard at North Shields

**Decision & Reasons
Promulgated**

On 25th January 2019

On 4th February 2019

Prepared on 25 January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

**H. M.
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Cleghorn, Counsel, Halliday Reeves & Co

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant entered the United Kingdom illegally, and on 7 November 2016 made a protection claim. He claimed to be ethnically Kurdish and a citizen of Iran,

- who had fled because he believed that he had been identified by the Iranian authorities as a smuggler.
2. This claim was refused on 29 January 2018. The Appellant's appeal against the refusal of her protection claim was heard and dismissed by First Tier Tribunal Judge Hands in a decision promulgated on 14 August 2018.
 3. The Appellant's application for permission to appeal was granted by Designated Tribunal Judge Shaerf on 5 September 2018.
 4. No Rule 24 Notice has been lodged in response to the grant of permission to appeal. Neither party has applied pursuant to Rule 15(2A) for permission to rely upon further evidence. Thus the matter came before me.

The challenge

5. As identified in the grant of permission, the grounds are generic because they do not engage with the text of the decision. Instead they take the form of a lengthy skeleton argument, rather than identifying the errors of law complained of, and thus fall into the trap identified in Nixon (Permission to appeal: grounds) [2014] UKUT 368. Nevertheless DJ Shaerf felt able to identify two challenges; namely a failure to adequately consider the risk upon return as one who would be perceived to be a failed asylum seeker, and, as one who would be perceived to be a Kurd.
6. Before me Ms Cleghorn, who had drafted the grounds and appeared below, accepted that DJ Shaerf had accurately identified the challenges to the decision the grounds sought to advance. As such she accepted that there was no challenge offered by the Appellant to the comprehensive adverse credibility findings that the Judge had made.
7. The Judge had rejected the entirety of the Appellant's account as a fabrication [D30-31]. She had concluded that the Appellant's father was in truth alive, that the Appellant was not a smuggler as claimed, and that the Appellant had never come to the adverse attention of the Iranian authorities. Whilst there was no express finding that the Appellant had failed to establish that he had left Iran illegally - on a fair reading of the decision such a finding is in my judgement implicit in the Judge's wholesale rejection of the Appellant's evidence. Absent the claim to be a smuggler on the run from the authorities the Appellant had offered no reason for his needing to leave Iran illegally. I can identify no reason why it should be inferred in his favour that he had done

- so, or, that he had told the truth when he had denied ever having been issued with a passport.
8. At its highest, the Appellant's case therefore needed to be considered by the Judge on the basis that he had done nothing whilst living in Iran, or since, that would have drawn him to adverse attention of the Iranian authorities. He had never claimed to have visited, or lived, in Iraq. Absent his rejected claim to be a smuggler he had never claimed to have undertaken any political activity, or any activity that could rationally be perceived as such.
 9. The application to those circumstances of the recent country guidance decision of HB (Kurds) Iran (illegal exit: failed asylum seeker) CG [2018] UKUT 430 means that the Appellant has failed to establish a real risk of harm upon return. As a Kurd he might face discrimination in Iran, although he had not advanced his claim on that basis, and such discrimination would not in general be of a level that would amount to persecution. Merely being a Kurd, whether or not he was prepared to produce a valid passport and exit visa, was not of itself sufficient to create a real risk of persecution or Article 3 ill treatment upon return.
 10. Accordingly the grounds fail to disclose any material error of law in the approach taken by the Judge to the appeal that requires her decision to be set aside and remade.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 14 August 2018 contained no material error of law in the decision to dismiss the Appellant's appeal which requires that decision to be set aside and remade, and it is accordingly confirmed.

Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify her. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed
Deputy Upper Tribunal Judge JM Holmes
Dated 25 January 2018

