Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/03481/2019**

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 16 October 2019	**On 6 November 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR B M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G. Brown, counsel instructed by Elder Rahimi solicitors
For the Respondent: Mr McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iran born on 1 January 1991. He arrived in the UK and claimed asylum on 23 February 2016 on the basis that he is of Kurdish ethnicity and had worked as a *kolbar* - an illegal trader or smuggler, smuggling alcohol and cigarettes and sometimes petrol from Iran to Iraq by horseback, that he had been obliged or forced to take arms and ammunition by armed men who he thought were Peshmerga. There was an attempt by security guards to stop them whereupon there was a shooting between the security guards and the Peshmerga and the Appellant and the other *kolbars* ran away. The Appellant fled to his cousin's house for two days during which time he heard his fellow k*olbars*

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had been arrested and that security guards had called at his house looking for him. The Appellant's cousin arranged for an agent to help him leave the country and he left Iran illegally.

2. The Appellant's asylum claim was rejected by the Secretary of State in a refusal decision dated 26 January 2019. The Appellant appealed against this decision and his appeal came before Judge of the First-tier Tribunal Siddiqi for hearing on 11 July 2019. In a decision and reasons promulgated on 12 August 2019 the judge dismissed the appeal.

3. Permission to appeal was sought, in time, on the basis that the judge had made material errors of law: firstly, in failing to provide sufficient or sustainable reasons for adverse credibility findings *cf.* SR Iran [2005] EWCA Civ 982 and had failed to consider or give reasons for departing from the country guidance decision in HB Kurds (Iran) [2018] UKUT 00430 (IAC). In particular, issue was taken with the judge's findings at [22] of the decision and reasons.

(ii) At [22](a) the judge based an adverse credibility finding on what she considered to be a significant inconsistency in the Appellant's evidence which was that at interview question 45, the Appellant stated he smuggled items across the border between Iran and Iraq once every two or three months, but in cross-examination the Appellant was asked how often he made journeys to the border, once a week, twice a week, to which the Appellant replied sometimes once, sometimes twice. It was submitted that this was not inconsistent given that *kolbars* often do not physically cross the border but operate in the border area between the two countries collecting and delivering goods at the border. Thus the judge's analysis was materially flawed.

(ii) Secondly at [22](b) the judge found an alleged inconsistency as to whether or not the Appellant knew that the armed men whose arms he transported were Peshmergas. However this was not inconsistent. The Appellant knew that they were Peshmergas but not to which group they belonged in light of the fact that there are many different Peshmerga groups active in that area fighting to improve the plight of Kurds. It was submitted that the judge materially erred in failing to recognise that in Kurdish culture Peshmerga is a generic term for armed fighters.

(iii) At [22](c) the judge made an adverse credibility finding again as to an alleged consistency in the evidence as to whether or not the Appellant was forced to help the Peshmergas which again was not an inconsistency, in that the Appellant stated he felt he had a duty to help them because they fight for the rights of Kurds, which is not inconsistent with the fact that the Peshmergas required their assistance as *kolbars*.

(iv) At [22](d) the judge found there was a discrepancy in the Appellant's evidence in relation to his knowledge of the location of the ambush. The judge materially erred in misunderstanding the Appellant's evidence on this. The Appellant stated he did not know where Peshmergas wanted their goods to be taken but as he worked extensively in that area he knew their

location at the time of ambush. Therefore it was not discrepant for the Appellant to say he knew how to get to his cousin's house after escaping from the ambush.

(v) At [22](e) the judge found a discrepancy in the Appellant's evidence as to why he did not return home after the ambush, but in fact there was no discrepancy. It is clear that the Appellant went to his cousin's house and did not go to his home address because he feared that his friends would be arrested. So this was precautionary on the basis that they might be arrested.

(vi) It was further submitted the judge failed to properly consider the decision in HB Kurds (Iran) and that permission to appeal should be granted.

4. Permission to appeal was granted by First-tier Tribunal Judge Nightingale in the following terms

"It is arguable that the judge fell into error at 22(a) in finding a discrepancy when it appears that two separate questions had in fact been asked with regard to the Appellant's smuggling activities and crossing the border. It is also arguable that the judge may have fallen into error in failing to appreciate that the word Peshmerga is a generic term for armed fighters active in the border region. These grounds are arguable. Whilst there is less immediately identifiable merit in the remaining grounds, this is an appeal in which it was accepted credibility was key. In view of what are argued two misunderstandings leading to adverse credibility findings permission is granted on all grounds pleaded".

Hearing

5. At the hearing before the Upper Tribunal, I informed the parties that the judge's Record of Proceedings had recorded the cross-examination in relation to the point raised at [4] of the grounds of appeal *viz* that the Appellant had been asked how often did you make the journey, once a week, twice a week. The judge had, therefore, not specified where the journey was to or from.

6. Mr Brown sought to rely on the grounds of appeal but equally raised concern about the manner in which the judge had dealt with the Appellant's *sur place* activities, albeit this had not been raised as a ground of appeal. Mr Brown submitted this was relevant to the issue of risk on return and should have been properly addressed. He further submitted that the judge had made no real finding in relation to the Appellant's illegal exit which had not been accepted by the Respondent but it was clear from the decision in *HB (Kurds)* that this needed to have been determined by the judge in order to properly assess risk on return.

7. In his submissions, Mr McVeety ultimately accepted that there was an error of law in relation to the first ground of appeal [22](a) of the judge's decision and reasons, in that the alleged inconsistency was not put to the Appellant in order to give him the opportunity to comment or clarify. Mr McVeety accepted that it was possible to smuggle both to a border and over it

and there again there was not necessarily discrepant evidence in that respect. Mr McVeety also accepted that the judge's finding at [22](d) was also problematic in relation to the finding that there was a discrepancy in the evidence in relation to the Appellant's knowledge of the location of the ambush. Mr McVeety submitted that overall the judge seems to have focused more on minor inconsistencies when perhaps they were not really inconsistencies, whereas there were other issues raised in the refusal decision which were perhaps more key in terms of going to the credibility of the Appellant's claim and on that basis he accepted there were material errors of law.

8. I accepted Mr McVeety's concession and agreed that it did appear that the Judge's focus was on perhaps more minor aspects of an assessment of the credibility of the Appellant in the round and that the assertions of inconsistencies were not made out on the basis of a reading of the evidence as a whole. I agreed with the joint submission of both parties that, as a consequence, the appeal should be heard *de novo* before the First-tier Tribunal.

Decision

9. I find for the reasons set out above and the express concessions by Mr McVeety on behalf of the Secretary of State that there are material errors of law in the decision of First-tier Tribunal Judge Siddiqi. I set that decision aside and remit the appeal for a hearing *de novo* before the First-tier Tribunal in Manchester. I make the following directions:

DIRECTIONS

1. The hearing should be listed for two hours.

2. A Kurdish Sorani interpreter.

3. Any evidence upon which the parties wish to rely should be submitted five working days before the remitted hearing.

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 Rebecca Chapman Date 3 November 2019

Deputy Upper Tribunal Judge Chapman