



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: PA/09528/2018

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice

Decision & Reasons Promulgated

Centre

On 2 April 2019

On 10 April 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

YOUSIF SIDIQI

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Greer instructed by Quality Solicitors

For the Respondent: Mr Bates Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Siddiqi promulgated on 3 December 2019, which dismissed the Appellant's appeal against the refusal of a protection claim on all grounds.

Background

3. The Appellant was born on 13 June 1989 and is a national of Iran of Kurdish ethnicity.
4. The Appellant arrived in the UK on 1 November 2007 and claimed asylum on the basis of his involvement in Iran with the KDPI. His claim was refused on 18 January 2008 and his appeal was dismissed after a hearing on 25 March 2008.
5. He made fresh submissions on 25 May 2017 on the basis of his sur place activities both his involvement with the KDPI in the UK and his internet activity
6. On 13 July 2018 the Secretary of State refused the Appellant's application. The refusal letter gave a number of reasons:
 - (a) There is no evidence that his Facebook page or Twitter which are both blocked in Iran have been seen by anyone in Iran.
 - (b) There was little activity on his Facebook page and in addition to the small footprint the activity was very recent.
 - (c) The previous decision was that the Appellant had no KDPI profile in Iran .
 - (d) The Appellants role at the demonstrations would appear to be a minor one not an organiser or leader.
 - (e) There is no evidence that the photographs of the Appellants attendance at these events were taken by mainstream media or that he could be

identified given that it had previously been found that he was not a political activist in Iran.

- (f) The report from Dr Joffe addresses the risk faced by high profile activists. It is also generic and does not address the Appellants situation. There was no basis for the claim that the treatment of Kurds generally had deteriorated to the point where all Kurds were at risk on return: this view is confirmed in caselaw and the COIS.
- (g) Therefore it was not accepted that the Appellant would be detained and persecuted on arrival simply on the basis that he was a Kurd who had exited illegally and had attended rallies.

The Judge's Decision

- 7. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Saddiqi ("the Judge") dismissed the appeal against the Respondent's decision.
- 8. Grounds of appeal were lodged arguing that the in respect of his surplice activities the Judge had given weight to immaterial matters; that she had misunderstood what was said in SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC) about the treatment at the point of return; she had made a mistake of fact in respect of his Facebook activity.
- 9. On 27 December 2018 First-tier Tribunal Judge O'Keefe refused permission and the application was renewed.
- 10. On 4 February 2019 Upper Tribunal Judge Mc William gave permission to appeal stating '*The Judge found that the Appellant would be questioned and detained at the airport. It is arguable that the risk was not considered in the light of this.*'
- 11. At the hearing I heard submissions from Mr Greer on behalf of the Appellant that:
 - (a) In respect of Ground 2 he argued that the tribunal recognised that conditions in detention facilities in Iran are such that any individual placed in detention for any period would face a risk of inhuman and degrading

treatment and therefore her assessment at paragraph 37(c) was irreconcilable with her conclusion at paragraph 38.

- (b) He accepted that there was a distinction drawn in SSH between those summarily questioned at the airport and those taken away for further questioning but she had said he would be detained and that crossed the threshold of risk.
- (c) In respect of Ground 3 he relied on paragraphs 4-10 of his skeleton argument. In determining whether the Appellant was genuinely involved in the KDPI the Judge took into account immaterial matters. He produced a large number of posts from 2015-2018 showing online interest and attendance at 9 separate demonstrations. Therefore it was difficult to understand what the Judge meant by 'meaningful' or 'not genuine': he was there and his attendance was regular.
- (d) The Judge found against the Appellant on the basis he was not a member of the KDPI when the Respondents own Policy Note recognises that the 3 levels of involvement with the KDPI which include membership, supporter or friend are all at risk.
- (e) The Judge also imposed a higher threshold for risk in that she finds that the absence of a leadership or organisational role undermines his claim to be at risk whereas paragraph 3 of the Respondents own guidance is that those involved with Kurdish groups at any level are at risk.
- (f) In relation to Ground 3 the Judge at paragraph 37(e) finds that there was no evidence that his contacts, his Facebook friends, were located in Iran when it was the unchallenged evidence of the Appellant that they were and this was not challenged in cross examination or by the Judge (this was confirmed by Mr Bates who checked his ROP)
- (g) The Judge suggested that the Appellant could delete his Facebook account and would not be at risk but the Appellants evidence was that he had lifted the photographs from the KDPI website and therefore even if he deletes his Facebook page the risk still exists.

12. On behalf of the Respondent Mr Bates submitted that:

- (a) She agreed that if the Judge meant 'detained' in the way the term is used in SSH that Article 3 would be contravened but it is clear that it is not what the Judge meant. She meant stopped and spoken to at the airport on arrival and such questioning would not put him at risk. She does not suggest that he was someone of such interest that he would be taken away for questioning as that required a significant profile.
- (b) He accepted that the Appellant asserted he had friends in Iran and this was unchallenged but was that mistake of fact material as there was no suggestion that the fact that his online activities were known to his friends in Iran had led to any interest being shown in him by the Iranian authorities in questioning his family about him.
- (c) The Judge was entitled to take into account that the Appellant was not a member of the KDPI and there was no evidence in the form of a letter of support or attendance by anyone from the KDPI on his behalf.
- (d) There was no evidence before the Tribunal that the photographs were lifted from the KDPI website.
- (e) The reasons were sustainable and the Judge was entitled to find that simple attendance at demonstrations did not raise the Appellants profile sufficiently for his sur place activities to put him at risk.
- (f) The Appellant could delete his Facebook account before applying for travel documents: if it was not a genuine claim this was not a protected right as it was not a core belief

13. In reply Mr Greer on behalf of the Appellant submitted

- (a) The Judge applied the terminology used in SSH 'detained'.
- (b) The Judge was not entitled to place reliance on a Scottish case, MA, to suggest that questioning at the airport did not put him at risk as it was not a country guidance case and was not binding. It was not put to the parties to address.
- (c) He accepted that there was no evidence from the KDPI website to suggest the photographs originated from there.

- (d) The decision suggests that the Appellant is merely a member of the public at the demonstrations but he is in a prominent position, reading a poem, holding a placard.

Finding on Material Error

14. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.
15. The Judge clearly recognised when the Judgement is read as a whole that she had to determine whether the Appellants involvement in the KDPI in the UK was genuine and could be perceived as such and whether his activities could come to the attention of the Iranian authorities and put him at risk.
16. Against a background of a previous unchallenged decision in which his claim to have been involved with the KDPI in Iran and wanted by the authorities was rejected and his evidence that his family had not been visited by the authorities suggesting they were aware of his activities abroad the Judge concluded that the Appellants involvement in the UK was extremely limited (37(b)) and was not genuine and would not therefore put him at risk. She was entitled to take into account the short period of Facebook postings (31 (a)); the fact that he had had not even attempted to become a member of the KDPI in the UK (31(b)); there was no evidence from the KDPI either in the form of a letter of support or witnesses either officially or personally given his claim to have had an organisational role albeit she found this aspect of his claim was vague (31(c)).
17. What is clear is that the Judge did not find that the Appellants involvement in political activities was either such as to give him a profile or indeed genuinely motivated because she stated that explicitly at 37(e) and (g). In reaching that decision I am satisfied that she was entitled to take that into account the country guidance that prevailed at the time of her decision which she set out in full. That caselaw made plain that the profile of the applicant was relevant and not every person who attended demonstrations was at risk. Mr Greer criticised her use of the word 'meaningful' and sought to argue that the Judge thereby placed an artificially high threshold on the Appellant to establish that he had a high profile role in supporting the KDPI in the UK in his sur place activities when

the background material suggested that any activity in support of Kurdish rights would be perceived as putting an applicant at risk because the Iranian authorities had a 'hair trigger' response to such behaviour. Mr Greer is quoting however from the headnote of the country guidance case of HB (Kurds) Iran CG [2018] UKUT 430 (IAC) which was heard 20-22 February and 25 May 2018 and promulgated 12 December 2018, ie a case promulgated the week after the hearing before Judge Sidiqi.

18. The Judge was applying the case law and background material that applied before her and I am satisfied from SA (Sri Lanka) v Secretary of State for the Home Department [2014] EWCA Civ 683 there was no error of law by the Upper Tribunal in deciding an asylum claim on the basis of the country guidance then in force.
19. Mr Greer argued that the Judges finding that the Appellant would be 'detained and questioned 'on arrival was irreconcilable with her conclusion at paragraph 38 that the Appellant was not at risk. I am satisfied however that the Judge recognised exactly what is recognised at paragraph 23 of SSH that there are two situations for returning failed asylum seekers in Iran. I set this paragraph out in full as it makes clear that there is the potential for an initial period of detention and questioning which may in fact take place at a court at or near the airport which is unlikely to go no further if the person has no profile to excite interest (as she found with this Appellant) or a period of further detention and questioning in prison which might breach Article 3. I am satisfied that there the use of the word '*detained*' is not determinative of the issue given that any questioning even at the airport requires the person to be held for a period of time for the questions to be put:

"This has to be seen, as with all these pieces of evidence, in the context of the evidence overall. In our view the evidence does not establish that a failed asylum seeker who had left Iran illegally would be subjected on return to a period of detention or questioning such that there is a real risk of Article 3 ill-treatment. The evidence in our view shows no more than that they will be questioned, and that if there are any particular concerns arising from their previous

activities either in Iran or in the United Kingdom or whichever country they are returned from, then there would be a risk of further questioning, detention and potential ill-treatment. In this regard it is relevant to return to Dr Kakhki's evidence in re-examination where he said that the treatment they would receive would depend on their individual case. If they co-operated and accepted that they left illegally and claimed asylum abroad then there would be no reason for ill-treatment, and questioning would be for a fairly brief period. That seems to us to sum up the position well, and as a consequence we conclude that a person with no history other than that of being a failed asylum seeker who had exited illegally and who could be expected to tell the truth when questioned would not face a real risk of ill-treatment during the period of questioning at the airport. We should add that we see no reason to doubt Dr Kakhki's evidence that there is a special court at or near the airport which considers the cases of returnees but the evidence does not show a real risk of ill-treatment in breach of Article 3 amounting to persecution as a consequence of attending at the court."

20. I am satisfied therefore that any fair reading of the decision overall is that the Judge is contemplating the first sort of questioning as he would be of no interest and there is nothing inherently wrong in using the word detention as that is used in SSH to refer to the first type of questioning.
21. In relation to the Judges treatment of the Facebook evidence her starting point was his support of the KDPI he was not genuine and therefore he could be expected to delete the account and she quite properly distinguished his case with RT where the political support was genuine. Mr. Greer attempted to argue that even if he were to accept that in those circumstances the Appellant could and should delete his account given that he had used photographs from the KDPI website, an account that the Iranian authorities might be expected to monitor even if they did not have the capability to monitor the Facebook accounts of every Iranian in the UK, this would put him at risk. Having read the decision and the ROP I note that this was not an argument advanced before

the Judge and Mr Greer conceded that no evidence that the photographs had been taken from that website was adduced before the Judge.

22. I am therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and well detailed and based on cogent reasoning applying the caselaw and background material that was applicable at the time of the decision. It may be that the application of HB would have resulted in a different outcome but the decision had not been promulgated. The Appellant has another remedy.

CONCLUSION

23. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

24. **The appeal is dismissed.**

Signed

Date 5.4.2019

Deputy Upper Tribunal Judge Birrell