



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10098/2018**

THE IMMIGRATION ACTS

**Heard at Bradford
On 30 May 2019**

**Decision & Reasons
Promulgated
On 07 June 2019**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**FQ
ANONYMITY DIRECTION MADE**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Holt, Counsel

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant identified as FQ.

Introduction

1. In a decision sent on 18 March 2019 I found that the decision of the First-tier Tribunal ('FTT') dated 11 October 2018 dismissing the appellant's appeal on asylum grounds contains an error of law. I now remake the decision.

Background

2. The appellant, a citizen of Iran of Kurdish ethnic origin, is 27 years old. He claims that he would be persecuted if returned to Iran because he left illegally and has participated in sur place pro-Kurdish rights activities whilst in the United Kingdom ('UK').
3. The appellant initially claimed asylum in the UK in 2010. This was based upon his and his family's claimed connections to pro-Kurdish political activities in Iran. In a decision dated 3 December 2010, FTT Judge Gordon dismissed the appellant's appeal on asylum grounds, having found the entirety of the appellant's account to be a fabrication.
4. In response to fresh claim submissions focussing upon the appellant's sur place activities in the UK after 2010, the respondent refused a further asylum claim in a decision dated 7 August 2018. In his decision dated 11 October 2018, FTT Judge M Davies accepted that the appellant had been involved in pro-Kurdish political activities in the UK, including attending demonstrations and Facebook entries but concluded that these activities were not motivated by any genuine commitment to Kurdish activism. Judge Davies found that the appellant participated in these activities in bad faith and solely to substantiate an asylum claim and did not accept the appellant's claim to have departed Iran illegally and dismissed his appeal on asylum and human rights grounds.
5. Having already identified an error of law in Judge Davies' decision, the matter now comes before me to remake the decision.

Evidence

6. The appellant relied upon a voluminous 593-page bundle containing witness statements from him and two supporting witnesses. This included evidence of his sur place pro-Kurdish political activities dating back to 2014 together with evidence of extensive pro-Kurdish and anti-Iranian regime Facebook postings from January 2017 to shortly before the hearing.

7. The appellant attended the hearing with his two witnesses. They each relied upon evidence of the appellant's longstanding participation in pro-Kurdish political views that continued to the present.

Hearing

8. At the beginning of the hearing, Mr Diwnycz clarified that he did not wish to cross-examine the appellant or his witnesses, and accepted their evidence on behalf of the respondent. Mr Diwnycz made it clear that although the FTT did not accept that the appellant departed Iran unlawfully, the FTT did not have the advantage of considering the initial screening interview from 2011, and this was now accepted. Mr Diwnycz acknowledged that the FTT did not accept that the appellant participated in sur place activities in good faith. However, he noted that there was now corroborative and more detailed evidence concerning the appellant's sur place activities, but in any event even if the sur place activities were not motivated by a genuinely held political opinion, that was likely to make little difference to the outcome, in the light of the country guidance in HB (Kurds) Iran CG [2018] UKUT 00430 (IAC) (12 Dec 2018).
9. Mr Diwnycz relied upon the respondent's *Country Policy and Information Note, Iran: Kurds and Kurdish political groups*, Version 3.0, January 2019 ('the 2019 COIN'). Mr Diwnycz confirmed that he did not dispute the country guidance summarised in my 'error of law' decision and submitted that the 2019 COIN merely confirmed the accuracy of this country guidance without dissenting from it. For this reason, he did not take me to any passage in the 2019 COIN. He also accepted that the country guidance specific to Kurds returned to Iraq is set out in HB and SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 308). When read with AB and Others (internet activity - state of evidence) Iran [2015] UKUT 257 (IAC) at [465] and [472] and BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC) at [65], Mr Diwnycz accepted that the Iranian authorities are concerned less with motivation and more with the nature and extent of the activities. Mr Diwnycz noted that in many cases a returnee to Iran might be expected to delete his Facebook account, but given the length of time this appellant's account had been very active and the number of followers associated with it, deletion of the account is unlikely to make a difference because its contents may have already come to the attention of the Iranian authorities.
10. Mr Diwnycz acknowledged that it was very difficult to argue against the proposition that this appellant faces a real risk of persecution, in the light of HB and invited me to determine the appeal on the basis of the accepted facts as applied to HB.

11. Mr Holt relied upon a skeleton argument drew attention to the nature and extent of the appellant's sur place activity, which is now accepted.
12. After hearing from both representatives, I indicated that I the appeal was allowed, for the reasons I now provide.

Remaking the decision

13. Having applied the lower standard of proof to the undisputed factual matrix, in the light of the relevant country guidance referred to above, I make the following findings:
 - (i) As an illegal departee from Iran, the appellant shall be questioned at the point of return in Iran - he will be returned without a passport, having never had any - see [97] of HB.
 - (ii) The initial questioning would be for a "fairly brief period" (at [12] of SSH the Internal Organisation for Migration considered that in the context of voluntary returnees, questioning might take a few hours).
 - (iii) If "particular concerns" arise from activities in the UK, then there is a real risk that there would be the risk of further questioning accompanied by ill-treatment. The assessment of whether "particular concerns" are likely to arise turns upon all the individual factors, considered cumulatively. However, as set out in HB, since 2016 the Iranian authorities have become increasingly suspicious of, and sensitive to, Kurdish political activity. Those of Kurdish ethnicity are thus regarded with even greater suspicion than hitherto and are reasonably likely to be subjected to heightened scrutiny on return to Iran. In addition, the Iranian authorities demonstrate a "hair-trigger" approach to those suspected to be involved in Kurdish political activities i.e. the threshold for suspicion is low and the likely reaction extreme.
 - (iv) The appellant would be expected to tell "the truth" when questioned. This includes, inter alia: (i) the appellant's Kurdish identity; (ii) the respondent's acceptance that he left Iran unlawfully and (iii) the appellant has participated in pro-Kurdish / anti-Iranian regime sur place activities in the UK since 2014. It is clear from the country guidance case-law that (i) and (ii) are insufficient to support prospective risk or a reasonable degree of likelihood of "particular concerns" without more, and it is therefore necessary to carefully assess the nature and extent of the appellant's sur place activities.
 - (v) The appellant's sur place activities include the following:

- He has been an extensive poster of pro-Kurdish posts on Facebook from January 2017. At the time of the FTT hearing he had 1052 followers. He now has 2360 followers. I accept that this internet activity at the more active end of the spectrum.
 - He has attended numerous pro-Kurdish demonstrations in cities throughout the UK from 2014.
- (vi) I accept the appellant's evidence that he is genuinely committed to these political activities. He has been disbelieved by two Tribunals. However, they did not have the extensive evidence available to me including the supporting evidence from two apparently credible witnesses, both of whom now have refugee status. As I have set out above Mr Diwnycz did not cross-examine any of the witnesses and accepted that this signalled that their evidence was accepted by the respondent. Even if I am wrong, and the appellant's activities were undertaken in bad faith, it is reasonably likely that the Iranian authorities will be less interested in the reasons or motivation for undertaking the activities. The mere fact of having undertaken the sur place activities would be sufficient, when combined with the other risk factors to prompt a "hair trigger" approach.
- (vii) For these reasons, the authorities are reasonably likely to have "particular concerns" regarding this appellant.

Conclusion

14. There is a real risk that the Iranian authorities' will have "particular concerns" about the appellant, by reason of the factors set out above. The appellant faces a real risk of persecution because the authorities will impute an anti-regime political opinion to him as a result of a combination of his Kurdish ethnic origin, illegal departure and sur place activities (whether undertaken in good faith or not and whether his Facebook account is deleted or not).

Decision

15. I remake the decision by allowing the appeal on Refugee Convention grounds.

Signed: *UTJ Plimmer*
Ms M. Plimmer
Judge of the Upper Tribunal

Date:
30 May 2019