



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10532/2017

THE IMMIGRATION ACTS

Heard at Bradford
On 13 March 2019

Decision & Reasons Promulgated
On 21 March 2019

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

AM
ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Brown, 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 AM.

Introduction

1. In this decision I remake the decision on the appellant's appeal against a decision dated 6 October 2017 refusing his asylum claim. In a decision dated 12 January 2019 I found that the First-tier Tribunal's ('FTT') decision dated 10 May 2018 to dismiss the appeal should be set aside.
2. I have anonymised the appellant's name because this decision refers to matters likely to be regarded as sensitive in relation to his international protection claim.
3. The appellant, a citizen of Iran of Kurdish ethnic origin, who will be 22 in April 2019, claims that he will be persecuted in Iran because of his perceived involvement with the Party of Free Life of Kurdistan ('PJAK'). The FTT rejected the appellant's evidence that he undertook PJAK activities when in Iran and described the appellant as "*an unimpressive witness*". The FTT expressly rejected the appellant's claim that he distributed leaflets and was involved in other activities on behalf of PJAK whilst in Iran. The FTT also rejected the appellant's claim that his father had been arrested in Iran. The FTT attached little weight to the evidence of a Mr Hawrami to the effect that the appellant's family have a political background and the appellant undertook PJAK activities in Iran.
4. The FTT accepted two significant aspects of the appellant's factual account:
 - (i) He left Iran illegally;
 - (ii) He attended 8-10 PJAK events in the UK, albeit he participated in these out of bad faith and merely to bolster his asylum claim, and there is no evidence these have come to the adverse attention of the Iranian authorities.

Hearing

5. At the beginning of the hearing, Mr Diwnycz explained that he did not have a copy of my decision setting aside the FTT decision, but that he was nonetheless ready to proceed and as such did not require an adjournment.
6. Both parties agreed that the two factual matters set out above are preserved findings and that I must determine prospective risk in light of these, any updated evidence and the relevant country guidance. These preserved findings are important and distinct from the respondent's position in the decision letter that the appellant did not depart Iran unlawfully.
7. The appellant gave brief evidence at the hearing. He confirmed the contents of an updated witness statement that described his difficulties in attending PJAK events due to a lack of funding. He also referred to two previous Facebook accounts having been hacked and closed down. He believed that this is because these included postings and photographs in support of PJAK, and the hacking

was therefore at the behest of the Iranian authorities. The appellant also described having recently attended an event organised by PJAK near his home in Liverpool. He accepted he was a passive participant but that he posted photographs of his attendance at this event with the PJAK flag on a via a third Facebook account.

8. Mr Diwnycz did not cross-examine the appellant. I invited Mr Diwnycz to explain why the appellant's appeal should not be allowed in the light of the most recent country guidance, even on the assumption that he was acting in bad faith in participating in sur place PJAK activities. Mr Diwnycz was unable to assist on this and made no further submissions.
9. Mr Brown relied upon a detailed skeleton argument cross-referencing to the country guidance decisions. At the end of the hearing I indicated that I would be allowing the appellant's asylum and I now provide my reasons for this.

Country guidance and background evidence

10. It has not been disputed that as an illegal departee, the appellant would be questioned on return - see SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 308. In SSH the Upper Tribunal found that if "*particular concerns*" arose, there would be a period of further questioning, which carried with it a real risk of detention and ill-treatment, and said this at [23]:

"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."

11. The following matters germane to this case appear to flow from the reasoning and guidance in SSH:
 - (i) As an illegal departee from Iran, the appellant would be questioned at the point of return to Iran.

- (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*” arose from previous activities either in Iran or in the United Kingdom, then there would be the risk of further questioning accompanied by ill-treatment.
 - (iv) The assessment of whether “*particular concerns*” are likely to arise turns upon all the individual factors, considered cumulatively.
 - (v) The appellant would be expected to tell the truth when questioned.
 - (vi) The evidence suggests no appetite to prosecute for illegal exit alone, but if there is another offence, illegal exit will be added on, the cases where illegal exitees were imprisoned show much more by way of specific activity, as opposed to simple imputation – see [31] of SSH.
12. The recent decision of HB (Kurds) Iran CG [2018] UKUT 00430 (IAC) confirms that SSH remains valid country guidance in terms of the guidance offered in the headnote. I note that headnote (b) of SSH acknowledges that there will be questioning on return to Iran in certain circumstances. The headnote of HB provides the following additional guidance:
- “(2) Kurds in Iran face discrimination. However, the evidence does not support a contention that such discrimination is, in general, at such a level as to amount to persecution or Article 3 ill-treatment.
 - (3) 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.
 - (4) However, 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.
 - (5) Kurdish ethnicity is nevertheless a risk factor which, when combined with other factors, may create a real risk of persecution or Article 3 ill-treatment. Being a risk factor it means that Kurdish ethnicity is a factor of particular significance when assessing risk. Those “other factors” will include the matters identified in paragraphs (6)-(9) below.
 - (6) A period of residence in the KRI by a Kurdish returnee 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.
 - (7) Kurds involved in Kurdish political groups or activity are at risk of arrest, prolonged detention and physical abuse by the Iranian authorities. Even Kurds expressing peaceful dissent or who speak out about Kurdish rights also face a real risk of persecution or Article 3 ill-treatment.

(8) Activities that can be perceived to be political by the Iranian authorities include social welfare and charitable activities on behalf of Kurds. Indeed, involvement with any organised activity on behalf of or in support of Kurds can be perceived as political and thus involve a risk of adverse attention by the Iranian authorities with the consequent risk of persecution or Article 3 ill-treatment.

(9) Even 'low-level' political activity, or activity that is perceived to be political, such as, by way of example only, mere possession of leaflets espousing or supporting Kurdish rights, if discovered, involves the same risk of persecution or Article 3 ill-treatment. Each case however, depends on its own facts and an assessment will need to be made as to the nature of the material possessed and how it would be likely to be viewed by the Iranian authorities in the context of the foregoing guidance.

(10) 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."

13. BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC) sets out the relevant factors to take into account when assessing prospective risk as a consequence of attending demonstrations in the UK. This states at paragraph 65 (my emphasis):

"As regards the relevance of these factors to the instant case, of especial relevance is identification risk. We are persuaded that the Iranian authorities attempt to identify persons participating in demonstrations outside the Iranian Embassy in London. The practice of filming demonstrations supports that. The evidence suggests that there may well have been persons in the crowd to assist in the process. There is insufficient evidence to establish that the regime has facial recognition technology in use in the UK, but it seems clear that the Iranian security apparatus attempts to match names to faces of demonstrators from photographs. We believe that the information gathered here is available in Iran. While it may well be that an appellant's participation in demonstrations is opportunistic, the evidence suggests that this is not likely to be a major influence on the perception of the regime. Although, expressing dissent itself will be sufficient to result in a person having in the eyes of the regime a significant political profile, we consider that the nature of the level of the sur place activity will clearly heighten the determination of the Iranian authorities to identify the demonstrator while in Britain and to identify him on return. That, combined with the factors which might trigger enquiry would lead to an increased likelihood of questioning and of ill treatment on return."

14. In addition, the Home Office Country Information and Guidance on Iran "Kurds and Kurdish political groups" version 2.0, July 2016 ("CIG") contains the following:

“3.1.1 Kurds in Iran face discrimination which affects their access to basic services. However, in general, this level of discrimination will not reach the level of being persecutory.

3.1.2 Those involved in Kurdish political groups are however, at risk of arbitrary arrest, prolonged detention and physical abuse from the Iranian authorities. Even those who express peaceful dissent or who speak out about Kurdish rights can be seen as a general threat and face a real risk of persecution.

3.1.3 Family members of persons associated with a Kurdish political group are also harassed and detained and may be subject to inhumane treatment.

3.1.4 Where a person can demonstrate to a reasonable degree of likelihood that they are known or likely to be made known to the Iranian authorities on the basis of their membership or perceived membership of a Kurdish political group they should be granted asylum.”

Discussion - remaking the decision

15. The appellant will be questioned upon return to Iran. The significant matter to be determined is whether this period of questioning will reasonably likely give rise to “*particular concerns*” such that further questioning will take place, during which time there is a reasonable degree of likelihood of serious harm. 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. PJAK is considered a terrorist organisation by the Iranian regime.
16. I am satisfied that “*particular concerns*” would arise on the part of the Iranian authorities from the following matters considered cumulatively.
 - The appellant and his family are Kurds.
 - The appellant left Iran illegally.
 - The appellant has participated in Kurdish political activities linked to PJAK and posted about these together with photographs linking him to the PJAK flag on Facebook accounts.
17. Mr Brown did not invite me to revisit the FTT’s preserved finding that the appellant’s sur place activities were motivated by bad faith and not out of any genuine political commitment. The country guidance makes it clear that the Iranian authorities attach little weight to motivation in the context of Kurdish

political activities. I am satisfied that even though the appellant was a mere low-level attendee at political meetings and demonstrations in support of PJAK, this is reasonably likely to be known to the Iranian authorities via their own surveillance together with the Facebook posts. Mr Diwnycz did not dispute the appellant's evidence that his Facebook accounts were twice hacked and shut down but submitted it was unlikely to be at the hands of the Iranian authorities. There is no clear evidence either way. However, given the nature and extent of the authorities adverse interest in Kurdish political activism in and out of Iran, and the surveillance it undertakes generally (see the country guidance set out above) and of online postings (see AB and Others (internet activity - state of evidence) Iran [2015] UKUT 257 (IAC)) it is reasonably likely that the Iranian authorities are at the very least aware of the appellant's sur place activities and will have "particular concerns" about these, such that in accordance with the country guidance, the appellant faces a well founded fear of persecution for reasons relating to an imputed political opinion, upon return to Iran. Mr Diwnycz did not attempt to argue the contrary and my reasons have therefore been set out succinctly.

Decision

18. I remake the decision by allowing the appeal on asylum grounds.

Signed:

UTJ Plimmer

Ms M. Plimmer

Judge of the Upper Tribunal

Date:

13 March 2019