



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/09322/2019 (V)

THE IMMIGRATION ACTS

**Heard at Field House (remote video
means)
On 20 October 2020**

**Decision & Reasons
Promulgated
On 2 November 2020**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**RAB
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Greer of Counsel, instructed by Legal Justice Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Skype. A face to face hearing was not held to take precautions against the spread of Covid-19 and as all issues could be determined by remote means. The documents were available in paper format on the court file.
2. The Appellant appeals with permission against the decision of First-tier Tribunal Judge O'Neill promulgated on 7 January 2020, in which the

Appellant's appeal against the decision to refuse his protection and human rights claim dated 19 September 2019 was dismissed.

3. The Appellant is a national of Iran, who has lived in Iraq from childhood until 2015, following which he made his way to the United Kingdom, arriving on 4 January 2017 and claimed asylum the following day. The Appellant's claim to be at risk on return to Iran due to his personal and family connections with the KDPI and due to his interest in Christianity following arrival in the United Kingdom.
4. The Respondent refused the application for the following reasons. First, it was not accepted that the Appellant was an Iranian national, although it was accepted that he was Kurdish. Secondly, the Respondent did not accept that the Appellant had any personal involvement with the KDPI due to inconsistencies in the claim and a lack of detail. Thirdly, the Respondent did not accept that any of his family members had been killed or kidnapped because of involvement with the KDPI, author on the basis of inconsistencies in the claim and a lack of detail. Fourthly, it was not accepted that the Appellant had any significant interest in Christianity nor has he converted to it. Further, the Appellant had not established that he had left Iran illegally and adverse credibility findings were made pursuant to section 8 on the basis that he had previously passed the number of safe countries before claiming asylum in the United Kingdom. Overall, the Respondent did not accept that the Appellant would be at risk on return to Iran on the basis of his Kurdish ethnicity and there were no other factors indicate a risk. The Appellant's private and family life, as well as claimed mental health problems were taken into account believe also refused on these grounds.
5. Judge O'Neill dismissed the appeal in a decision promulgated on 7 January 2020 on all grounds. The First-tier Tribunal accepted that there was realistic prospect that the Appellant an Iranian national and there was no dispute that he was of Kurdish ethnicity. It was found that the Appellant's father was not of any adverse interest to the Iranian authorities, nor was he killed by them, although it was accepted that it was possible that he supported the KDPI and the family moved to the IKR in Iraq for that reason. Further, it was found that neither the Appellant's mother or sister had been kidnapped by the Iranian authorities reason of any family involvement in the KDPI either. In relation to the Appellant's claimed involvement with the KDPI, the First-tier Tribunal found that he had not made anything more than a minor contribution to the KDPI. The conclusion on this point is contained in paragraphs 56 and 57 of the decision as follows:

"56. I note that in HB (Kurds) Iran CG [2018] UKUT 430 it was held that SSH and HR was not authority for any proposition in relation to the risk on return for refused Kurdish asylum-seekers on account of their Kurdish ethnicity alone. It was acknowledged that Kurds in Iran faced discrimination but that such

discrimination is not at such a level as to amount to persecution or Article 3 ill-treatment.

However because the Iranian authorities have become increasingly suspicious of Kurdish political activity it is said in HB that returning Kurds are reasonably likely to be subjected to a heightened scrutiny at the airport pinch-point of return. According to this case the fact of being an undocumented Kurdish returnee and combined with the legal exit, does not create a risk of persecution Article 3 ill-treatment.

Never the less Kurdish ethnicity was found to be a risk factor which, when combined with other factors, may create a real risk of persecution or Article 3 ill-treatment. Those factors include overt political activity connected to Kurdish self-governance (which I do not find in the Appellant's case) but also residence in the KRI (the independent Kurdish governate in Iraq). In this respect what the Appellant was doing there and why he went will be significant.

'A period of residence in the KRI by a Kurdish returnee is reasonably likely to result in additional questioning by the authorities on return. Whether, 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 why they left'.

57. I find the appellant will be of no interest to the authorities on account of his or his father's political affiliations, his surplus activity or his so-called Christian conversion. He will be returning as a failed asylum seeker who is undocumented. The only factors of significance to the Appellant that he is a Kurd who spent a considerable period of this life in the IKR. The question therefore arises as to whether, because of his relatively long residence in the IKR he will be perceived as a political opponent and thus be enough to create a risk of persecution.

He went as a child with his parents within their control. He spent about 17 years in the IKR and grew up there, leaving in 2015 aged 23. I been referred to no background material on expert report which suggest that such residence in the IKR (mostly as child) is enough to greater risk of persecution or Article 3 ill-treatment."

6. The appeal was then dismissed on the basis that the Appellant did not have a well-founded fear of persecution in Iran by reason of his religious belief or political activity or association by reason of perceived political opinion because of his residence in the IKR.

The appeal

7. The Appellant appeals on the single ground that the First-tier Tribunal either misunderstood the country guidance in HB or otherwise departed from it without reasons. On the findings made by the First-tier Tribunal, that the Appellant is a national of Iran; that he and his family moved to the IKR due to their support for the KDPI; that he lived there for 17 years; that the Appellant worked for the KDPI in Iraq and engage in activities including smoking leaflets into Iran; and would be subject to additional questioning upon return to Iran as to his activities with the KDPI in Iraq; it was said that the Appellant fell squarely within paragraph (9) and (10) of the head note setting out risk categories in HB such that his appeal should have been allowed protection grounds.
8. At the oral hearing, the respondent did not oppose the appeal and submitted on the basis of the express findings made by the First-tier Tribunal about the Appellant, he would face a risk on return to Iran in accordance with the country guidance in HB such that the decision should be set aside and remade allowing the appeal.

Findings and reasons

9. The Respondent's submissions agreeing with the error of law identified by the Appellant were entirely appropriate and correct on the facts of this case. Whilst the First-tier Tribunal refer expressly to the country guidance in HB, it is clear that the Judge failed to apply this to the facts found in this particular case. The paragraphs quoted above fail to consider holistically the findings of fact made by reference to the fore guidance in HB, including the Appellant's low-level political activity with the KDPI and his long residence in the IKR which are expressly considered in the country guidance to be factors giving rise to a real risk of persecution or Article 3 ill-treatment. Although each case is fact specific and the level of involvement, length of residence and reasons for leaving Iraq must be considered; these matters must be viewed in light of the low threshold for suspicion of the Iranian authorities and likely extreme reaction even to low-level activity. In all of the circumstances, the findings of fact made by the First-tier Tribunal. Only within the risk factors identified in HB, with no reason to depart from that binding country guidance on the such that it was an error of law for the First-tier Tribunal to dismiss the appeal on protection grounds.
10. As also accepted by the Respondent it is therefore necessary to set aside the decision of the First-tier Tribunal and the decision on appeal can be remade without any further hearing to allow the appeal to the reasons already set out above.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal and remake the appeal as follows:

The appeal is allowed on asylum grounds.

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 G Jackson
Upper Tribunal Judge Jackson

Date 21st October 2020