Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03326/2019

THE IMMIGRATION ACTS

Heard at Field House Remotely	**Decision & Reasons Promulgated**
On 12 April 2021	**On 27 May 2021**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

D P I
(ANONYMITY ORDER IN FORCE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr G Brown, Counsel instructed by Hallmark Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Interpreter: Ms B Karimi attended to interpret the Kurdish Sorani and English languages

DECISION AND REASONS

1. I have already found that the First-tier Tribunal erred in law and set aside its decision. My "Reasons for Finding Error of Law" are dated 9 November 2020 and have been sent to the parties but I set them out below by way of introduction to this decision and reasons. **I confirm that the anonymity order made there stands**.

2. When I found an error of law and set aside the decision of the First-tier Tribunal I said:

REASONS FOR FINDING ERROR OF LAW

3 Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellant. Breach of this order can be punished as a contempt of court. I make this order because the Appellant is an asylum seeker and so is entitled to privacy.

4 This is an appeal by a citizen of Iran against the Decision of the First-tier Tribunal dismissing his appeal against the Decision of the respondent refusing him asylum.

5 Permission to appeal was given by Upper Tribunal Judge Stephen Smith on a limited basis. I set it out below. It is, with respect, self-explanatory:

> "It is arguable, however, that the judge erred when considering and applying HB (Kurds) Iran CG [2018] UKUT 00430 (IAC), given the heightened scrutiny of Kurds at the border, and the fact that the appellant cannot be expected to lie if asked about attendance at any pro-Kurdish events in this country. See [29]. Although the judge said that she had considered the 'hair trigger' approach, arguably the reader is left wondering why attendance at a pro-Kurdish event would not cause the notoriously hypersensitive Iranian Authorities any concerns if it were revealed during routine questioning upon the appellant's return. Arguably, the findings of the Upper Tribunal in HB (Iran) do not justify a finding that the Iranian Authorities would be unconcerned about sur place activities that were conducted in bad faith. I grant permission to appeal solely in relation to this ground of appeal, as raised in the renewal grounds."

6 Subsequently, in the light of the well-known strain on resources as a result of the COVID-19 crisis, Directions were given suggesting that the Tribunal could determine without a hearing whether the Decision and Reasons involved the making of an error of law and, if so whether the Decision should be set aside. Mr T Melvin for the respondent produced a respondent's written submissions Rule 24 reply. As far as I can see neither party took the opportunity of making representations about the need for a hearing. I assume that is because neither party thought there was a pressing need for a hearing. As is made clear at Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008, in statutory appeals they impose no obligation on the Upper Tribunal to have a hearing before making a Decision but the Upper Tribunal must have regard to any view expressed by a party when deciding whether or not to hold a hearing. Here no view has been expressed. Provided that it can be done justly, the Tribunal has decided to determine some appeals without a hearing in an effort to use efficiently the restricted hearing space which is diminished by the needs of adapting to the Corona-19 virus. Whilst there may be some cases before the Tribunal where the claimant has a vested interest in delay, excessive delay is not fair to the public interest or to many claimants and is something to be avoided when possible. I have read the papers in the case and I am satisfied that this appeal can be determined justly without a hearing and that is what I have endeavoured to do.

7 It is important that the appellant understands that the scope of the grant of permission to appeal is limited and most certainly does not require a challenge to the adverse credibility findings. The First-tier Tribunal was clearly very unimpressed with the appellant and found unequivocally that the appellant had no adverse history of political activity in Iran but was reasonably likely to have left the country illegally. He had taken part in one demonstration in the United

> Kingdom but the judge, after reminding herself of the "hair trigger approach", did not accept that the Iranian Authorities would have any interest in the appellant as a political opponent and said that "being Kurdish and having left illegally is not enough".
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> 8 The Tribunal then decided that "the appellant is an economic migrant who seeks to take advantage of a refugee process." That is a very emphatic finding but it is consistent with the findings as a whole but it may be helpful if the judge chose not to use phrases such as "economic migrant" as these are highly pejorative in some contexts and can be seen as offensive.
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> 9 I am entirely satisfied that the First-tier Tribunal erred in law. The route to the Judge's conclusion is just not explained. I set aside the conclusion that the appellant is not entitled to protection.
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> 10The Secretary of State's Rule 24 notice reminds me, rightly, that the country guidance of the Tribunal is that a Kurd who returns to Iran having left illegally will not for those reasons alone risk persecution. The difficulty here is that there has been a degree of political activity. The judge has decided that it does not create a risk but not explained why it does not create a risk. Mr Melvin's arguments are interesting, particularly his suggestion that only a sincere objection would cause a problem. It may be there is support for this view in **PS (Christianity – risk) Iran CG [2020] UKUT 46 (IAC)** but that is an observation on my part, not a ruling. Far from persuading me that there is no error of law it illustrates the importance of a further hearing. The appellant must not assume that it is a smooth passage from these findings to being seen recognised as a refugee.
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> 11The Directions that led to the decision without a hearing do not permit a final disposal if an error of law has been established.
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> 12There has been no application to serve further evidence and I see no need for further evidence. The hearing will be in the Upper Tribunal and it is suitable for remote hearing. If either party objects to a remote hearing and the case is listed for remote hearing then the objections should be made forthwith when they will be considered. It is likely to assist the Tribunal if the parties each serve skeleton arguments explaining why the appeal should be allowed or dismissed with reference to adverse credibility finding and the material before the Tribunal.
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> **Notice of Decision**
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> 13The First-tier Tribunal erred in law. I set aside this Decision and I direct the case be heard again in the Upper Tribunal.

3. Mr Brown had previously applied to rely on additional evidence served in a short statement dated 8 February 2021. I consider it in more detail below but the gist of it is that the appellant attended demonstrations in February, March and July 2020. He also asked on the morning of the hearing to permit the admission of further evidence tending to show that he had planned to attend another demonstration in April 2021 in front of the embassy of the Islamic Republic but it was called off in the light of coronavirus restrictions. Mr Melvin did not object to this additional evidence going in and I admitted it.

4. The statements supported photographs which again I consider in more detail below but which tend to support the appellant's claim to have been involved in demonstrations.

5. The paperwork has rather spread in this case and the parties were careful to make sure that the written submissions that I ought to have I in fact did have before me.

6. Mr Melvin wanted to rely on three written documents. The first is dated 17 August 2020 and is entitled "Respondent's Written Submissions Rule 24 reply". The second is dated 10 February 2021 and is entitled "Respondent's Skeleton Argument". The third is dated 9 April 2021 and is entitled "Respondent's Final Skeleton argument".

7. Mr Brown relied particularly on "Appellant's Outline Arguments" dated 10 February 2021.

8. The appellant adopted his statement signed 8 February 2021. There he said that since the hearing in September 2019 at Bradford he had been to three further demonstrations outside the Iranian Embassy in London against the Iranian regime. They had taken place on 3 February 2020, 1 March 2020 and 30 July 2020.

9. He believed the Iranian regime to be responsible for the persecution and displacement of Kurds. He had left Iran and his family in order to save his life. He said how Kurds in Iran were not treated properly. They were not given the rights of Iranians and they were targeted and killed if they expressed their views.

10. He said he would continue to voice his thoughts in opposition to the Iranian regime for as long as he lived or until the regime toppled.

11. He attached photographs showing him taking part in demonstrations.

12. He said that how it came to be understood that people who attended demonstrations were particularly vulnerable to catching coronavirus so planned demonstrations were cancelled.

13. In answer to supplementary questions he said he had a train ticket for an event in April but it was cancelled.

14. The appellant was cross-examined.

15. He was reminded that he had claimed to have attended an indoor event in 2019. He said that event had been organised to celebrate the formation of the Kurdish Democratic Party of Iran. He attended the meeting but he did not make a speech. He said everyone present renewed their pledge to the Democratic Party in its struggle for liberation.

16. He was asked directly if he was a member and he replied that he supported the party and continued to be sympathetic for the sake of Kurdish liberation.

17. He was asked if anybody was supporting his claim to be a supporter of the party. He replied that many people were there who could confirm that he was a supporter of the party but nobody was coming to attend to support him.

18. He was reminded that he had provided a photograph which appeared to show him attending a demonstration. He agreed that that was right. He asked if there was any independent proof of the dates that he had given. Again the appellant was reluctant to answer the question claiming the photographs were evidence he had attended the demonstration. He was asked if he had got

evidence other than the photographs. Yet again the appellant seemed reluctant to answer the question and referred to having many colleagues and brothers there.

19. I asked the appellant if anyone was coming to support his case "today", that is at the hearing before me. He replied:

> "Today no-one to give evidence many brothers aware of my attending a demonstration always in dialogue usually informed about this demonstration."

20. Mr Melvin asked the appellant if he knew who organised the demonstration and he replied that many organise such events mainly from the networks and those were Iranian Kurds. He talked about having a duty to represent the cause.

21. He was asked if there was any evidence of a network of activists in the United Kingdom. He said there were many activists they come and talk about the prospects of Kurds.

22. It was then suggested that in the photographs he appeared to be holding posters. He agreed that was correct. He was and asked if he could read what was written on the posters. He said he could not he was illiterate, but he understood them to be posters showing the flag and identifying martyrs.

23. He was asked if the photographs were published anywhere such as on a website or in a magazine.

24. The appellant said posters were published "everywhere, social media, college, friends many places" and said the Iranian government had hidden cameras so they can collect information "in case we go back".

25. He was asked if there were any photographs of him published anywhere. He replied, "No doubt about it all over social media in UK and Iran".

26. He was asked if there were any photographs of him published anywhere that he had seen. He replied "No, but friends have told me that I am there". I thought this answer possibly significant and checked that I had recorded it correctly. I had. He said his concern was to take part in the liberation of his people not to have his photograph taken.

27. He had produced a letter from the KPDI UK. He obtained that he said from a friend of his. They met face to face and discussed the situation.

28. He was asked about evidence of his links with the KPDI UK. He replied, "All the people who saw me are the evidence".

29. He was asked about family in Iran. He has had no contact with his family in Iran since he arrived in the United Kingdom because every contact is monitored in Iran. He did not want to exacerbate the situation by contacting them. He did not know if they had been punished or not.

30. Mr Melvin suggested that possibly a friend in the KPDI network could get information secretly. The appellant said that he had not contacted his family because international communications with Iran are monitored and so contact could make problems for his family. Mr Melvin asked him if standing outside the embassy protesting would have any impact on the family and he replied "Yes, very much possibly but they are not aware who I am, or name or address or story".

31. He was then asked why he did not think he would be recognised from standing outside the embassy. He had decided that they might recognise him because it was spread all over social media and if he were sent back his life would be in danger he risked execution.

32. He was asked again how the authorities in Iran would know about his activities in the United Kingdom. He said that it was because his pictures were all over social media. He believed the Iranian government had pictures of "all of us". He then thought that his family would be at risk already because of things he had done if the picture had been noticed.

33. He explained he left Iran on a forged passport that his uncle had obtained for him.

34. Mr Melvin addressed me but relied also on the written documents.

35. I consider now the "respondent's written submissions Rule 24 reply dated 17 August 2020".

36. This began by drawing attention to Upper Tribunal Judge Stephen Smith's grant of permission. The First-tier Tribunal Judge had found that the appellant had only attended one event in Manchester and had not satisfied her that he was a member of any Kurdish political group in the United Kingdom. The appellant had not been involved in any online activity and was simply trying to bolster a claim.

37. Mr Melvin contended that the decision in **HB (Iran)** was not authority for the contention that a Kurdish applicant who was not credible and had no political profile would be at risk simply by reason of attending one pro-Kurdish event in the United Kingdom. He made the point that the appellant had no known links with pro-Kurdish political activity in Iran through his family and what he did in the United Kingdom could not even be described properly as low level political activity. It was not a question of his being expected to lie because he had not shown he was a serious supporter of Kurdish separatism. Rather he was dishonest and an opportunist and had no principles to hide in the event of his return.

38. I consider now Mr Melvin's skeleton argument dated 10 February 2021. This is described as "Further to the written submission served ... on 17 August 2020".

39. There Mr Melvin emphasised that the appellant lacked credibility as his claim of past persecution was not believed. He set out in full the headnote of the decision in **HB (Iran)** where it was emphasised that the decision in **SSH and HR (illegal exit: failed asylum seekers) Iran CG [2016] UKUT 308 (IAC)** remains authoritative guidance. Kurds in Iran face discrimination but not generally at a level that entitles them to international protection. I find it helpful to follow Mr Melvin's example and set out the entire headnote in **HB (Iran)**. The Tribunal said:

COUNTRY GUIDANCE

(1) SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 308 (IAC) remains valid country guidance in terms of the country guidance offered in the headnote. For the avoidance of doubt, that decision is not authority for any proposition in relation to the risk on return for refused Kurdish asylum-seekers on account of their Kurdish ethnicity alone.

(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.

40. I find paragraph (3) of the headnote highly pertinent. The Iranian authorities are wary of Kurds and the appellant is likely to be interrogated in the event of his return.

41. Having recognised this position Mr Melvin argued that the risk factors do not apply to this appellant. The appellant will not be able to show the Tribunal that he risked being perceived to be a supporter of Kurdish activism. He had no

political affiliations in the United Kingdom. He had not relied on any postings on Facebook or similar. He has no known political affiliations or profile who attended at that time one pro-Kurdish event in the United Kingdom which, he submitted, was not enough.

42. The respondent's final skeleton argument, also from Mr Melvin, is dated 9 April 2021. There he recognised, as is clearly the case, that insincerity is no protection for a political activist but he argued that the case was analogous to the risks facing Christians that were considered in **PS (Christianity – risk) Iran CG [2020] UKUT 46 (IAC)**. He particularly drew my attention to headnote (4) which is set out. It states 4:

> In cases where the claimant is found to be insincere in his or her claimed conversion, there is not a real risk of persecution 'in-country'. There being no reason for such an individual to associate himself with Christians, there is not a real risk that he would come to the adverse attention of the Iranian authorities. Decision-makers must nevertheless consider the possible risks arising at the 'pinch point' of arrival:
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> i) All returning failed asylum seekers are subject to questioning on arrival, and this will include questions about why they claimed asylum;
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> ii) A returnee who divulges that he claimed to be a Christian is reasonably likely to be transferred for further questioning;
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> iii) The returnee can be expected to sign an undertaking renouncing his claimed Christianity. The questioning will therefore in general be short and will not entail a real risk of ill-treatment;
>
> iv) If there are any reasons why the detention becomes prolonged, the risk of ill-treatment will correspondingly rise. Factors that could result in prolonged detention must be determined on a case by case basis. They could include but are not limited to
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> a) Previous adverse contact with the Iranian security services;
>
> b) Connection to persons of interest to the Iranian authorities;
>
> c) Attendance at a church with perceived connection to Iranian house churches;
>
> d) Overt social media content indicating that the individual concerned has actively promoted Christianity.

43. The point made there is that a claimant found to be insincere in his claimed conversion to Christianity would not face a real risk of persecution in-country. He would have no reason to associate with Christians or do anything that would attract the attention of the authorities. Nevertheless he might be interrogated on arrival and could be required to sign an undertaking renouncing his claimed Christianity.

44. It was argued that similar tolerance could be extended to an insincere token activist such as this appellant. Unlike the appellant in **HB** the present appellant is someone whose family members are not known to be politically active. There is no independent evidence of any sincerity in his activism in the United Kingdom and it is the respondent's case that his attendance at demonstrations is an attempt to create a claim for asylum that "should be

rejected as it is clear that [the appellant] has no real political opinion and his only interest is to secure leave to remain in the UK."

45. Mr Melvin's written submissions added nothing of substance to the apt and full written submissions outlined above.

46. Mr Brown based his case substantially on his outlined skeleton argument dated 10 February 2021. This asserts that "case law establishes that there is no tolerance by the Iranian regime for any kind of activities with connection to the Kurdish political parties and any affiliation".

47. He contended that it was unlikely that the Iranian authorities would dismiss the appellant's political activities as a cynical attempt to bolster a weak asylum claim.

48. He referred to passages in **SSH v HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 308 (IAC)** particularly paragraph 23 suggesting strongly that persons who left irregularly or whose passport documentation suggests they left irregularly could expect to be interrogated on return.

49. That of itself is not persecutory. The difficulty would come if the authorities became aware of the appellant's involvement in Kurdish separatism. It is trite law that he cannot be expected to lie about what he did and trite law that bad motives do not deprive him of the status of refugee if in fact he would be persecuted for his perceived political opinion in the event of his return or at least there is a real risk that he would.

50. I have looked at the photographs that were produced in evidence. I can summarise them as showing the appellant at a demonstration. Some of the photographs lend themselves to the criticism that only a small number of people were shown and it is possible that the appellant had taken with him some friends to give the impression of a crowd but that is not a fair description of the evidence as a whole which clearly shows the crowd too numerous to count all those whose image is in the picture. The photographs clearly show a police presence and clearly shows the appellant in a position of some prominence in the crowd either with a small poster or acting as a marshal and generally being someone who would be noticed.

51. I have no hesitation in rejecting Mr Melvin's argument that an insincere political activist is some way analogous to an insincere Christian convert of the kind considered in **PS (Christianity – risk) Iran CG [2020] UKUT 46 (IAC)**. That is a decision that must be looked at for its own terms and effects but the role of a "disclaimer" in preventing the risk of further persecution had to be understood in the face of evidence that, although Christian converts who assert their Christianity may well risk persecution, there was clear evidence that persons who admitted to an insincere dalliance with Christianity and who were prepared to sign a declaration that they were not Christians would, ordinarily, may not be at risk. No similar evidence has been put before us to suggest that a person who was thought insincere in political views would not be at risk for that person's perceived views.

52. The fundamental point is that the possibility of avoiding persecution by renouncing the sincerity of the conversion was supported by clear evidence that such renunciations are sought by the authorities in the case of Christians.

There is absolutely no basis whatsoever in the evidence that I have seen for extending that to say that people who might be at risk for other reasons would be given an opportunity in renouncing their new positions.

53. The appellant must prove his case to the lower "real risk" standard.

54. Drawing these things together, I am satisfied that the appellant is not a political activist in any strong sense. He may have some sympathetic leaning towards the Kurdish cause because he is Kurdish and some natural affinity can be expected and this is enhanced by the rough treatment Kurdish people tend to experience at the hands of the Iranian state. He is not a man who has a profile of political activism and has done little to support the Kurdish cause other than attending some demonstrations where he has conducted himself in a way that has made himself prominent. It is impossible not to attribute a degree of cynicism to those motives. There is no reason to find that he would have a desire to be any more active in Iran.

55. However, this case is about perception. I have reminded myself of the observations in **HB (Kurds) Iran** and the reference to "hair trigger" and the risk of persecution following low level activity. I also noted the evidence that lack of commitment is unlikely to impress the Iranian authorities.

56. I am satisfied the real point here is whether his conduct will be noticed in the event of return, or, rather, if there is a real risk of it being noted in the event of his return. There are two ways this can happen. One is if he was monitored and details picked up and the other is if he felt obliged to say what he had done. It is very hard to have any clear evidence about what the Iranian authorities might reasonably be expected to have picked up from their own monitoring of demonstrations. It would be foolish to assume that they do not monitor. Most of us carry around our mobile phones with perfectly good video recording equipment. The idea that the Iranian authorities in the United Kingdom would not have some interest in demonstrations and those who attend is absurd and the possibility of the recordings being made is extremely real. It is less clear how they could seek to identify anyone but the appellant was not a face in the crowd. He made sure he was doing things that would be noticed. I recognise my evidential basis for reaching this conclusion is thin and I am speculating but I hope the speculation is informed by what is known about the Iranian authorities and what seems inherently reasonable. I am satisfied there is a real risk of his being identified because he made sure that he would be and of this being noted in case he returned. The second is that he would reveal what he had done under interrogation. He will be interrogated in the event of return. He does not have an up-to-date passport and is a Kurd. I cannot assume he would not say what he had done.

57. It follows therefore that I am satisfied that there is a real risk of his being persecuted because he would be perceived as a political activist. It follows therefore that I allow this appeal.

Notice of Decision

58. The appeal is allowed.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal Dated 13 May 2021