



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06124/2019

THE IMMIGRATION ACTS

At: Manchester Civil Justice Centre (remote)
Heard on: 3rd November 2021

Decision & Reasons Promulgated
On 19th November 2021

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

MS + 1
(anonymity direction made)

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Mr , Freedom Solicitors
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iran born in 1989. He seeks protection, and/or leave on human rights grounds. His dependent is his wife, also an Iranian national seeking protection.

Anonymity

2. This a claim for protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“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 his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Background

3. The salient history of this matter is as follows.
4. The Appellant claims to have arrived in the United Kingdom in October 2018: he presented himself to the immigration authorities and claimed asylum on the 21st of that month. The basis of his claim was that he had a well-founded fear of persecution in Iran because he is a member of the Kurdish Democratic Party (KDP). He left Iran in 2015 because he feared arrest for his part in a conspiracy to deliver leaflets critical of the Iranian government to the Yarsan community.
5. The asylum claim was refused on the 8th June 2019. The Respondent accepted that the Appellant is Iranian, of Kurdish ethnicity. No finding is made on the Appellant’s claimed Yarsan heritage, but his claim to have been involved in the KDP is rejected for being internally inconsistent and vague. Documents purportedly emanating from the KDP to verify the Appellant’s claims could not be verified and were given little weight.
6. The Appellant appealed to the First-tier Tribunal and on the 8th August 2019 Judge Herwald dismissed the appeal. The Appellant sought permission to appeal to the Upper Tribunal which was granted by First-tier Tribunal Judge Grant-Hutchinson on the 27th September 2019. The matter came before Upper Tribunal Judge Coker on the 11th November 2019 and the decision of Judge Herwald was set aside by consent. The Secretary of State agreed on that date that the decision of Judge Herwald was flawed for multiple errors of law and that the matter should be re-heard *de novo*. It now comes before me, after a regrettable, but pandemic-related, delay.

Legal Framework and Matters in Issue

7. In SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC) the Tribunal heard expert evidence on, and made findings in respect of, the processes that a failed asylum seeker might expect to face on return to Imam

Khomeini International Airport in Tehran. The Tribunal found that there was no general risk arising for Iranian men who had claimed asylum and failed (the gender specification arose simply, as I understand it, from the fact that the Tribunal heard no evidence about women). At [§23] the Tribunal found:

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.

8. In HB (Kurds) Iran CG [2018] UKUT 430 (IAC) a differently constituted Tribunal considered what “particular concerns” might mean in the context of Kurdish returnees. I here highlight the parts of the headnote relied upon by the Appellant:

- (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.*

9. The Appellant's claim is based on the following factors:

- He and his wife are both Iranian Kurds who were born in, and have lived in, Iraqi Kurdistan
- He and his wife are both from families with long established connections to Kurdish opposition movements including the KDP and Komala
- The Appellant is wanted in Iran for activities on behalf of the KDP, specifically the distribution of anti-government material to Yarsan villagers in 2015
- Since he came to Europe the Appellant has maintained his connection with the KDP, joining the organisation in Norway and now in the UK. He is committed to the cause of Kurdish separatism
- Since his arrival in the UK the Appellant has undertaken *sur place* political activity in opposition to the Iranian regime. He has in particular been active on social media and it is reasonably likely that this activity would have come to the attention of the Iranian authorities

10. In light of the country guidance in SSH and HB the Respondent accepts that the Appellant does not have to prove each of these elements of his case in order to succeed. It may be the case, for instance, that I find the claims about events in Iran in 2015 unproven but I am prepared to accept that he is today an active member of the KDP: were those my findings, the appeal would have to be allowed.

The Evidence

11. The Appellant's screening interview, conducted on the 21st October 2018, says comparatively little about his claim. He states that his family are Yarsan but that he has no religion himself. He has spent the years 2015-2018 in various places in Europe. He is an electrical engineer. He needs protection because he is a member of the KDP.
12. The Appellant was interviewed again, this time more substantively, on the 22nd October 2018. He explained that he had been born in a refugee camp in Ramadi, Iraq to a Kurdish Yarsan family many of whom were involved in Kurdish groups opposing the Iranian regime. An uncle had been killed at the time of the uprising against Khomeini and many Kurds had to leave their land. When he was about 2 years old they moved to Sarpol-e Zehab. This is a small town in Kermanshah, not far from the Iraqi border.
13. He described the events which led him to leave Iran as follows. 3 or 4 days before he fled there had been a Yarsan festival, and the KDP allocated to him, and another man, the job of delivering to the Yarsan village some leaflets. The leaflets celebrated Yarsan culture and spoke about how that community was being oppressed by the regime - "they had been under the tyranny and injustice of the Iranian government for many years". The friend was supposed to collect the leaflets, as usual, from the Iraqi border. There were no more than 500 leaflets in the package. The difficulty was that at that time the Appellant was working on an engineering project with long hours, about 70km from Sarpol-e Zehab. It involved him being inside a tunnel, where he had no phone signal. For various reasons relating to the project, and set out in detail in the asylum interview, the Appellant was deep inside the tunnel when his friend tried to contact him to tell him about the mission; he ended up working late and missed the transport back to Sarpol-e Zehab so he ended up having to stay there.
14. At 4.50 he woke to the sound of his mobile telephone ringing. It was his sister, calling to tell him that the police had come to the house and that there were three officers there asking for him. The Appellant left the site immediately and walked for about an hour. He flagged down a car and got a lift to Ghasrshirin. From there his cousin picked him up and took him to Kermanshah. From there he went to Orumieh where he met with his wife so that they could leave the country together. His brother was arrested the next day. He subsequently found out from the party that his friend had been arrested that night. He does not know how the police were led to him, but he speculates that it was either because of the man's telephone records, or perhaps because he gave up the Appellant's name under torture.
15. The Appellant told the interviewing officer that none of his immediate family had been aware of his involvement with the KDP. He had not even told his wife, whose own family had suffered because of her father and sister being

involved. He then explained that his father had been a KDP member, and his sister and two uncles had been in another group. The interviewing officer asked the Appellant to explain why he would not tell his family about his involvement if they themselves had been members. The Appellant explained that his father had been tortured in the past, and that “the less people know about these sort of things is better for themselves”.

16. The Appellant describes himself as a nationalist. He got involved in the KDP when he was at university, after he started reading about Kurdish history and politics. Although his father had been involved he was illiterate and had not educated him about these things.

17. Before me the Appellant adopted his witness statement dated the 29th July 2019. This largely repeats the information given in the asylum interview with the following details added. The Appellant’s wife was born and lived as a refugee in Iraq for most of her life. She only moved to Iran with the Appellant because of ISIS advances in Iraq. She had only lived in Iran a few weeks at the point that they were forced to leave. She is the Appellant’s first cousin, and her father (his paternal uncle) is also a member of the KDP. The job of distributing KDP literature was one that the Appellant and his friend (who is also a distant relative) had done on four previous occasions.

18. He further adopted an updated witness statement, dated the 25th October 2021. Therein he explains that since he has been in the UK he has been active on Facebook promoting KDP content and disseminating news about Iran. He has taken part in a virtual KDP congress, and attended demonstrations. Khalid Azizi, the leader of the KDP, shared on his Facebook page a screenshot of the conference in which the Appellant can be seen. This statement also deals with the death in Erbil of a ‘contact’ of the Appellant’s, Mr Musa Babkhani. An internet news article about his death is in the bundle.

19. In examination-in-chief Mr Karnik asked the Appellant about his family. He had said at interview, and his statements, that numerous family members had sought, and been granted, asylum abroad. Mr Karnik solicited the following information from the Appellant:

- His wife, who is dependent to this claim, was recognised by the UNHCR as a refugee whilst living in Iraq;
- Two maternal uncles, and their entire families, were resettled in the UK as mandate refugees and now have ILR/British nationality. Mr McVeety was able to check the Home Office record on these family members during the hearing. There are 12 of them altogether.
- The Appellant has one brother and one sister in the UK, both on spouse visas.
- The Appellant’s paternal aunt, her husband and children were all settled in Norway as UNHCR mandate refugees

- The Appellant's father-in-law (also his paternal uncle) is currently seeking asylum in Norway
- Two other brothers are in Norway, married to cousins who are recognised as refugees
- The Appellant's sister was recognised as a refugee in Norway, along with her husband. They are members of Komala.

20. Having been asked that question, the Appellant asked if he could say something. He wanted to explain his family history in his own words. This is a verbatim note of what he said, almost entirely in English but with some assistance from the Sorani interpreter:

"In 1979 there was an uprising in Iran. My family were just doing ordinary stuff on their own land. Suddenly something happens and everything changes for many people. My family's life was changed. The Iranian government collapsed. There was a power struggle between the groups who overthrew the Shah. In the first year, the KDP was legal. Then Khomeini showed he wanted to dominate Iran himself - so he suppressed the other groups. One of those groups was the KDP. During that period the Iran-Iraq conflict was about to start. During that time my family became involved in the struggle between the KDP and the Iranian state. This is how my father came to join. He would have been in his 30s then. He had one brother - he also joined the party. This uncle is the father of my wife. My father and his brother - all my extended family joined the movement. Their uncles and cousins - everybody joined that struggle.

We lost. As a result many people fled to Iraq. Then the war broke out with Iraq. We had three choices - we had to work for the Iraqis - become spies, become opponents of the Iranian regime, or be kept captive by the Iraqis to be used as pawns. So this is the position my father faced- it did not matter that he was illiterate, uneducated, and could not speak about politics. He had no choice.

My father decided to go back to Iran during the Gulf War. After Saddam invaded Kuwait things became very dangerous in Iraq so my family decided to go back to Iran. The Iranians offered us an amnesty. My father and my maternal uncles family returned to Iran. Other family members - like other uncles including my father-in-law - didn't trust the Iranians and decided to risk staying in Iraq.

My father was arrested by the Iranians after a short time. He was held for 4 months. They said that an individual had come forward and accused him of killing someone as a member of the KDP armed wing. They had to let him go in the end because the accusation was false - my father never carried a gun.

In 2003 the Iraqi regime was destroyed by the Americans. My family were living in the refugee camp in Ramadi and in the bombing they

fled to Kurdish Iraq. Others fled to Jordan, and then to here, but my father-in-law thought he would stick with the Iraqi Kurds – he made a mistake. He thought they would be interested in helping other Kurds...

When I was growing up I was not aware of all of this history. I was unwise. I only found all of this when I met my father-in-law in Iraq in 2011. My dad never explained any of this to me. I think maybe its because he suffered so much himself – he was like a gypsy – can I say that? He was always moving around and hunted. His life was ruined by the choices he made. He didn't want me to suffer like that. Also I don't know if he really had a choice. When he joined the party I don't think it was because he really understood the ideology – he just went along with what all of his older cousins were doing. There was a war. It was no choice you just had to pick a side.

So I didn't learn any politics from my dad. I started to learn at university. In 2008 there were elections coming up in Iran. The political atmosphere was this. There were two main parties in Iran. One of them was hardline and the other was the reformist. There was a lot of talk at university – competition for people's votes. Ahmedinejad and Mousavi both came to visit the campus. It was the first time I voted. When I saw that I had only those two options I realised that there was no Kurdish party. I had to vote for someone (they stamp your identity documents to show you have voted and if you have not done it then they wont let you get a good job) so I voted for Mousavi. But I did not want to. I wanted to vote for someone who would represent me.

I realised then that I needed to join an organisation if I wanted to be involved in politics. There were no legal options in Iran. I had heard the names of Kurdish parties but knew very little about their manifestos etc. The internet was not like it is now. We did not have smart phones. But I managed to use a proxy server to access internet sites. Those were the only places you could find out information. I came to understand that the KDPI represented the idea of nationalism and democracy – something we have you to thank for (I mean this place, not you personally). Komala were only interested in Marxism – communism. They were not particularly interested in representing the Kurds. I started to understand more about the history – how the KDP had fought against the regime. I found out that our history went back a long way. I wanted Kurds to have representation, for that history to mean something.

In 2011 I got my passport. Even though I had not done military service I was entitled to one, because of the 'three brothers' rule – ie if you are the 4th brother you are exempt. It's the only luck I have had in my life. Anyway I started to think about my uncle in Iraq. I had not seen him since I was a baby. Me and my father went to Iraq to

see my uncle. It was good for my dad and I learnt a lot then. I got all the information I could from my uncle. It wasn't even about the politics - it was about the family history at that point. I put the pieces of the puzzle together. It explained me - my history.

In 2012 me and my wife were married. I started visiting Iraq more frequently and stayed longer each time. I continued my studies, and researching my life, my history. In 2013 I made my decision to do something practical. I didn't want to hug my knees and cry like a baby anymore. I knew that my uncle was still involved with the KDP. I knew that to join they would need a reference - they need to be cautious, to be able to trust you. If they don't have a reference from someone they trust you could be anybody - working for the regime. So I asked my uncle. He was obviously concerned about me being involved. He tried to get me to stay in Iraq. He said I could stay there and work for the party. But I was optimistic. I thought I was smart. I thought I would not get caught. My uncle urged me to be careful. You can discuss democracy in Iran without difficulty...the problem comes when you mention Kurds, and democracy. Then you have a big problem. He did not want me to get into trouble. He knew that KDP could bring trouble but I wanted to do it. I did not want to stay in Iraq.

My uncle gave me the reference. He and another man called Fashi Mohammedi. The man they introduced me to, who admitted me to the party, was Musa Babkhani, who has been murdered in Erbil. This was how I came to be involved in the KDP".

21. At this point in the hearing I asked whether the Secretary of State would be asking me to draw adverse inference from a 'contradiction' earlier identified in the Appellant's evidence, by the author of the refusal letter, and by Judge Herwald. This concerned the Appellant's evidence that whilst he had known about his own family's connections to various political organisations he had not told them of his. Mr McVeety indicated that although he would be relying on the refusal letter, he accepted that having heard the evidence it was a matter for me. He had no cross examination for the Appellant.
22. I indicated that I did not think it necessary for the Appellant to give any further oral evidence.
23. In submissions my attention was drawn to two sets documents said to emanate from the KDP-Iran. The first is dated 5th March 2019 and is from a Yunes Mukri to Mr Wood, the Appellant's former representative. Mr Mukri writes that it has been confirmed to him by the KDP main organisation department in Iraq that the Appellant is a member. The confirmation letter was issued by a Mr Wirya who is a member of the political bureau. The letter itself is appended to Mr Mukri's email to Mr Wood. It is on headed notepaper, contains a telephone

number, email address, website url and the Appellant's full name and date of birth.

24. The second set of documents consists of an email sent directly to the Appellant's current representative at Freedom Solicitors from the KDP UK branch email address (which can be verified by checking the official website). Attached to the email is a letter, on official headed notepaper and with complete contact details, saying the following:

Dear Miss Kamaljit Sandhu,

Thank you for assisting our party member [the Appellant's name].

In reply to your recent request for further information about [the Appellant], DOB: [the Appellant's date of birth] is a member of our Party.

[The Appellant] was recommended to our party by two active members, his uncle [his uncle's name] and Mr Farshid Mohammadi.

[The Appellant] was accepted and joined KDP-Iran on March 21st 2013, but it was on September 25th 2013 when he became an active member and has been given orders and instructions to follow.

[The Appellant] was responsible to distribute KDP propaganda leaflets and persuade people to join the party.

We confirm that [the Appellant's] life was at risk, therefore, he was advised to leave the country for his own safety.

[The Appellant] continued to serve KDP after his arrival in Norway and has been issued with membership card by KDP Committee of Norway.

[The Appellant] is our party's active member in UK and attended the Party's conference meeting on 14/06/2020 which was held through Microsoft Teams.

For any further information or clarification about [the Appellant's] position within our party please do not hesitate to contact us.

25. The bundle also contains screenshots of the aforementioned party conference, and Facebook posts that have appeared on the Appellant's page, and those of 'friends' on the social media site.

Discussion and Findings

26. I begin by marking that there are significant issues arising in this appeal under section 8 Asylum Immigration (Treatment of Claimants etc) Act 2004. The Appellant and his wife travelled from Turkey to Greece in 2015, and from there to seven different European countries, before claiming asylum in Norway. The claim in Norway was rejected and an appeal dismissed. I am bound by the statute to draw adverse inference from the failure to claim asylum in first safe country that the Appellant reached. I have done so.

27. I also note that the asylum interview, and subsequent statements, suffer from a great deal of superfluous detail which, I think it fair to say, muddied the water of what is now, to my mind, a crystal clear case. Had the Appellant been permitted to give his account in the way that he did before me, without interruption, fluently, and at times passionately – for instance breaking down in tears when he spoke about his father’s life – I have no doubt that he would have been recognised as a refugee long ago. His evidence was cogent, compelling and wholly credible.
28. That said, it is also quite apparent that had the Secretary of State, or indeed the First-tier Tribunal, applied the country guidance in SSH and HB (Kurds), the Appellant would have succeeded simply on the basis of the uncontested facts, with no need for his credibility to be assessed at all. It is there that I begin.
29. The Appellant would be returned as a failed asylum seeker. As Mr McVeety acknowledged, the Secretary of State might have some difficulty in *refouling* the Appellant’s wife with him to Iran, since she has been recognised to have protection needs by the UNCHR, but I set that to one side for the purpose of this decision. We know from SSH that he would, as a returning asylum seeker, be ‘flagged’ for questioning. This is because he would be travelling on a *laissez-passer* and so the embassy in London would already have identified him as a national facing return. In general such questioning does not give rise to any difficulties. Difficulties will only arise where the interviewing officers have “particular concerns”.
30. What might those concerns be?
31. The Appellant is Kurdish. As the Tribunal has repeatedly stated, being Kurdish does not in itself entitle someone to protection, albeit that Kurds in Iran do face discrimination. 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. It is one matter that the interviewing officer at Tehran will take into account.
32. In HB the Tribunal identified what other factors might be of interest in that initial interview.
33. The first of these factors is that a period of residence in Iraqi Kurdistan. It is accepted that both the Appellant and his wife were born in the IKR. It is further accepted that she was a recognised refugee there and spent her entire life, prior to 2015, living in Iraq. The Appellant left Iraq as a young child but spent a number of years travelling back and forth, to stay with family members who are all associated with Kurdish opposition groups in one way or another – a matter I return to below. In HB the Tribunal found that a period of residence in the IKR would mean that a returnee would be reasonably likely to be subject to additional questioning. It noted that 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”.

34. I am satisfied that when questioned, the Appellant and his wife cannot lie about their associations with Iraq, not least because they would be unable to hide them, given their place of birth and the fact that she has been living as a refugee in Iraq for most of her life.
35. This brings me to the family connections. The Appellant has, since as early as his screening interview, asserted that he has various family members who are all in the UK recognised as refugees, from either the KDP or Komala. This merits an oblique reference in the First-tier Tribunal decision to a “history of family migration to Europe”, but it appears that no-one, prior to Mr McVeety, bothered to check whether his assertion was true. Within minutes, during the hearing before me, Mr McVeety was able to see that no fewer than *twelve* of the Appellant’s relatives – uncles, aunts and first cousins – have been recognised as refugees and resettled in the UK. These are all the same people who the Appellant and his wife were visiting, and living amongst, in Iraq. Mr McVeety quite properly agreed that this family history was obviously relevant to the risk assessment for the Appellant and his wife.
36. I am satisfied that *on these factors alone* the Appellant must succeed in his claim. He is a Kurd who has been out of Iran for seven years; he was born in a KDP refugee camp in Iraq and has subsequently spent time in the IKR, where he married an Iranian Kurd resident there as a refugee; twelve members of his family have been recognised as refugees in the UK. I am satisfied that these issues alone would raise “particular concerns” such that he would be transferred for additional questioning. As the Tribunal noted in HB, the Iranians have a “hair trigger” response when it comes to Kurdish returnees and I am satisfied that there would be real risk of serious harm should this second-line questioning occur.
37. What then of the remainder of the Appellant’s case? In light of my findings I have no need to address the rest of the evidence but I do so, because it was evident that it means a lot to the Appellant, who has had to wait a very long time for his claim to be recognised. It was clear that he has been under immense stress during that time.
38. The Appellant’s claim was rejected by the First-tier Tribunal for two principle reasons.
39. First it is apparent from the decision that the Tribunal was horrified by what it regarded as the Appellant’s “appalling immigration history”. That history, insofar as the UK is concerned, consisted simply of claiming asylum and waiting to be recognised. As I understand it, what appalled the Tribunal was that the Appellant had travelled through several countries, mainly in Eastern Europe, and not claimed asylum until he had got to Norway: I say this because

that journey is detailed at some length and in disapproving, sarcastic tone. The Tribunal was of course entitled – in fact obliged – to weigh that travel history in the balance against the Appellant. As I have set out above, however, it could only go to *his* credibility, and on a proper analysis of the accepted facts, he was a refugee regardless of whether he might have engaged in “asylum shopping”.

40. The second reason that featured heavily in the First-tier Tribunal’s analysis was what it regarded as the fundamental contradiction in the evidence that the Appellant was aware of the political activity of his family members, but had not informed them about his own. The Tribunal found that he “cannot have it both ways”. Having heard the evidence I am unclear as to why not. I found the Appellant’s explanation of his family history to be detailed, clear and entirely understandable.
41. His father was an uneducated farmer who found himself caught in a moment of great historical change in Iran. Like many Kurds he and his family joined Ayatollah Khomeini’s movement to overthrow the hated Shah. Having done so, they quickly found themselves dispossessed and persecuted, as the hardline Islamists consolidated their positions. They were forced to flee from their land: as the Appellant puts it, they became like “gypsies”. They fled to Iraq, where they lived in a refugee camp. When war broke out between Iran and Iraq they were faced with more stark choices. Eventually, fearing for his family’s safety in the first Gulf War, the Appellant’s father took his family back to Iran, only to find himself imprisoned and tortured for his involvement with the KDP. It is the Appellant’s evidence that as a young boy growing up his father hid all of that history from him, in order to protect him. His father did not want him to make the same mistakes that he felt he had made. I find that to be entirely understandable. Then as the Appellant became a man himself and attended university, the position of the Kurds in Iranian society became evident to him in the run up to the 2009 election. He started to conduct his own research, culminating in his visit to his family in Iraqi Kurdistan, where the family history was revealed to him by the uncle who later became his father-in-law. This history is entirely consistent with the evidence that the Appellant has given throughout this claim, entirely consistent with the background evidence, and entirely plausible. I can find no reason to reject it.
42. It was clear from the fluent and confident way in which the Appellant narrated his personal history that he is an educated man for whom politics and family are inextricably linked. The past forty years of this family’s life has been defined by Kurdish politics, and events in the Middle East. I was left with no doubt at all that he believes strongly in Kurdish nationalism. Nor am I left in any doubt that he is, as claimed, a member of the KDP. Were there any doubt about the Appellant’s own evidence on the point I have the evidence of the KDP themselves. I note that the emails and letters produced accord with what is said in the Respondent’s CPIN¹, namely that the organisation will decline to provide

¹ Country Policy and Information Note *Iran: Kurds and Kurdish political groups* Version 3.0 January 2019

letters of recommendation directly to appellants, but will provide them, if asked, to representatives. The letters are addressed to the Appellant's former representative Mr Wood and his current representative Ms Sandhu. They are sent from email addresses which are verifiably associated with the KDP. They contain full contact details and the contents are consistent with the evidence that the Appellant has given.

43. This evidence all establishes that the Appellant is a member of the KDP. I accept, to the lower standard of proof that his narrated history of involvement in this group is true, and that he would face a real risk of persecution should he be returned to Iran.

44. His appeal is therefore allowed.

Decisions

45. The decision of the First-tier Tribunal is set aside.

46. The decision in the appeal is remade as follows: the appeal is allowed on protection grounds.

47. There is an order for anonymity.

Upper Tribunal Judge Bruce
3rd November 2021