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

R (on the application of Ali Ahmad Rashid) v The Secretary of State for the Home Department IJR [2015] UKUT 00430 (IAC)

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**

**Before**

**UPPER TRIBUNAL JUDGE ALLEN**

**THE QUEEN (ON THE APPLICATION OF)**
**ALI AHMAD RASHID**

Applicant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Applicant: Mr P Turner, instructed by Barnes Harrild and Dyer
For the Respondent: Mr W Hansen, instructed by the Treasury Solicitor.

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**JUDGMENT**

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1. The applicant is a national of Iran. On 14 April 2014 he was granted permission by Upper Tribunal Judge Perkins to apply for judicial review of a decision of the respondent of 11 April 2013 refusing to accept that the previously considered material and the further submissions amounted to a fresh claim.

2. The applicant claimed to have arrived in the United Kingdom on 14 January 2008. He claimed asylum the next day and this was refused and an appeal against that decision was dismissed on 18 May 2010. The judge who heard his appeal found him to lack credibility to the extent that no credence was to be attached to:

(a) his account of the events relating to him in Iran that he claimed had brought him to the adverse attention of the authorities;

(b) the reasons claimed by him for leaving that country, and

(c) the specific risks that he claimed that he would face on return at the hands of the authorities.

3. The applicant put forward an expert report by Professor Joffé and also relied on three pieces of case law: SB (risk on return – illegal exit) Iran CG [2009] UKAIT 00053; BA (demonstrators in Britain – risk on return) Iran CG [2011] UKUT 37 (IAC) and SA (Iranian Arabs – no general risk) Iran CG [2011] UKUT 41.

4. The respondent commented, with regard to SB, that the applicant did not fall under any of the risk categories identified in the summary in SB, and the Immigration Judge had not accepted that he had come to the adverse attention of the authorities in Iran.

5. As regards BA, the respondent commented that this case reaffirmed the principles of SB and found that someone would not be at risk due to leaving Iran illegally and being returned from the United Kingdom.

6. With regard to SA, the respondent noted that no amendment was said to be required to the risk factors for those returning to Iran having exited illegally as identified in SB.

7. With regard to Professor Joffé's report, it was noted that this report had been compiled for another case and was not based on the particular facts of the applicant's

case. It was noted that in the email from Professor Joffé giving permission to use the report he had said by way of warning that the court/Tribunal tended to hate generic reports. The respondent went on to say that as such it was considered that this report was a piece of objective evidence regarding the situation in Iran. However it was also considered that there were country guidance cases as outlined above in the letter, that concluded that the applicant could return to Iran. It was considered that a substantial amount of background evidence was considered by the Tribunal before deciding those cases. The respondent went on to say:

> "Therefore it is not considered that the report from Professor Joffé is sufficient to warrant departing from the findings of the country guidance case law for Iran or that an Immigration Judge would place any weight on a non-specific report."

It was then said that for the above reasons it was considered that the applicant had not established that he could not return to Iran and it was considered that these submissions if placed before an Immigration Judge would not create a realistic prospect of success.

8. It was common ground that the essential issue before me was whether the respondent had erred in her treatment of Professor Joffé's report.

9. At the outset it was necessary to address an application made by Mr Hansen for a stay in the proceedings. There were pending appeals before the Court of Appeal in MA (Iran) (C4/2014/0227) and RA (Iran) (C4/2014/0437) which were Cart judicial reviews which would come back to the Upper Tribunal for a substantive hearing, and there was also the case of KK (Iran) C2/2014/3044, in which Beatson LJ stayed the application for permission to appeal pending the decision of the Court of Appeal in MA and RA. Mr Turner opposed the application on the basis essentially that if permission had been granted in a Cart judicial review bearing in mind the very high threshold, there was clearly an issue to be argued out before an Immigration Judge in the instant case and in addition the applicant had Professor Joffé's report.

10. I refused the application. I understand from Mr Hansen's skeleton argument that MA and RA were listed for hearing on 4 to 5 March but that date has now been vacated due to lack of judicial availability and accordingly it is uncertain when the matter might be resolved. In any event the instant application does not involve a determinative decision in the case, but no more, if I am with Mr Turner, than quashing of the respondent's decision which would lead to an appeal hearing before a First-tier Judge in due course.

11. Mr Turner adopted his skeleton argument and developed points made in it. He argued that the adverse credibility findings of the Immigration Judge were irrelevant and what was at issue were the points set out in Professor Joffé's report. The applicant had the two risk factors of being a Kurd and being Iranian and that was sufficient. The question was whether the respondent was rationally entitled to conclude that Professor Joffe's report was not a piece of evidence such as to lead to a realistic prospect of success. The decision-maker accepted that the report was objective evidence but gave it no weight because of the three country guidance decisions. Of those three, SB was decided on 6 May 2009 and was based on reports of which the latest was dated 2009 and the earliest went back to 2001. Kurdish ethnicity had not been a relevant factor. BA was concerned with individual circumstances and demonstrations and SA was concerned with Iranian Arabs. It was the case therefore that SB was essentially the respondent's justification for saying what she had said. There was a lack of anxious scrutiny.

12. Professor Joffé's report was very detailed. He quoted from more recent background evidence than was considered in SB, for example the US State Department Report of 2010, and he addressed in detail not only the general situation of human rights in Iran but also the situation of the Kurds and the position with regard to return to Iran. The report had not properly been addressed by the respondent in the decision letter and her decision was therefore flawed.

13. In his submissions Mr Hansen argued that the respondent's addressing of Professor Joffé's report was within the range of reasonable responses open to her. The adverse findings of the Immigration Judge were not irrelevant since the putative judge would

start with those findings and that was on the basis that the applicant was incredible and had no political profile at all including as a Kurdish activist, and had never come to the adverse attention of the authorities. Although SB had been decided in 2009, its findings had been endorsed in both SA and BA, which were both decided in 2011. A judge would be obliged to apply the findings in the country guidance cases in accordance with the Practice Directions on country guidance cases.

14. It was also relevant to note that Professor Joffé's report had been prepared for a very different claimant, a person who was a Kurdish political activist and member of the KDPI. There were relatively few references in Professor Joffé's report post-dating BA. Such as these were, for example the US State Department Report of 2012, merely stated that Iran was not a happy place for human rights but did not address the situation of failed asylum seekers or Kurds. Professor Joffé's conclusions were not justified by the underlying material and report. For example the focus on the evidence he set out was on Kurdish political activists and Kurdish political parties. On a proper analysis of the report the risk to Kurds was to Kurdish political activists. The evidence was consistent with the Iran COIR of 26 September 2013 and also the Iran OGN of October 2012, both of which made it clear that there is no risk to an Iranian Kurd purely on the basis of his or her ethnic origin but they might be at risk if they were known or suspected to be members of Kurdish political parties. It was clear from the OGN that there was no general risk of persecution or ill-treatment for Iranians facing enforced return. With regard to what was said in Mr Turner's skeleton concerning AK (Turkey) [2004] UKAIT 00230, clearly there was a need to engage with the report, but that had not been a fresh claim case but a decision concerned with the quality of Tribunal decision making. Line by line rebuttal of Professor Joffé's report was not required. The later material referred to in Mr Turner's skeleton could not impact on the rationality of the respondent's decision. It was a question of Professor Joffé's report only and the decision was a lawful one.

15. By way of reply Mr Turner argued that the authorities quoted, for example, in the OGN were 2008 authorities and also the OGN quoted remarks of Iranian authorities whose materiality had to be questionable. The issue was one of perception of a person as a failed Kurdish asylum seeker rather than whether they actually had a

history. The three country guidance authorities were either too old bearing in mind the more recent evidence of Professor Joffé or concerned with different categories of Iranians potentially at risk. They were not dispositive of the issue. The respondent had failed to have regard to a material factor.

16. I reserved my judgment.

17. I have set out above what the respondent had to say in her decision letter about Professor Joffé's report. I turn now to the report itself which is dated 30 September 2012. As was pointed out by Mr Hansen, it is a generic report, so far as it is of relevance to this applicant, having been prepared for a different applicant. Professor Joffé addresses the poor human rights record of the Iranian Government in some detail. He quotes for example at page 11 from the US State Department Report of March 11, 2010 on the deterioration of the human rights situation in Iran and an absence of improvement in the following year. There is then a section, beginning at page 17 of the report, concerning Kurds in Iran. Professor Joffé sets out the history of Kurds in the region and the problems that they have experienced over time. As regards the current situation, on which his comments begin at page 26, he refers to collective discrimination by the central authorities and cites a number of examples of specific incidents of activists being imprisoned and killed. There is also a section in the report, beginning at page 32, on returns to Iran. At paragraph 95 he says that Kurds who have fled Iran are frequently suspected of having had political reasons for doing so and are treated accordingly. He notes a report of 2011 from which it appears that in recent years the Iranian authorities assume that all asylum seekers who are returned to Iran have engaged in anti-regime activities whilst abroad, especially in spreading false information about the Islamic Republic. He comments at paragraph 97 that the developments set out in previous paragraphs suggest that persons returned to Iran as failed asylum seekers now face an enhanced threat of being considered a priori to have defamed the Islamic Republic whilst abroad and therefore face a significantly increased threat of conviction seemingly on the basis of having to prove lack their lack of guilt rather than the converse.

18. In his summary at page 35, Professor Joffé says at paragraph (ii) as follows:

> "I have sought to amass evidence above that the Iranian regime does severely discriminate against its Kurdish minority, collectively and individually, simply because they are Kurdish. I have also sought to show that such discrimination is so severe that it amounts to persecution."

He goes on to quote from a report of the Irish Refugee Documentation Centre, dated 5 January 2012, that when Kurds are returned to Iran as failed asylum seekers they face serious and real threats to their personal safety and security as a result.

19. I agree with Mr Turner that the three country guidance cases are to a large extent concerned with different risk factors from those that exist in this case. None of those cases deals with risk on return of a Kurd who is a failed asylum seeker. Although there is endorsement of the conclusions in SB in the later decisions of BA and SA, I do not think it was properly open to the respondent to conclude that Professor Joffé's report was not sufficient to warrant departing from the country guidance findings. Country guidance is authoritative where a subsequent appeal depends upon the same or similar evidence, but this is different, more recent evidence. Also, the view expressed by the respondent in the decision letter that an Immigration Judge would not place any weight on a non-specific report is, in my view, irrational. Professor Joffé's report does, as Mr Turner has argued, address risk to Kurds not only on the basis of political activism but also simply by dint of being Kurds. The passages I have quoted above bear that out. Though Mr Hansen is right to say that the putative First-tier Judge would have to start from the position that the applicant is a person with no credible history, the fact is that Professor Joffé's report is a generic report and does contain and refer to evidence which would have to be considered seriously by the putative First-tier Judge. That evidence would of course fall to be considered together with such other matters as the COIR and the OGN. But the addressing of the report in the relevant paragraph in the decision letter is in my view legally flawed in that it betrays an absence of anxious scrutiny in its consideration of that report in the context of the applicant's claim. Accordingly, the application succeeds. I quash the respondent's decision on the basis of its illegality.

20. I will hear the parties on any consequential matters, including costs, when this decision is handed down. ~~~~-~~~~