Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/00914/2015**

THE IMMIGRATION ACTS

Heard at Field House
On 15 December 2015

Determination Promulgated
On 29 December 2015

Before

Deputy Upper Tribunal Judge MANUELL

Between

R M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms H Foot, Counsel (instructed by Sutovic & Hartigan)
For the Respondent: Mr S Staunton, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Cruthers on 14 September 2015 against the decision of First-tier Tribunal Judge Britton made in a decision and reasons promulgated on 22 June 2015 dismissing the Appellant's asylum, humanitarian protection and human rights appeals.

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2. The Appellant is a national of Iran, of Kurdish ethnicity, born on 1 April 1996. He left Iran on 1 July 2011 and arrived in the United Kingdom on 11 August 2011. He claimed asylum on 19 August 2011, which was refused on 30 April 2012. He was granted DLR as an unaccompanied minor until 1 October 2013. His appeal to the First-tier Tribunal under section 83 of the Nationality, Immigration and Asylum Act 2002 was dismissed on 20 June 2012. On 30 September 2013 he applied for further leave to remain in the United Kingdom, which application was refused by the Secretary of State on 5 January 2015. The Appellant stated that he feared to return to Iran because of his illegal exit, failed asylum claim and Kurdish separatist allegiance as seen in his *sur place* activities. The Appellant also made an Article 8 ECHR claim based on his private life in the United Kingdom.

3. Judge Britton found that the Appellant was not at real risk on return to Iran, applying SB (risk on return – illegal exit) Iran CG [2009] UKAIT 00053. He found that the Appellant was not a reliable witness. He found that little had changed since the Appellant's section 83 appeal was dismissed in 2012 and that ***Devaseelan*** (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka * [2002] UKIAT 00702 applied. Any interference with the Appellant's United Kingdom-based private life was proportionate to the legitimate aim of immigration control. Thus the appeal was dismissed.

4. When granting permission to appeal, First-tier Tribunal Judge Cruthers considered on his initial assessment that it was arguable that Judge Britton's adverse credibility findings were variously ill founded and misdirected, and, *inter alia*, that the judge had misunderstood Devaseelan (above). Judge Cruthers added, however, that the grant of permission to appeal was not to be seen as any indication that the onwards appeal would ultimately succeed.

5. The Respondent filed notice under rule 24 dated 12 August 2015 indicating that the appeal was opposed. Standard directions were made by the tribunal and the appeal was listed for adjudication of whether or not there was a material error of law.

Submissions

6. Ms Foot for the Appellant requested permission to expand the grounds of appeal previously lodged, so as to argue that both Judge Britton and the previous judge, Judge Baldwin, had erred in their credibility assessment. They had taken into account the Appellant's statement given at an age assessment dated 12 August 2011 which had subsequently been found not be Merton complaint. The application to amend was not opposed by Mr Staunton for the Respondent and was granted.

7. In summary, Counsel submitted that there were multiple errors in the determination, as had been set out in the permission to appeal application. The judge had not considered the Appellant's case for himself but had simply adopted the previous judge's findings. The judge had not dealt adequately with the Appellant's Kurdish activist brother. The judge had been wrong in his whole approach to the Appellant's Kurdish flag tattoo, which was a political statement. The Appellant's motivation for his *sur place* activity was irrelevant. The judge had given insufficient consideration to the country background evidence concerning the position of Kurds in Iran. The judge had not examined the evidence the Appellant had submitted concerning his uncle properly.

8. Nor had the judge given any adequate attention to the Article 8 ECHR private life claim which the Appellant had put forward, which was a new claim. JS (Afghanistan) [2013] UKUT 00568 had not been considered in relation to the Appellant's former status as a "relevant child". There had been inadequate findings and no proper analysis. The decision and reasons should be set aside, and the appeal reheard before another First-tier Tribunal judge.

9. Mr Staunton for the Respondent relied on the Respondent's rule 24 notice. He submitted that the decision and reasons disclosed no error of law. The judge had considered the new evidence, of which there had been very little, and had applied the principles of Devaseelan correctly. The judge had given adequate reasons for finding that the Kurdish flag tattoo did not place the Appellant at real risk on return. None of the additional factors identified in SB (Iran) (above) were present. JS (Afghanistan) (above) had no real relevance. The Appellant's complaints at most were just a disagreement with the judge's proper findings. The judge had explained why he found that there was no real depth to the evidence and that the Appellant was not credible. The decision and reasons should stand.

10. Ms Foot in reply reiterated the faults which she submitted made the determination unsafe. There had not been voluminous Article 8 ECHR evidence but even so there had been no context to the judge's findings.

No material error of law

11. The tribunal reserved its decision, which now follows. In the tribunal's view, the terms of the grant of permission to appeal were far too generous a response to what was in essence a weak reasons challenge which was based on a superficial reading of the decision in issue. The tribunal agrees with Mr Staunton that the grounds even in their expanded form are no more than disagreement with the judge's proper and sustainable findings.

12. The country background evidence concerning the position of the Kurdish minority in Iran was not in dispute before Judge Baldwin or Judge Britton. The Appellant's appeal turned on his credibility and, as that was found wanting, there was no need for any detailed discussion of the country evidence, which had been summarised at [18] to [20] of Judge Baldwin's determination. The illegal exit plus asylum claim argument had been noted by Judge Britton at [9] of his determination and he gave adequate reasons for findings that SB (risk on return – illegal exit) Iran CG [2009] UKAIT 00053 remained applicable on the facts he found: see the summary at [30].

13. It was contended that Judge Britton had adopted Judge Baldwin's adverse credibility findings, which were infected by error because of reliance on a statement made in the course of an unlawful process, i.e., the non compliant age assessment. In the tribunal's view that was an extravagant submission. At [24] of his determination Judge Baldwin reminded himself that the Appellant was a young and possibly vulnerable witness. He considered the Appellant's claims with great care and examined the Appellant's previous statements for their consistency. Judge Baldwin gave ample reasons for finding that the Appellant was bright and articulate, not uneducated as the Appellant had claimed. The judge was entitled to take his impression of the Appellant's abilities into account, having reminded himself of his youth as the judge did. There would have been little point in an oral hearing otherwise.

14. Judge Baldwin referred to the since discredited age assessment dated 12 August 2011 specifically at [27] of his determination, when considering the Appellant's claimed lack of contact with his relatives. But the judge gave the Appellant the benefit of the doubt about whether or not he had lost a brother detained because of his activist opinion: see [28] of the determination. The judge gave a number of sound and free standing reasons for finding that the Appellant remained in contact with family members. Thus even if there were any substance in Miss Foot's submission (and in the tribunal's view there was none), it made no difference to the multi-faceted credibility assessment reached with evident anxious scrutiny to the lower standard.

15. Judge Britton rightly treated Judge Baldwin's determination as his starting point, as seen at [7] of Judge Britton's determination. There had been no appeal of Judge Baldwin's determination and it was obviously a thorough and full decision by an experienced judge, set out in detail and at appropriate length, to which recognition was due. Nor had there been any real change in the background evidence about Iranian nationals of Kurdish ethnicity.

16. At [9] of his own determination, Judge Britton noted what was had been said to be the new material, by reference to the Appellant's solicitors' letter to the Secretary of State dated 30 September 2013.

That letter also set out the Appellant's Article 8 ECHR claim, as the judge noted, and to which the tribunal will return later in this determination. The new elements to the Appellant's claim were his Kurdish flag tattoo, said to have been done in 2013, and his involvement in Kurdish political demonstrations in the United Kingdom: see [17] of the determination.

17. Judge Britton addressed the new matters for himself, and found at [30] that there had been no material change. The judge's finding that the Appellant's tattoo was a deliberate attempt to enhance his asylum claim was open to him as it bore upon the Appellant's overall reliability as a witness. The judge also addressed the key issue, i.e., the perception that the tattoo might reasonably cause to the Iranian authorities. As the judge explained, the authorities already knew that the Appellant is Kurdish and the flag of itself meant nothing more than showing that: see [27]. The judge gave secure reasons for finding that the Appellant's claimed *sur place* activities were minimal and were not a source of potential real risk coupled with his flag tattoo. The submission that Judge Britton failed to consider the Appellant's claims properly must be firmly rejected.

18. The Appellant's claim that he had lost an activist brother was not the subject of any new evidence and so Judge Baldwin's open finding stood. There was no new risk to be assessed.

19. Judge Britton refrained from saying so, but the evidence produced in support of the Appellant's private life claim was thin: see [8] of his witness statement dated 1 May 2015. The independent evidence related mainly to his education. Only one friend had provided a letter of support. The Appellant was the sole witness at his appeal hearing. The judge alluded to the evidence of the Appellant's private life at [29] of the determination. Those facts were not in dispute. The judge applied JS (above), by taking all relevant factors into account, as summarised at (4) of the headnote. The judge applied section 117B of the Nationality, Immigration and Asylum Act 2002 and also considered whether there were any compelling matters which might have required the claim to be considered outside the Immigration Rules: see [32]. The securely reached findings that the Appellant still had family in Iran and remained familiar with Iran were, of course, relevant to the proportionality assessment.

20. In the tribunal's judgment, the judge's decision was a comprehensive reflection on the various issues raised in the appeal, and his findings were balanced and logical. There was no error of law. There is no basis for interfering with the judge's decision to dismiss the Appellant's appeal, which dismissal must stand.

DECISION

The tribunal finds that there is no material error of law in the original decision, which stands unchanged

Signed **Dated**

Deputy Upper Tribunal Judge Manuell