



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

Appeal Number: PA/09530/2016

THE IMMIGRATION ACTS

Heard at Field House
On 24 August 2017

Decision & Reasons Promulgated
On 25 August 2017

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

**J P A
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Kotak, of Counsel, instructed by Barnes, Harild and Dyer Solicitors

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, an Iranian national of Kurdish ethnicity born on 5 May 2001, challenges the determination of First-tier Tribunal Judge Traynor dismissing his appeal against the respondent's refusal on 18 August 2016 to grant him protection in the UK. As a minor, he has, however, been granted discretionary leave. The appeal was dismissed by way of a determination promulgated on 18 January 2017 following a hearing at Taylor House on 11 October 2016.

2. The appellant claimed to have witnessed an alleged fight between a shop owner and a Pasdaran guard in 2015. The guard was hit with a stick and later died of his injuries. The appellant then heard through his uncle that all those who had been present were wanted by the authorities. His uncle and mother made arrangements for him to leave. He travelled here via Turkey and France and claimed asylum.
3. The initial grounds for permission to appeal, at 23 pages, were unnecessarily lengthy and some 10 pages longer than the determination. Permission to appeal was refused by Judge Parkes. The application was renewed and the grounds to the Upper Tribunal were more succinct. Permission to appeal was granted on 29 June 2017 by Upper Tribunal Judge Plimmer.
4. At the hearing before me on 24 August 2017, Ms Kotak expanded on the grounds in her submissions and Mr Avery responded. At the conclusion of the hearing, I reserved my decision which I now give.

5. **Conclusions**

6. Only one ground is advanced. It takes issue with the judge's assessment of the risk to the appellant on return to Iran and is divided into several sub sections. I deal with each in turn.
7. The first complaint is that the judge failed to consider relevant evidence; that is to say, he did not consider the issue of the risk to the appellant on return on account of his Kurdish ethnicity. The judge is criticised for maintaining this was a new issue and reference is made to various statements of evidence where the appellant mentioned his ethnicity and claimed he would have problems because of it.
8. The difficulty with this complaint is that it takes the judge's comments out of context. The remarks which the appellant criticizes are contained at paragraph 41. The judge's precise comments are: *"Although in her skeleton argument and oral submissions, Counsel on behalf of the appellant seeks to argue that because the appellant is an ethnic Kurd who would be returned to Iran as an undocumented failed asylum seeker he is at risk. I find this is a new assertion which has only been introduced at this stage of the hearing and certainly not something that the appellant has ever advanced in connection with his claim. He has never suggested that the authorities have been interested in him on account of him being an ethnic Kurd"*. It is plain then that the judge was not saying that the appellant had never claimed to be a Kurd. What he was saying was that he had not claimed he would be at risk on return purely because of his ethnicity

and that is borne out by the evidence. The witness statement referred to in the grounds was prepared for the appeal hearing and with the assistance of his representatives. No such claim was, however, made at his asylum interview. Even in the witness statement there was no claim that he would be at risk solely as a Kurdish asylum seeker; the claim was made that the risk to him would be exacerbated by this fact.

- 9.** Nevertheless, contrary to what is argued, the judge did engage with the issue. At paragraphs 42, 43, 44, 45 and 47 he considered the claim but concluded that the appellant's young age and lack of political profile would make adverse interest in him unlikely and this finding was supported by the absence of any evidence to suggest otherwise.
- 10.** This ties in with the second complaint; that the judge erred in disregarding the expert report. The judge considered the reports by Dr Joffe and Dr Kahkhi at paragraph 41 but considered that they did not relate specifically to the appellant or his particular circumstances *as a minor*. That was a conclusion he was entitled to reach. The appellant was a child at the time of the alleged incident and his return now, when he is still a minor, cannot be equated with the return of adult asylum seeking Kurds who are dealt with in the reports. It was entirely open to the judge to conclude that adults and minors would be treated differently and I have not been referred to any evidence to suggest that would not be the case. Moreover, the submission in the grounds regarding the discrimination and persecution of Kurds, supported by the reports, does not accord with the appellant's own evidence at interview that his first and only problem was the alleged incident in 2015. He did not claim that he had suffered discrimination or persecution on account of his ethnicity nor did he claim his family had. For the large part the extracts cited in the grounds refer to the mistreatment of Kurdish activists, armed Kurdish groups, Kurds exercising their freedom of expression, members of Kurdish opposition parties and Kurdish militants. None of these scenarios would apply to the appellant.
- 11.** The third complaint is that country evidence was not considered when considering the return of failed Kurdish asylum seekers. This is linked to the first complaint. The difficulty is that the evidence does not relate to the treatment of Kurdish children returning to Iran. It is difficult to see how a rehearsal of this evidence in the determination would have advanced the particular issue before the judge.
- 12.** Finally, it is argued that country guidance was not considered. It is more precise to state that current country guidance was not considered as the judge did, indeed, refer to and apply SB (risk on return - illegal exit) Iran [2009] UKAIT 00053. I accept that there was

no reference to SSH and HR (Illegal exit: failed asylum seeker) CG [2016] UKUT 308 however as the parties both noted in their submissions there are no fundamental differences between the two decisions and I was not referred to anything in the later decision which would suggest that the appellant was materially disadvantaged by a failure to consider the case. Moreover, neither case addresses the *particular situation of a child*. Whilst it would, of course, have been preferable for the judge to have considered recent country guidance, even if only to reject it as irrelevant, given the particular circumstances of this case there was no material error in failing to do so.

- 13.** It is significant that the judge's findings on the core claim are unchallenged. No issue has been taken with the judge's conclusion that the core claim relating to the alleged fight and subsequent interest in all those present was not made out. Those findings therefore stand unchallenged.
- 14.** As the applicant has discretionary leave as a minor, no article 8 claim was brought.
- 15.** For all the reasons set out above, I am satisfied that there are no material errors in the First-tier Tribunal Judge's determination and the decision to dismiss the appeal stands.

16. Decision

- 17.** The appeal is dismissed.

18. Anonymity

- 19.** Although I was not asked to do so, I continue the anonymity order made by the First-tier Tribunal.

Signed



Upper Tribunal Judge

Date: 25 August 2017