



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02317/2018

THE IMMIGRATION ACTS

Heard at Field House
On 31 May 2018

Decision & Reasons Promulgated
On 18 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

ZANA [A]
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Harris, Counsel, instructed by Elder Rahimi Solicitors
(London)

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

DECISION AND REASONS

Introduction

1. The appeal to the First-tier Tribunal (FTT) was against the decision of the Secretary of State on 1 February 2018 to refuse asylum, human rights and humanitarian protection, the appellant having entered the UK in September 2017 and claimed asylum and those other forms of protection shortly thereafter. The present appeal is against the FTT's decision to dismiss the appeal on asylum, human rights and humanitarian protection

grounds. That was a decision of Judge of the First-tier Tribunal Siddall (the judge) following a hearing on 19 March 2018, the decision being promulgated on 28 March 2018.

2. Designated Immigration Judge Macdonald gave permission to appeal to the Upper Tribunal on 25 April 2018 because he considered it to be at least arguable that there was a lack of clarity in the way the judge dealt with the issues raised by the leading cases of **BA [2011] UKUT 36** and **SB [2009] UKAIT 53**. Judge Macdonald considered that there may be flawed reasoning and that the adverse credibility finding was insufficiently thorough. Standard directions were therefore sent out directing the parties to file any additional evidence they wished to rely on at the hearing before the Upper Tribunal but there has been no response to that notice.
3. The appellant's case was fully set out by the FTT in its decision. The appellant claimed to be a member of the KDPI, the separatist Kurdish group which operates in Iran. He alleged that his home in Iran had been visited and searched and that he had fled to Europe with a view to avoiding the Iranian authorities.
4. The grounds seeking permission to appeal raised two grounds. The first ground is that the appellant's identity and presence would necessarily alert suspicion if he were to return to his own country. It was submitted that the finding that the appellant would not be known to the authorities could not be allowed to stand. While it was accepted that he was not a member of the KDPI, nevertheless the authorities go to extraordinary lengths to find those with sympathies for that organisation. The second ground asserts that the appellant had engaged in *sur place* activities which would bring him to the attention of the Iranian authorities. Thus, whilst it was always accepted that the appellant was not a member of the KDPI, nevertheless, he was a person who would be of interest to the authorities if he returned to Iran.

The hearing

5. Ms Harris made a number of the following submissions on her client's behalf: first she pointed out that there was no Rule 24 response by the respondent. She said that the grounds were still relied upon in full. She said that the mechanisms for monitoring activity by anti-state activists in Iran, including Kurdish separatists, were highly sophisticated. The authorities went to extraordinary lengths to try and identify dissenters both inside and outside that country. She said that the appellant's Kurdish ethnicity and his past perceived activities may be enough to bring him to the attention of the authorities in Iran.
6. Ms Harris referred at length to the case of **AB**, pointing out that the expert's evidence before the Tribunal on that occasion had been accepted. She said that it indicated the level of surveillance that the appellant may be subject to. It would be considered strange by any advanced western economy but was common in Iran. She also pointed out that access to the internet was controlled. She said the reasons given by the judge were insufficient and that she should not have allowed the appeal, based on the

evidence that was given and the *sur place* activities, which had continued since the hearing before the FTT. These activities would further draw the appellant to the attention of the authorities in Iran.

7. In reply, Mr Avery said that the judge had to make an assessment on the evidence before her. Her findings were cogent. She indicated that she did not find the appellant to be a credible witness and therefore rejected his account. It cannot be an error of law to fail to refer to a case to which the judge's attention was not drawn (a reference to the case of **AB**) and the respondent said that overall the findings, particularly those encapsulated within paragraphs 18 onwards, were open to the judge. He particularly referred to paragraph 37 of the decision, where the judge said that she was not satisfied that the event that the appellant described, a KDPI-sponsored event in Iran, had ever taken place. She rejected the account of being introduced via a friend, called Mustapha, to KDPI members. She found the appellant's account incredible.
8. In replay, Ms Harris repeated her earlier submission that the high level of state surveillance in Iran would itself put the appellant at risk.

Conclusions

9. I have to decide whether the Immigration Judge was entitled to reach the negative conclusions that she came to and whether, in particular, she was entitled to reject the appellant's evidence because it was incredible.
10. The judge's decision appears to be thoroughly reasoned. Having gone through the authorities to which her attention was drawn, and summarised the evidence, she went on to indicate which parts of that evidence she accepted and which parts she rejected. The judge then indicated that she had "read and considered" the evidence "in the round", and having reminded herself of the burden and standard of proof, rejected the appellant's account. The judge also considered the reports referred to at the hearing. As a consequence of considering those reports, was reinforced in her conclusion that the appellant was not a genuine refugee. She took account of the condition of the Kurds in Iran, but concluded the appellant would not be at risk on return.
11. Having considered the country guidance available to her, I find that the appellant, reached findings that were open to her on that evidence. It would be an error of law to fail to take account of material country guidance case law, even if, as happened this case, the attention of the tribunal was not drawn to it. However, the judge did take account of the leading cases of **BA** and **SB** and in my view took full account of the background material. She was well aware of the risk that the authorities may perceive someone to be a threat to the Islamic state in circumstances where they would not be considered a threat in any Western country in equivalent circumstances. It is always possible, with the benefit of closer analysis, to criticise the judge who heard the evidence. I am satisfied having read the judge's notes that she carefully weighed up the evidence before reaching her conclusions. I am satisfied that there is no material

error of law in her decision and I am satisfied it would be wrong to interfere with that decision.

Notice of Decision

The appeal is the appeal to the Upper Tribunal against the decision of the First-tier Tribunal in this case is dismissed.

No anonymity direction was made by the FTT and I make no anonymity direction.

Signed

Date 4 June 2018

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 4 June 2018

Deputy Upper Tribunal Judge Hanbury