Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03240/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 6th November 2018	**On 3rd December 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

MR CHIA HAMEDAMIN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Knight, Legal Representative, Duncan Lewis & Co Solicitors (Harrow Office)
For the Respondent: Mr S Kandola, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Iran, appealed to the First-tier Tribunal against a decision of the Secretary of State of 1st February 2018 to refuse his application for

asylum and humanitarian protection. First-tier Tribunal Judge Swaniker dismissed the appeal in a decision promulgated on 13th August 2018. The Appellant now appeals with permission granted by First-tier Tribunal Judge Alis on 16th September 2018.

2. There are essentially two Grounds of Appeal. It is contended that the First-tier Tribunal Judge erred in applying too high a standard when considering the evidence. It is further contended that the judge erred in assessing whether the Appellant was at risk as a young ethnic Kurd from a rural area of Iran.

3. The standard of proof in asylum cases is well established. In **R v SSHD ex p. Sivakumaran (1998)AC 958**, the Court of Appeal said that the existence of a well-founded fear of persecution required the establishment of what was described by Lord Keith of Kinkel as "a reasonable degree of likelihood"; by Lord Tempelman as "a real and substantial danger"; and by Lord Goff as a "real and substantial risk". In **Ravichandran (1996) Imm AR 97**, Lord Simon Browne said that "the question whether someone is at risk of persecution for a Convention reason should be looked at in the round and all the relevant circumstances brought into account".

4. At the hearing before me Mr Knight submitted that the judge made an erroneous statement in relation to the standard of proof at paragraphs 3 and 34 of the decision. At paragraph 3 the judge said;

> "The burden of proof is on the Appellant to show as at the date hereof that there are substantial grounds for believing that he meets the requirements of the Qualification Regulations or that he is entitled to be granted humanitarian protection in accordance with paragraph 339M of the Immigration Rules…"

At paragraph 34 the judge said that the Appellant had failed to establish that "there are substantial grounds for believing that he is at a real risk of suffering treatment and/or punishment contrary to Articles 2 and 3 upon return to Iran".

5. At the hearing Mr Kandola pointed out that in the reasons for refusal letter the Secretary of State used similar phrasing at paragraph 59 in reference to paragraph 339C of the Immigration Rules where, in the context of consideration of humanitarian protection, the Secretary of State concluded that "there are no substantial grounds for believing that there is a real risk of serious harm on return to Iran". This refers back to paragraph 339C(iii) which states that a person will be granted humanitarian protection in the UK if the Secretary of State is satisfied that "substantial grounds have been shown for believing that the person concerned if returned to the country of origin would face a real risk of suffering serious harm."

6. It therefore appears that the First-tier Tribunal Judge quoted the standard of proof applicable in relation to humanitarian protection. In any event the judge undertook a detailed analysis of the Appellant's credibility at paragraphs 18 to 28 of the decision. Mr Knight did not point to any aspects of that assessment which demonstrate the application of too high a standard in this assessment.

7. Mr Kandola pointed to a number of places in the decision where the judge specifically referred to the test in terms of reasonable degree of likelihood. For example at paragraph 17 where the judge can find that the Appellant had given divergent and fundamentally inconsistent accounts relating to material aspects of his claim "for which he has not provided any reasonable or credible explanation". Further at paragraph 21 the judge referring to an alleged encounter with the Pasdar on the third smuggling trip across the border which the judge found was a straightforward and significant event the fundamental details of which "would have reasonably likely remained clear in the Appellant's mind". The judge refers to this again at paragraph 23 where she used the word reasonably and at 24 where she referred to an aspect of the claim which it was expected the Appellant would "reasonably likely be clear and consistent about". Again the judge refers to the Appellant's failure to give a "reasonable" explanation at paragraph 25. At paragraph 28 the judge said that she found there was a "reasonable likelihood" that the Appellant and his family remained in contact after leaving Iran and that his family remain there. In my view it is clear reading the decision as a whole that the judge applied the appropriate standard to the assessment of the Appellant's credibility.

8. Mr Knight contended that, having made the findings she did, the judge failed to consider whether the Appellant was at risk on return on the basis of the findings made. However the judge relied upon the country guidance case of **SSH and HR (illegal exit: failed asylum seeker) CG [2016] UKUT 308 (IAC)** where it was not accepted that the Appellant there had a well-founded fear of persecution on the basis of his Kurdish ethnicity on return to Iran. The Upper Tribunal's findings are summarised in the head note as follows:

> *(a) An Iranian male whom it is sought to return to Iran, who does not possess a passport, will be returnable on a laissez passer, which he can obtain from the Iranian Embassy on proof of identity and nationality.*
>
> *(b) An Iranian male in respect of whom no adverse interest has previously been manifested by the Iranian State does not face a real risk of persecution/breach of his Article 3 rights on return to Iran on account of having left Iran illegally and/or being a failed asylum seeker. No such risk exists at the time of questioning on return to Iran nor after the facts (i.e. of illegal exit and being a failed asylum seeker) have been established. In particular, there is not a real risk of prosecution leading to imprisonment.*

9. The judge considered this matter at paragraph 29 of the decision and concluded that there was no risk to the Appellant upon return as a failed asylum seeker and/or account of his Kurdish ethnicity. The judge further found that there was no credible evidence before her to support any claim based on the Appellant being a conscientious objector to military service. Mr Knight did not point to any evidence before the judge which could have led to an alternative conclusion on this matter.

10. Having considered the decision as a whole I conclude that the Grounds of Appeal have not been established. The First-tier Tribunal Judge reached conclusions open to her on the basis of the evidence.

Notice of Decision

The decision of the First-tier Tribunal does not contain a material error of law.

The decision of the First-tier Tribunal will stand.

No anonymity direction is made.

Signed Date: 28th November 2018

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

No fee is payable therefore there is no fee award.

Signed Date: 28th November 2018

Deputy Upper Tribunal Judge Grimes