Upper Tribunal
(Asylum and Immigration Chamber) Appeal Number: PA/07967/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 9 February 2018	**On 10 May 2018**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

BAHZAD [A]
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation
For the appellant: Mr I Palmer of Counsel
For the respondent: Mr L Tarlow, Senior Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Iran, born on [ ] 1996, appealed to the First-tier Tribunal against the decision of the respondent dated 18 July 2016 to refuse his claim for asylum and humanitarian protection in the United Kingdom. First-tier Tribunal Judge Khan dismissed the appellant's appeal on July 2016.

2. Permission to appeal was granted by First-tier Tribunal Judge Ransley who founded arguable that the Judge failed to engage with or make any findings on the evidence in the country expert report of Prof Emil Joffe regarding the

enhanced risk on return due to the appellant being a Kurd and a failed asylum seeker who had exited Iran illegally. He also said that the Judge failed to engage with the submissions made on behalf of the appellant that there are good reasons to depart from the CG case of **SSH and HR Iran CG [2016] UKUT 308 (IAC).** The Judge also failed to engage with Prof Joffe's evidence on the very significant discrimination against Kurds in Iran and the discrimination amounts to a very significant obstacle to integration into Iran. This might have made a material difference to the outcome of the appeal.

3. Thus, the appeal came before me.

The First-tier Tribunal Judge's findings

4. The Judge made the following findings which I summarise. The appellant's background is that he ran a grocery shop in Iran, selling cigarettes and alcohol to a few customers. On the evening of 24 December 2015, a friend asked him to keep a parcel in his shop until the next day which he agreed to do. The following day his mother informed the appellant that his neighbour had told her that the appellant should close the shop and go into hiding as there was something illegal in his shop. The appellant gave the parcel to his mother who later told him that she had burnt it. He also moved the alcohol from the shop elsewhere. His mother told him to leave the village and go to his uncle in Sardesht. He arranged an agent to leave Iran. His mother informed his uncle that the authorities raided his shop and the family home on 25 December 2015 taking his belongings including his identity card and his birth certificate. The appellant cannot return to Iran because he will be mistreated due to him accepting an illegal parcel.

5. The appellant claims that he started his Facebook postings since his arrival in the United Kingdom although he could not remember the date. He had no evidence of these Facebook postings and has not printed them off from the computer. Even if the appellant has something on Facebook, how will the Iranian authorities come to know of it.

6. In his screening interview, the appellant claimed that he left Iran because he had been accused of helping the Pejak party and would distribute their leaflets in his shop. He stated that the authorities came to arrest him and he decided to leave Iran. However, in his witness statement the appellant's evidence completely changed and he stated that one of his regular customers came with two other friends to his shop and asked him to keep a small parcel at his shop. There were other inconsistencies in the evidence pointed out by the Judge from paragraph 33 to 37 and found him not to be credible and dismissed his appeal.

Grounds of appeal

7. The grounds of appeal argued that the appellant is an Iranian national of Kurdish ethnicity who first entered the United Kingdom on 2 February 2016 at his asylum claim was refused by the respondent on 18 July 2016. The respondent accepted the appellant's nationality, ethnicity and identity but not his account of past experiences or that he would be at risk if returned to Iran.

8. The Judge failed to deal with the submissions made on behalf of the appellant that there were four grounds upon which it was said that the appellant would be at risk upon his return to Iran. These are his activities in Iran, his Kurdish ethnicity, his illegal exit from Iran and his return to Iran as a failed asylum seeker.

9. The core of the submissions made on this aspect of the appellant's claim was that the Judge should depart from the country guidance case of **SSH and HR**. The Judge failed to engage with any of the arguments put before him including that the expert in his report submitted that in the appellant's case he had vigorously challenged with the reasoned argument and evidence that the conclusions that the Tribunal reached in **SSH and HR** in respect of the four findings that were material to the appellant's case.

10. Prof Joffe in his report pointed out that undocumented returnees can obtain a laissez passé upon the production of proof of identity and proof of nationality to an Iranian Embassy second that absent any other adverse inference a person who left Iran illegally or who was a failed asylum seeker would not be at risk for those reasons alone, third that as a returnee who is Kurdish would not enhance their risk per se and thought that Kurdish, in general do not face a disproportionate risk of official discrimination and persecution. The Judge was invited to depart from the conclusions of the Upper Tribunal in **SSH and HR** in respect of those findings on the basis of the expert report provided by Prof Joffe and expert whose bona fides are well established.

11. The expert further noted that the situation in Iran has worsened for every Kurdish returnee who has given rise to suspicions of anti-regime behaviour, either at home or whilst abroad such as claiming asylum and therefore his prospects of avoiding persecution are significantly diminished. Furthermore, the expert noted that applications from an asylum seeker for a laissez passé cannot be made without potentially endangering the applicant. It was incumbent on the Judge to engage with these issues.

The respondent's Rule 24 response

12. The respondent in her rule 24 respondent stated the following. The Judge of the First-tier Tribunal directed himself appropriately. On the face of the decision without sight of the skeleton argument submitted on behalf of the appellant,

there appears to have been no argument put forward at the hearing that a request was made to depart from the country guidance case. Even if that was the case, one expert report with no supporting objective evidence would be insufficient to lead to departure from the country guidance case law if these findings were not demonstrated as happening on the ground.

Findings as to whether there is a material error of law in the determination.

13. Essentially, the point been taken by counsel on behalf of the appellant is that the First-tier Tribunal Judge materially erred in law by not taking into account the expert report and departing from the country guidance case of **SSH and HR**. The appellant also took issue that the Judge did not consider that the appellant was a Kurd and this would put him at risk on return as opined by the expert, Prof Joffe.

14. It was clear from the decision of the First-tier tier Tribunal who dismissed the appellant's appeal, did not find the appellant credible in respect of events which the appellant claims to have taken pace in Iran and no issue is taken with those findings. The Judge gave proper cogent reasons for finding that the appellant left Iran as an economic migrant. These findings are without arguable error.

15. The Judge in his decision after finding that the appellant was not credible did not engage with the appellant's evidence that he is a Kurdish failed asylum seeker. After having found the appellant not credible about events that the appellant claimed happened to him before he left Iran, he did not engage in any of the other issues in the appeal.

16. There is therefore merit in the argument that the Judge did not engage with the expert evidence of Prof Joffe about risk on return. The Judge also failed to consider that the appellant will be returned to Iran as an unwilling returnee who has claimed asylum in the United Kingdom. However, I note that the appellant has only been away from Iran since early 2016 and this is a factor to be considered when determining whether the appellant will be questioned on his return which is when the problems for a returnee normally start.

17. The Judge recorded the appellant's evidence at paragraph 36 and stated that the appellant states that since his arrival in the United Kingdom in February 2016, he has been posting materials against the Iranian authorities on his Facebook page. The Judge stated that the appellant has not had a single response to it and has not provided any evidence of the posts such as printouts. Therefore, there was no evidence before the Judge about the appellant's Internet activity. The Judge was therefore entitled to find that the appellant had not demonstrated his Internet activity in the United Kingdom.

18. The Judge therefore cannot be criticised for not considering whether the appellant claimed Internet activities would put him at risk on his return to Iran because there was no evidence of this activity before him. At the hearing, there was no attempt to refer me two the evidence of the Facebook activities of the appellant, which was before the Judge which it is claimed that the Judge did not consider.

19. The Judge also stated that even if he was to accept that the appellant may have put something on his Facebook account, he questioned, "how would anyone be able to access his account in Iran". This finding does not rest easily with the case of **AB and others (Internet activity – state of evidence) Iran [2015] 0257 (IAC)** where it was stated that there is clear evidence that some people are asked about their Internet activity and particularly for their Facebook password. It is absolutely clear that blogging and activities on Facebook are very common amongst Iranian citizens and it is very clear that the Iranian authorities are exceedingly twitchy about them. The act of returning someone creates "a pinch point" so that returnees are brought into direct contact with the authorities in Iran who have both the time and inclination to interrogate them. background evidence that Iranian authorities do ask for returnees Facebook password to look into their account.

20. The Judge did not even refer to the country guidance case of **SSH and HR**, in his decision much less say that he had been invited to depart from it. The Judge obviously did not consider that it was not an issue in this appeal because he did not accept the appellant's evidence that he had participated in any Internet activities in the United Kingdom which would put him at risk on return.

21. However, the evidence before the Judge was that the appellant was an unwilling Kurdish returnee and should have addressed how this would affect the appellant's safe return to Iran. His failure to engage with these issues brought him into material error.

22. I find that there is a material error of law in the decision of the First-tier Tribunal for not considering the country guidance case of **SSH and HR**. The issue remains whether the appellant would be at risk on his return to Iran as a failed Kurdish asylum seeker who will be perceived by the Iranian authorities to have anti-regime proclivities, remains to be considered.

23. I however preserve the adverse credibility findings made against the appellant by the Judge about the events which the appellant claims to have happened in Iran.

24. I direct that the appeal be placed before the Upper Tribunal for submissions on the issue of risk on return for this appellant, on the evidence in this appeal, including the expert report of Dr Joffe.

Resumed hearing on 9 February 2018

25. I heard submissions from both parties as to the appellant's risk of return to Iran. The issue I now must decide is whether the appellant faces any risk on return to Iran as an unwilling Turkish Kurd returnee who left Iran illegally and who has claimed asylum in the United Kingdom.

26. It has been argued that I should depart from the country guidance case of **SSH and HR** and rely on the expert's evidence. It is argued that Dr Joffe's report is an extension to the country guidance case on Iran.

27. I have considered the country guidance case of **SSH and HR** and Dr Joffe's report as to the risks to the appellant on his return considering the appellant's profile. I am aware that the country guidance case is the authoritative guidance on the situation in a particular country based on assessment of expert and factual evidence. I also am aware that I must take into account of an applicable country guidance case in deciding whether the appellant's fear of persecution is well-founded. A failure to do so is an error of law because it constitutes a failure to take a material matter into account.

28. I take into account the case of **DSG & Others (Afghan Sikhs: departure from CG) Afghanistan [2013] UKUT 00148 (IAC)** where it was said that as this case shows, country guidance cases are not set in stone (see also **HS (Burma) [2013] EWCA Civ 67**), and a judge may depart from existing country guidance in the circumstances described in the Practice Direction and the Chamber Guidance Note. I note that it is necessary, in the wording of the Practice Direction to show why it does not apply to the case in question. In **SG (Iraq) [2012] EWCA Civ 940**, the Court of Appeal made it clear, at paragraph 47, that decision makers and Tribunal Judges aare required to take country guidance determinations into account, and to follow them unless very strong grounds supported by cogent evidence, are adduced, justifying their not doing so. To do otherwise will amount to an error of law.

29. In the Upper Tribunal Immigration and Asylum Chamber Guidance Note 2011 No 2, at paragraph 11, it is stated:

> " If there is credible fresh evidence relevant to the issue that has not been considered in the country guidance case or, if a subsequent case includes further issues that have not been considered in the CG case, the judge will reach the appropriate conclusion on the evidence, taking into account the conclusion in the CG case so far as it remains relevant."

30. I take into account Dr Joffe's expert report in this regard and note that he is an expert of repute. Dr Joffe challenged the country guidance case with reasoned argument and evidence and that the conclusion the tribunal reached in the country guidance case in respect of four findings that were material to the

appellant's case. These findings were, first, that in an documented individual can obtain unless it passé upon production of proof of identity and proof of nationality to an Iranian Embassy, second that absent any other adverse inference a person who left Iran illegally or who was a failed asylum seeker would not be at risk for those reasons alone, third that a returnee who is Kurdish would not enhance their risk per se and fourth that Kurds, in general do not face a disproportionate risk of official discrimination and persecution.

31. Dr Joffe referenced in his report of October 15, 2014 where he pointed out that undocumented returnees issued with travel documents to the Iranian authorities will appear before a special court on return when they can face prison and ill-treatment. His recent evidence was that Kurds returned to Iran to face an increased risk of persecution simply because of their Kurdish ethnicity and therefore the combination of being both Kurdish and a failed asylum seeker does result in a significant risk of persecution. It was also Dr Joffe's evidence that the situation in Iran has worsened and if a Kurdish returnee has given rise to a suspicion of anti-regime behaviour either at home or whilst abroad such as claiming asylum, his prospects of avoiding persecution are significantly diminished. He also stated that applicants from an asylum seeker for a *lasse passé* cannot be made without potentially endangering the applicant.

32. I consider Dr Joffe's report is supplementary evidence which undermines the conclusion reached in the country guidance decision that a Kurd will not necessarily be at risk on his return to Iran. I therefore find that there are reasons for me to depart from the country guidance case and accept the evidence of Dr Joffe who considers that the appellant would be at risk as a failed asylum seeker who left the country unlawfully.

33. I find that Dr Joffe's evidence justifies my departure from the country guidance in **SSH and HR**. I find that the appellant would be at risk on his return to Iran.

Decision

34. I allow the appellant's appeal under the Refugee Convention and this concludes the matter.

Signed by

A Deputy Judge of the Upper Tribunal
Mrs S Chana Dated this 3rd day of May 2018