



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: PA/00460/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 21 October 2019**

**Decision & Reasons
Promulgated
On 24 October 2019**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

**B A
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Childs, of Counsel, instructed by CK Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal comes before me following the grant of permission to appeal by Upper Tribunal Judge S Smith on 9 September 2019, against the decision of First-tier Tribunal Judge Hodgkinson, promulgated on 8 July 2019, to dismiss this asylum/human rights appeal.
2. The appellant is a Kurdish Iranian who claims that he would be at risk on return to Iran because of his race and religion and because his

father was an alcohol smuggler. The appellant's claim is that his father arranged for his journey to the UK with an agent when he refused to help him with his smuggling activities. The respondent was not satisfied that the appellant was Iranian and considered that he was an Iraqi from the IKR.

3. Judge Hodgkinson heard oral evidence from the appellant who was 18 at the date of the hearing. He found that the appellant was Iranian as claimed (at 33-46). He also found that the appellant's account of his father's work and the pressure put on him to assist was credible (at 47-52). He was not, however, satisfied that the appellant would be at risk on return on account of his father's activities, noting that the father had never had any problems himself, that there was no evidence that the appellant was wanted, that he had been a minor when he left Iran and that there was no reason he would be perceived to be an alcohol smuggler (at 54-57). He rejected the contention that if the appellant's father were to be arrested, then the appellant would be forced into smuggling to financially support the family (at 58). He also found that the appellant's ethnicity and Sunni faith were not factors that in themselves could place him at risk (at 59-64). He concluded that the appellant could safely return to his home village (at 65). No article 8 claim was pursued (at 7).
4. Permission to appeal was sought and granted on the basis that the judge had arguably failed to analyse the return of the appellant in the context of country material which showed that Kurds and smugglers were harshly treated by the authorities.

The Hearing

5. Ms Childs submitted that the judge had made individual findings on the risk factors rather than assessing them cumulatively. The appellant would be questioned on return to Iran and he would be perceived as a smuggler. Smugglers were treated very harshly and executed. Kurds were treated harshly in prison when compared to other prisoners and had less access to the judicial system. People were punished for drinking and smuggling. I was referred to 2.3.5 at P6, 5.3.2 and 6.1.9 at R18.
6. Ms Childs referred to headnotes (3) and (5) of HB (Kurds) Iran CG [2018] UKUT 00430, pointing out the increasing suspicion of Kurds amongst the Iranian authorities and Kurdish ethnicity being a factor of particular significance when assessing risk. She argued that even those with very low level political activity were at risk. Whilst smuggling was not considered as a risk category, there was a heightened risk for Kurds generally. The appellant was not involved in any political activities, but his father was a smuggler and that was a risk factor the judge should have properly assessed. She submitted that smuggling would be perceived as being anti-regime. The

appellant would be questioned at the airport and could not be expected to lie.

7. In response, Ms Everett submitted that the judge had properly directed himself as to cumulative consideration. The appellant had left Iran to get away from his father and it was very difficult to see how he would be perceived as being involved in his father's activities. There was no reason why he should be perceived to be a criminal or anti-regime. The judge had properly considered the facts and undertaken a full assessment (at 56-57). The appellant was not involved in criminal activity and so there would be no need for him to lie. Any problems his father might face on account of his own activities did not engage the appellant's own claim under the Convention. The judge's determination should be upheld.
8. Ms Childs replied. She repeated the complaint that the judge had considered facts individually rather than cumulatively. She argued that the appellant's father's smuggling activities would place the appellant at risk. His father's activities could be seen as anti-regime as he was bringing in goods banned by the regime. Family members were treated with suspicion. If the appellant had to lie about his father's activities that was a further risk factor.
9. That completed submissions. At the conclusion of the hearing, I reserved my decision which I now give with reasons.

Discussion and Conclusions

10. Having considered all the evidence and the submissions made, I find the following.
11. I do not accept the argument that the judge looked at factors individually rather than cumulatively. The judge plainly considered all the evidence (at 22-24, 51 and 53) and properly directed himself in respect of the appellant's youth and the guidance on minors (at 28 and 30). Whilst he does go through all the factors in turn (at 31-67), it is difficult to see how else a judge could consider all the points made. The criticism appears to be with the form of the determination rather than the substance. I note that the judge specifically confirms that he considered the risk factors holistically (at 57) and cumulatively (at 67). To argue that he did not do so, despite his insistence that he did, is unjustified.
12. The judge considered the claim that the appellant would be at risk because of his father's activities (at 15, 48-49 and 54) but he properly rejected this contention (at 54-58). It is not correct to say that this was not a factor he had in mind. It is notable that he was not referred to any evidence which suggested that the family members of alcohol smugglers were ill treated by the Iranian authorities. There was no such reference in the skeleton arguments or representations

included in the appellant's large bundle and Ms Child's reference to the evidence before me did not support the contention either. Nor is there any suggestion that the appellant's father or any family members had ever experienced any problems from the authorities as a result of the smuggling activities.

13. The appellant was a minor when he left Iran and the judge properly found, having considered all the circumstances, that he would not be viewed with suspicion on return. The only country evidence on smugglers amidst the appellant's large bundle of documents is the respondent's Country Information and Guidance note of April 2016 and that points out the difference between drug smugglers, who are treated very harshly and are at risk of execution, and those smuggling other commodities who are likely to face prosecution rather than persecution (at 2.4.7, 3.1.1). Smuggling is described as a way of life in border villages (at 6.1.6). Alcohol is said to be easily available and in vast quantities and it is believed that the Revolutionary Guard and other elements of government actually profit from the illegal trade (at 6.1.9). Whilst I accept that The Iranian Penal Code sets out a punishment for anyone who *"produces, buys or sells or proposes to sell or carries or keeps alcoholic beverages or provides to a third person"* (at 5.3.2), the fact remains that there is no evidence as to how frequently, if at all, this punishment is enforced. Significantly, there are no reports of any ill treatment of the families of alcohol smugglers. I accept that there is a report of the harassment and detention of family members of persons associated with Kurdish political groups and that Kurds in prison are subjected to harsher treatment than other prisoners (at 2.3.5) but the appellant has no political history, he has not been active or even supported any Kurdish groups and there is no reason to believe that there would be any real risk to him of imprisonment.
14. The judge took account of (SB (risk on return - illegal exit) Iran CG [2009] UKAIT 00053 and properly found that having exited Iran illegally was not a significant risk factor, that the appellant had not been involved in political protests and had not left Iran facing court proceedings. The Country Information and Guidance report on illegal exit from Iran dated July 2016, provides that *"Although the law provides that a person can be fined on return or sentenced to between one and three years' imprisonment if they left Iran illegally, current evidence is that returnees who left Iran illegally and have no other history which would bring them to the attention of the authorities (such as political activism) generally do not face prosecution. If prosecuted, the likely sentence is a fine, and there is not a real risk of imprisonment"* (2.2.3). In general, returnees are not prosecuted for illegal exit and if they are, there is no real risk of imprisonment (3.1.2, 5.1.2-5.1.7). Prosecution and the prospect of imprisonment are more likely where the returnee is known to the authorities for political activism (3.1.3). It is acknowledged that Iranian Kurds know of illegal paths across the border and their returns

are met with fines (5.1.9). Interest is only shown in those with a political history. The appellant has no political profile and has never shown any interest in politics.

15. SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC) also confirmed that *“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”*.
16. The evidence on the treatment of Sunni Muslims contained in the appellant’s bundle indicates that the numbers of those singled out are few and that they are largely converts, activists and preachers (ibitimes) although there is discrimination against religious minorities (Amnesty International). The appellant’s evidence was that he came from a small Kurdish village where he was able to attend a Kurdish school. In that environment, there is no real risk he would face persecution for practising his faith as he did before his departure and any discrimination he may face as a Sunni Kurd would not amount to persecution.
17. Ms Childs relied heavily on HB (Kurds) Iran CG [2018] UKUT 00430 (IAC). This was not, however, relied on in either skeleton argument before the judge, nor was it adduced as part of the appellant’s evidence. No submissions were made on it. It is, nevertheless, country guidance and I have considered it. It upholds the country guidance given in SSH and HR, confirms that whilst Kurds face discrimination, such discrimination does not amount to persecution or article 3 ill treatment and that Kurdish ethnicity, even if combined with illegal exit does not create a risk. Whilst it is correct that there is increasing suspicion of Kurds, there have to be other factors apart from ethnicity to arouse interest. These are set out at headnotes 6-9. None of these applies to the appellant. even if the authorities were made aware of his father’s smuggling activities, there is no evidence to support the contention, which is essentially the basis of the appellant’s claim, that he would be at risk because the authorities would ascribe to him an anti-regime opinion on account of his ethnicity and his father’s smuggling. I find that such a contention is speculative and is unsupported by any evidence.
18. It follows that the judge did not err in law as is claimed and his determination stands.

Decision

19. The decision of the First-tier Tribunal contains no errors of law. The appeal is dismissed.

Anonymity

20. I continue the anonymity order made by the First-tier Tribunal.

Signed

A handwritten signature in black ink, appearing to read "R. Keir". The signature is written in a cursive style with a small dot at the end.

Upper Tribunal Judge

Date: 21 October 2019