



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11145/2018

THE IMMIGRATION ACTS

Heard at Manchester
On 1st May 2019

Decision and Reasons Promulgated
On 30th May 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

M S Y
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Z Khan, Knightbridge Solicitors

For the respondent: Mr A Tan, Senior Presenting Officer

DECISION AND REASONS

The background

1. The appellant made a claim for protection on the basis that if returned to Iran, his home country, he would face mistreatment on the basis of his political opinion. He is of Kurdish ethnicity. He claimed to support the KDP (rather than the KDPI) and made a living as a cross-border trader with Iraq.

2. He claimed that in November 2015 whilst in Iraq he was given a package which he was told contained leaflets promoting the KDP. Crossing the border back to Iran he encountered police but managed to escape. He said he learnt that Etelaat had been to family home looking for him.
3. He decided to leave Iran and travelled back to Iraq and then on to Turkey. From there, he travelled to Greece before passing through various countries until he came to Switzerland. He remained in a camp for around a year but said he did not claim protection. He then travelled on to France before arriving in the United Kingdom. Since being in the United Kingdom he had been posting pro-KDP material on Facebook and attending demonstrations.
4. The respondent found his account to be internally inconsistent and did not accept he was wanted by the Iranian authorities.

The First tier Tribunal

5. His appeal was heard by First-tier Tribunal Judge Ennals at Manchester on 19 October 2018. In a decision promulgated on 23 October 2018 his appeal was dismissed. The judge found the appellant's account at his asylum interview to be reasonably consistent and he showed a knowledge of the KDP. The judge found an inconsistency about the level of contact with his family. In his oral evidence he said he only spoke his brother once since arriving in the United Kingdom but in his asylum interview said they were in contact once a month. The appellant had indicated he would like to have joined the Peshmerga but had a wife and young son. The judge questioned why, instead of travelling across Europe and leaving his family behind, he did not join them.
6. The appellant had produced the letter said to confirm his involvement with the KDP. The judge questioned this, given that he said he had been a supporter rather than a member and on his account only for a short time before the ambush.
7. He also produced photographs said to show him at pro KDP demonstrations. The judge felt the photographs were taken in order to bolster his claim for protection and questioned why he would publish those pictures on the Internet as he claimed. The judge was shown an extract from the appellant's Facebook account but no photographs of the appellant at demonstrations were seen. The judge did not accept it demonstrated he was wanted by the Iranian authorities and concluded by rejecting the claim. The judge did accept he probably left Iran illegally but did not find this will place him at risk.

The Upper Tribunal

8. Permission to appeal was granted on the basis it was arguable the judge had not provided sufficient reasons for the decision.
9. At hearing, Mr Khan relied upon the grounds for which application was made.
10. In response, Mr Tan said the decision had to be viewed in the round. At paragraph 18 the judge had commented on inconsistencies about contact with his family and questioned the authorities being at his home as promptly as claimed. At paragraph 19 the judge questioned why the appellant, if exposed, did not then seek refuge with his KDP colleagues. Regarding the letter of support, it was a matter for the judge to decide what weight should be attached.
11. Regarding his sur place activities and BA (demonstrators in Britain-risk on return) Iran CG [2011] UKUT Mr Tan said that this appellant had no profile in Iran or in the United Kingdom. Regarding his Facebook activity there was no evidence about how widely spread it was. The judge assessed this at paragraph 22. Mr Tan submitted that the judge correctly applied this case law. The decision of HB (Kurds) Iran CG [2018] UKUT 00430 (IAC) was promulgated subsequently.

Consideration

12. The First-tier judge was the factfinder in relation to the evidence produced. The judge had the details obtained from the appellant by the respondent and his substantive interview. The interview was in January 2018, at which time on the appellant's account he had been out of Iran over 2 years. At question 4 he said that he had contact with one of his brothers maybe once a month for a few minutes. He said he had spoken to him a month earlier. The judge found this was inconsistent with his oral evidence which was to the effect he had only spoken to his brother once since arriving in the United Kingdom in December 2017.
13. At question 16 of his interview he gave a detailed account. He described how after 10 PM he started across the border when they encountered the police. The following morning he telephoned his mother and she said the authorities had visited. They had also searched his brothers' homes. The 1st Tier judge questioned how the authorities would have made the connection so quickly but accepted it was possible.
14. The appellant did not claim any political activity in Iran. He was sympathetic towards the KDP was not a member. At question 20 he said he had been supporting the party for one month before the incident. That was when he said he 1st met the Peshmergas. He recounted that by chance he knew the brother of one of the men

he met and they began talking. He said it was through this man as a referee that he obtained the letter of support. Before that he said he did not have a lot of information because the authorities restricted media information. He was able to give a detailed account about the KDP and the KDPI.

15. The judge was provided with a bundle on behalf of the appellant. This included Facebook prints.
16. The judge sets out the assessment of the evidence at paragraph 18 onwards. The judge deals with a letter of support. The judge referred to the appellant stating in oral evidence that he joined the KDP which was not consistent with his earlier account that he was a supporter, not a member. The judge referred to the evidence of his attendance at demonstrations.

Conclusions

17. I agree with Mr Tan that the decision must be looked at in the round. The judge was presented with a claim which is not uncommon. I accept that the extent of the reasoning is limited but this is dictated contextually by the nature of the claim made and the evidence produced. The respondent did not accept he was wanted by the Iranian authorities. The judge accepted aspects of the claim as possible but also raised various inconsistencies. The judge assessed the evidence at para 17 onwards and the conclusions reached were open. Reasons are given which I find adequate in the circumstance. I can find no error of law in the judge's assessment.
18. BA (demonstrators in Britain- risk on return) Iran CG [2011] UKUT held that the risk depended on the type of activity involved; the risk that a person will be identified ; the factors triggering inquiry on return of the person and the factors that would lead to identification at the airport on return or after entry. The Iranian authorities attempt to identify demonstrators outside the Embassy in London by filming demonstrations but there is insufficient evidence to establish that the regime has facial recognition technology in use. The Iranian security apparatus attempts to match names to faces of demonstrators from. The infrequent demonstrator who plays no particular role in demonstrations and whose participation is not highlighted in the media will not face a real risk of identification and therefore not a real risk of consequent ill-treatment, on return.
19. The appellant gave evidence of some sur place activities. However, those activities were very limited. Although the country guidance decision is not referred to the judge did assess the likelihood of the appellant's activities bringing him to adverse attention. At paragraph 21 the judge refers to the absence of evidence that the

Iranian authorities systematically check on anyone who attends demonstrations. Country guidance decision does indicate some surveillance but there is nothing to suggest the appellant's profile would place him at risk. Consequently, I do not find a material error demonstrated in respect of how the surplus activities were assessed.

20. HB (Kurds) Iran CG [2018] UKUT 00430 (IAC) was promulgated post decision. It found that those of Kurdish ethnicity are reasonably likely to be subjected to heightened scrutiny on return to Iran. However, the mere fact of being a returnee of Kurdish ethnicity with or without a valid passport and even if combined with illegal exit, does not create a risk of persecution. Kurdish ethnicity is nevertheless a risk factor which, when combined with other factors, may create a real risk. Even low-level activity perceived to be political, such as, possession of leaflets supporting Kurdish rights involves a risk of persecution but each case depends on its own facts. However in the appellant's case the judge had not accepted found the underlying incident. Again, taking into account this latest guidance I do not find a material error of law.

Decision

No material error of law has been shown in the decision of First-tier Tribunal judge Ennals. Consequently, that decision dismissing the appellant's appeal shall stand.

Deputy Upper Tribunal Judge Farrelly

Dated 28th May 2019