Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12020/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11th July 2019	**On 20th August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

RS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:	Ms V Easty, Counsel instructed by Brighton Housing Trust Immigration Legal Service
For the Respondent:	Mr S Walker, Senior Home Office Presenting Officer.

DECISION AND REASONS

1. This is an appeal by the Appellant from the decision of First-tier Tribunal Judge Lewis, promulgated on the 9th April 2019, to dismiss the appeal against the refusal of his Protection Claim. I extend the anonymity direction made in the First-tier Tribunal

2. The Appellant's Protection Claim can conveniently be summarised as follows. He is an Iranian national of Kurdish ethnicity, who grew up in a village located about 7 kilometres from Sardasht. He did not receive any formal education. He instead helped tend his father's sheep from about the age of 8 years. On an occasion in mid-2015, two men asked him to take an envelope to the local community leader (the 'Shura'). However, the Shura was not at home when the Appellant attended there and so he left the envelope with the Shura's wife before returning to his flock. When the Shura opened the envelope, he discovered that it contained political materials. The Shura therefore passed it on to the Revolutionary Guard who, in turn, went to arrest the Appellant at his home. The Appellant was still tending his father's flock in the hills at the time, and so, on the advice of their father, his brother warned him not to return home. That night, the Appellant's uncle arranged for him to leave the country and gave him what transpired to be (unbeknownst to the Appellant) a false Iranian identity card. The Appellant entered the UK clandestinely on the 15th August 2015 and claimed asylum. Social Services subsequently estimated his date of birth as the 9th August 2015.

3. The Respondent did not accept the Appellant's claimed Iranian nationality, concluding instead that he is a citizen of Iraq. It was on this basis that the Respondent concluded that the Appellant could safely relocate to the Iraqi Kurdish Region (IKR). However, the Respondent also considered the plausibility of the Appellant's account of him fleeing Iran in the circumstances he described. The Respondent concluded that that account was inconsistent with background country information, in that it failed to explain why the Iranian Revolutionary Guard would not have taken their usual steps (such as taking a family member as hostage) to ensure that the Appellant was either apprehended or forced to surrender to their custody.

4. In a careful analysis of the evidence, the judge concluded that the Appellant had substantiated his claim to be an Iranian national [paragraphs 25 to 76]. He was not however satisfied that the Appellant had told the truth about his reasons for leaving Iran. This was because the Appellant had given inconsistent details about his identity (including, but not limited to, producing a false identity document) and had sought to conceal the fact that he had claimed asylum in Austria. [paragraphs 77 to 97].

5. Whilst permission to appeal would appear to have been principally granted upon the basis that the Judge had failed to apply the guidance in HB (Kurds) Iran CG [2018 [UKUT] 00430 to the facts as found (grounds 2 and 3) Ms Easty's submissions before me focussed upon her criticism of the reasons the judge gave for his adverse credibility findings (ground 1). It is this upon that I too shall concentrate.

6. Ms Easty rightly drew my attention to the fact that the judge had made adverse credibility findings for which the Respondent had not contended, either when giving reasons for refusing the Appellant's claim or at the hearing of the

appeal. The Respondent's attack upon the credibility of the Appellant had been based solely upon his claim to be an Iranian national when evidence she relied upon (a Sprakab analysis of the Appellant's speech) was said to point strongly in favour of him being an Iraqi citizen. However, as Ms Easty pointed out, the judge found in favour of the Appellant upon that issue. The Respondent's alternative position (assuming the Appellant to have substantiated his claim to be a citizen of Iran) was simply that the Appellant's account of the behaviour of the Iranian Revolutionary Guard was implausible given its apparent inconsistency with relevant background country information

7. Ms Easty also criticised individual aspects of the Judge's reasoning. Those criticisms can conveniently be summarised as follows. Whilst stating that he had approached the statements made by the Appellant in his Screening Interview with caution, the judge did not in fact do so. This can be demonstrated by the fact that the judge failed to allude to the general factors in YL (Rely on SEF) China [2004] UKAIT 00145 (the lack of supplementary questions in a Screening Interview by way of clarification of earlier replies, together with the likely fatigue of the claimant) as well as to the fact that the Appellant had made a statement (dated 11th February 2016) in which he sought to correct and explain some of the replies he had given in his first Screening Interview (held on the 26th February 2915). The judge also failed to give the Appellant and/or his Counsel an opportunity to address his concerns before drawing adverse conclusions from them. An example of why this failure was material to the outcome of the appeal can be seen in the judge's approach to the Appellant's recorded reply to question 2.1 of his Screening Interview. The judge interpreted this to mean that the Appellant had been unable to recall the name of the individual on the Identity Card that he had used to travel across Europe whereas an alternative (and arguably more plausible) interpretation of that reply is that the Appellant was stating that he had been unable to recall the name of the police station at which he had handed in his identity card. It is clear from paragraph 84 of the judge's decision (and paragraph 84(iv) in particular) that the judge reached an adverse conclusion that was based upon the correctness of his interpretation of the Appellant's reply to that question.

8. For his part, Mr Walker accepted that some of the judge's reasoning was questionable. However, he submitted that this did not render his overall conclusion unsafe. I disagree. I am unable with confidence to say that the outcome of the appeal would have been the same had the judge invited the appellant to explain the perceived anomalies in his evidence and/or heard submissions from his Counsel about them. It therefore seems to me that the decision to dismiss the appeal is indeed unsafe.

9. Ms Easty argued that if I came to this conclusion, I should nevertheless preserve the judge's favourable findings concerning the Appellant's claimed nationality. I disagree with this for several related reasons. As previously noted, the Respondent's attack upon the Appellant's general credibility was based solely upon evidence suggesting that he may not have told the truth

about his nationality. That issue cannot therefore be isolated from a more general consideration of the claimed propensity of the Appellant to be untruthful. Indeed, whilst it was not specifically raised as a ground of appeal, it is arguable that the judge fell into error precisely because he failed to consider the evidence concerning the Appellant's credibility in the round. It would thus in my view be quite wrong to hamstring a future factfinder by fixing them with mixed factual findings from which they may find it difficult or even impossible to reach a logical and properly reasoned conclusion. It must therefore be open to a future factfinder, having applied the appropriate standard of proof, either to accept or reject the entirety of the Appellant's account, of which his claimed nationality is an integral feature. I therefore conclude that the facts must be determined afresh and that the most appropriate course in those circumstances is to remit the appeal to the First-tier Tribunal for that purpose.

10. The only direction that I give for the future conduct of his appeal is that any further evidence upon which either party may choose to rely must be served on the other party and upon the Tribunal not less than five calendar days before the day the appeal is listed for rehearing. Any other directions must be a matter for the Resident Judge at Hatton Cross.

Notice of Decision

1. The appeal against the decision of the First-tier Tribunal is allowed and that decision is set aside.
2. The appeal is remitted to the First-tier Tribunal to be heard afresh before any judge other than Judge Lewis.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 12th August 2019

Deputy Upper Tribunal Judge Kelly