



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12501/2018

THE IMMIGRATION ACTS

Heard at Manchester CJC
On 15 January 2019

Decision & Reasons Promulgated
On 14 May 2019

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

FS

ANNONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Bushall, Counsel

For the Respondent: Ms Young, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original first Appellant in this determination identified as FS.

Introduction

1. I have maintained the anonymity direction made in the First-tier Tribunal ('FTT').

2. The appellant has appealed against the FTT decision, which was sent on 22 January 2019, to dismiss his appeal on asylum and human rights grounds.
3. The appellant, a citizen of Iran of Kurdish ethnic origin, is 30 years old. He claims that he would be persecuted if returned to Iran because of a combination of his Kurdish ethnicity, pro-Kurdish opinions likely to be imputed to him by the Iranian authorities for reasons related to his sur place activities and his conversion to Christianity.
4. The appellant's claim for asylum was refused by the respondent in a decision dated 10 October 2018. The respondent relied on a previous FTT decision dismissing the appellant's appeal, following a hearing on heard on 7 March 2008. The respondent did not accept that the appellant is a genuine Christian convert or that his sur place activities would lead to adverse interest from the Iranian authorities.

Grounds of appeal

5. The grounds of appeal submit that FTT Judge Birk:
 - (1) misapplied the country guidance in HB (Kurds) Iran CG [2018] UKUT 00430 (IAC);
 - (2) acted procedurally unfairly in using his own experience of coming from an evangelical Church as a yardstick by which to measure whether the appellant's activities constitute evangelising or proselytising activities.
6. In a decision dated 18 February 2019 FTT Judge Saffer granted permission to appeal on both grounds.

Hearing

7. Ms Young conceded that the two grounds of appeal contain errors of law such that the FTT decision should be set aside.
8. Both representatives agreed that I should remake the decision in the Upper Tribunal ('UT') by allowing the appeal on the basis of the appellant's Kurdish ethnic origin together with his low level sur place political activities. I made it clear to Ms Bushall that I could not make any clear findings on the genuineness of the appellant's claimed conversion to Christianity. This is because the appellant was not present and this aspect of his claim remained in dispute. Ms Bushall took instructions over the phone with the assistance of an interpreter and confirmed that that the appellant was content with this course. I therefore confirmed that the appeal is allowed on Refugee Convention grounds by consent, and that a short written decision would follow.

Country guidance

9. It is uncontroversial that the FTT was obliged to apply the country guidance that as an illegal deportee, the appellant would be questioned on return - see SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 308, as approved in the first headnote of HB. In SSH the Upper Tribunal found that if “particular concerns” arose, there would be a period of further questioning, which carried with it a real risk of detention and ill-treatment, and said this at [23]:

“In our view the evidence does not establish that a failed asylum seeker who had left Iran illegally would be subjected on return to a period of detention or questioning such that there is a real risk of Article 3 ill-treatment. The evidence in our view shows no more than that they will be questioned, and that if there are any particular concerns arising from their previous activities either in Iran or in the United Kingdom or whichever country they are returned from, then there would be a risk of further questioning, detention and potential ill-treatment. In this regard, it is relevant to return to Dr Kakhki's evidence in re-examination where he said that the treatment they would receive would depend on their individual case. If they cooperated and accepted that they left illegally and claimed asylum abroad then there would be no reason for ill-treatment, and questioning would be for a fairly brief period. That seems to us to sum up the position well, and as a consequence we conclude that a person with no history other than that of being a failed asylum seeker who had exited illegally and who could be expected to tell the truth when questioned would not face a real risk of ill-treatment during the period of questioning at the airport.”

10. The headnote of HB provides the following additional country guidance:

“(2) Kurds in Iran face discrimination. However, the evidence does not support a contention that such discrimination is, in general, at such a level as to amount to persecution or Article 3 ill-treatment.

(3) Since 2016 the Iranian authorities have become increasingly suspicious of, and sensitive to, Kurdish political activity. Those of Kurdish ethnicity are thus regarded with even greater suspicion than hitherto and are reasonably likely to be subjected to heightened scrutiny on return to Iran.

(4) 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 or Article 3 ill-treatment.

(5) Kurdish ethnicity is nevertheless a risk factor which, when combined with other factors, may create a real risk of persecution or Article 3 ill-treatment. Being a risk factor it means that Kurdish ethnicity is a factor of particular significance when assessing risk. Those “other factors” will include the matters identified in paragraphs (6)-(9) below.

(6) A period of residence in the KRI by a Kurdish returnee is reasonably likely to result in additional questioning by the authorities on return. However, this is a factor that will be highly fact-specific and the degree of interest that such residence will excite will depend, non-exhaustively, on matters such as the length of residence in the KRI, what the person concerned was doing there and why they left.

(7) Kurds involved in Kurdish political groups or activity are at risk of arrest, prolonged detention and physical abuse by the Iranian authorities. Even Kurds expressing peaceful dissent or who speak out about Kurdish rights also face a real risk of persecution or Article 3 ill-treatment.

(8) Activities that can be perceived to be political by the Iranian authorities include social welfare and charitable activities on behalf of Kurds. Indeed, involvement with any organised activity on behalf of or in support of Kurds can be perceived as political and thus involve a risk of adverse attention by the Iranian authorities with the consequent risk of persecution or Article 3 ill-treatment.

(9) Even 'low-level' political activity, or activity that is perceived to be political, such as, by way of example only, mere possession of leaflets espousing or supporting Kurdish rights, if discovered, involves the same risk of persecution or Article 3 ill-treatment. Each case however, depends on its own facts and an assessment will need to be made as to the nature of the material possessed and how it would be likely to be viewed by the Iranian authorities in the context of the foregoing guidance.

(10) The Iranian authorities demonstrate what could be described as a 'hair-trigger' approach to those suspected of or perceived to be involved in Kurdish political activities or support for Kurdish rights. By 'hair-trigger' it means that the threshold for suspicion is low and the reaction of the authorities is reasonably likely to be extreme."

11. The Home Office Country Information and Guidance on Iran "Kurds and Kurdish political groups" version 2.0, July 2016 ("CIG") contains the following:

3.1.1 Kurds in Iran face discrimination which affects their access to basic services. However, in general, this level of discrimination will not reach the level of being persecutory.

3.1.2 Those involved in Kurdish political groups are however, at risk of arbitrary arrest, prolonged detention and physical abuse from the Iranian authorities . Even those who express peaceful dissent or who speak out about Kurdish rights can be seen as a general threat and face a real risk of persecution.

3.1.3 Family members of persons associated with a Kurdish political group are also harassed and detained and may be subject to inhumane treatment.

3.1.4 Where a person can demonstrate to a reasonable degree of likelihood that they are known or likely to be made known to the Iranian authorities on the basis of their membership or perceived membership of a Kurdish political group they should be granted asylum."

Error of law

12. Ms Young was entirely correct to concede that the FTT's decision contains errors of law for the reasons set out in the grounds of appeal.

Ground one – country guidance

13. The guidance in SSH and HB, in the context of this case can be summarised as follows:
- (i) as an illegal departee from Iran, the appellant would be questioned at the point of return to Iran - he will be returned without a passport, having never had any – see [97] of HB;
 - (ii) the initial questioning would be for a “fairly brief period” (at [12] of SSH the Internal Organisation for Migration considered that in the context of voluntary returnees, questioning might take a few hours);
 - (iii) if “particular concerns” arose from previous activities either in Iran or in the United Kingdom, then there would be the risk of further questioning accompanied by ill-treatment;
 - (iv) the assessment of whether “particular concerns” are likely to arise turns upon all the individual factors, considered cumulatively;
 - (v) however, as set out in HB, since 2016 the Iranian authorities have become increasingly suspicious of, and sensitive to, Kurdish political activity. Those of Kurdish ethnicity are thus regarded with even greater suspicion than hitherto and are reasonably likely to be subjected to heightened scrutiny on return to Iran.
 - (vi) in addition, the Iranian authorities demonstrate a ‘hair-trigger’ approach to those suspected to be involved in Kurdish political activities i.e. the threshold for suspicion is low and the likely reaction extreme.
 - (vii) the appellant would be expected to tell the truth when questioned;
 - (viii) the evidence suggests no appetite to prosecute for illegal exit alone, but if there is another offence, illegal exit will be added on, the cases where illegal exitees were imprisoned show much more by way of specific activity, as opposed to simple imputation – see [31] of SSH;
 - (ix) this appellant is a failed asylum seeker who exited Iran illegally but there are additional matters relevant to his history and profile, which require careful scrutiny in light of the country guidance.
14. SSH must be applied alongside BA (demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 and HB. Unfortunately, although Judge Birk considered the nature and extent of the appellant’s political activities in the UK at [30] and [32] in the context of the guidance provided in BA, in order to support his conclusion at [32] that the appellant would not come to the adverse attention of the authorities, but failed to ask herself whether “particular concerns” would arise from the appellant’s circumstances and characteristics. These include the following accepted facts:
- The appellant is a Kurd.

- He has been a low-level supporter of the KDPI in the UK and he has attended two meetings and a demonstration.
- He has posted pro-Kurdish material on his Facebook page.
- He left Iran illegally.

15. At no stage in its decision did the FTT consider whether there was a real risk of questioning (as an illegal departee from Iran) revealing these characteristics, and whether this would lead to a period of further questioning during which serious harm was reasonably likely. As the grounds of appeal point out even very low level pro-Kurdish political activities are viewed with heightened suspicion in Iran. The FTT failed to properly apply the guidance to this effect in HB. The FTT also failed to consider to what extent the appellant's activities including his Facebook posts would emerge upon return as part of the authorities' investigation into his background in order to determine whether there were any "particular concerns" - see [116] of HB. I am therefore satisfied that the FTT erred in law in its application of the country guidance.

Ground 2

16. I also accept that Ms Young was entirely correct to concede that it was unfair for Judge Birk to use her own knowledge or understanding of evangelism in the Christian faith as a barometer by which to assess the appellant's claim that he evangelised or conducted proselytising activities. I am satisfied that this has infected the finding that the appellant is not a genuine convert.

Disposal

17. I have had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I have decided that this is an appropriate case to re-make the decision myself.

Re-making the decision

18. The parties accept that the appeal should be allowed on Refugee Convention grounds because there is a real risk that the Iranian authorities' will have "particular concerns" about the appellant, by reason of the factors set out at [14] above. The appellant faces a real risk of persecution because the authorities will impute an anti-regime political opinion to him as a result of a combination of his Kurdish ethnic origin, illegal departure and low level sur place activities. I entirely accept that both parties were correct to agree that this conclusion follows from a proper application of HB, and for this reason there is no need to provide any further reasons.

19. I have overturned the FTT's adverse findings regarding the appellant's conversion to Christianity and claim to be involved in an evangelical Church.

The respondent continues to dispute this issue. However, I accept that both parties were correct to agree that given the positive conclusion that has been reached on the remainder of the appellant's asylum claim, it is unnecessary to reach any findings on this discrete aspect of his claim.

Decision

20. The FTT decision contains an error of law such that the decision is set aside.
21. I remake the decision by allowing the appeal on Refugee Convention grounds.

Signed:

Ms M. Plimmer

Judge of the Upper Tribunal

Date:

10 May 2019