



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/12725/2018

THE IMMIGRATION ACTS

**Heard at Manchester
On 17th May 2019**

**Decision & Reasons Promulgated
On 19th July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

**SA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss G Patel, instructed by Parker Rhodes Hickmotts
Solicitors

For the Respondent: Mr Tan, Home Office Presenting Officer

DECISION AND REASONS

1. The First-tier Tribunal ("FtT") has made an anonymity order and for the avoidance of any doubt, that order continues. SA is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

2. This is an appeal against the decision of First-tier Tribunal (“FtT”) Judge Mitchell promulgated on 28th January 2019. The FtT Judge dismissed the appellant’s appeal against the decision of the respondent dated 21st October 2018, to refuse his claim for international protection.
3. The appellant is a national of Iran. He was born on 1st June 1994 in Quolti, a village in the Sardasht County, Iran. Prior to his departure from Iran in or about June 2015, he lived there with his parents, a sister and a brother. The background to the claim for international protection and the events that the appellant claims lead to his departure from Iran, are summarised at paragraph [13] of the decision of the FtT Judge and I do not repeat the claim in this decision.
4. It is common ground that the appellant is a Kurdish Iranian. Beyond that, the respondent did not consider the appellant’s claim to be a credible one. The findings and conclusions of the FtT Judge are set out at paragraphs [15] to [37] of the decision. Again, I do not set out in any detail the findings that were made by the Tribunal. It is sufficient for present purposes to simply note that the FtT Judge comprehensively rejected the account of events relied upon by the appellant. In support of the appeal, the appellant had relied upon an arrest warrant that he claimed was issued on 25th May 2015, for his arrest. He claimed that the warrant had been sent to Sardasht, and by coincidence, an officer in the relevant Sardasht office knew the appellants father and informed him of the arrest warrant. The appellant’s father paid some money and arranged for the appellant’s departure from Iran. Having considered the account of events advanced by the appellant, the FtT Judge summarised his findings, at [32], as follows:

“Having considered the evidence the most that can be said about the appellant’s claim is that he has been away from the country for a significant period of time (three years, four months) and that he may well have left the country illegally. I do not accept any of the other appellant’s claim that he has been associated with PJAK or that there is a warrant in existence for his arrest for that association. The appellant may well have travelled through the IKR (Kurdish Autonomous Area); he did not live there but maybe passed through

and was therefore (*sic*) a maximum of 14 days. He cannot be described as having lived in that area.”

5. The FtT Judge referred to the country guidance decision of SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00306 (IAC), and found, at [34], that the appellant would be able to demonstrate his identity and nationality by simply contacting his family to obtain documentation, or being interviewed by the Iranian authorities.
6. The FtT Judge also referred to the country guidance set out in HB (Kurds) Iran CG [2018] UKUT 00430 (IAC). At paragraph [36], the FtT Judge concludes as follows:

“I do not consider that any of the material produced by the appellant’s representatives undermines the country guidance cases. The appellant does not appear to have any elements which would actually create a risk to him apart from his ethnicity and his time out of, and his illegal entry (*sic*) from the (*sic*) Iran. He has not undertaken any political activities. There are no outstanding matters against the appellant in Iran. I consider the appellants claim has been fabricated and it is without foundation. I therefore dismiss the appellant’s appeal under the Refugee Convention. His claim for humanitarian protection is based on the same facts as a consequence must be dismissed...”

The appeal before me

7. Although set out as three grounds of appeal, the appellant criticises the Judge’s assessment of the risk that the appellant claims to face, upon return as a young Kurdish male, without documents, in light of the Country Guidance decision in HB (Kurds) Iran CG. It is said that the FtT Judge failed to consider whether the appellant would be at risk on return as an undocumented returnee. It is said that the appellant will be questioned on return at the airport, and he will be detained. It is said that he cannot be expected to lie about his basis for claiming asylum in the UK, and that the appellant will be perceived as an individual involved in assisting PJAK members, irrespective of whether the appellant’s account has been found by the Tribunal, to be credible. The appellant claims that having accepted, at [32], that the appellant has been away from Iraq for a significant period of time, that he may have left legally, and he may

have travelled through the IKR, the FtT Judge failed to address the risk upon return that the appellant is exposed to, in light of the country guidance.

8. Permission to appeal was granted by FtT Judge Foudy on 18th March 2019. The matter comes before me to consider whether the decision of the FtT involved the making of a material error of law, and if so, to remake the decision.
9. Miss Patel submits that regardless of the findings made by the FtT Judge, the issue is the risk that the appellant is exposed to, upon return as an Iranian national, of Kurdish ethnicity, who left Iran illegally. She submits that the FtT Judge found, at [32], that “... *the most that can be said about the appellant’s claim is that he has been away from the country for a significant period time... and that he may well have left the country illegally.... The appellant may well have travelled through the IKR...*”, and that those factors alone, place the appellant at risk upon return. She submits that as an undocumented returnee, the appellant will undoubtedly be questioned, and the fact that he travelled through the IKR, is reasonably likely to result in additional questioning by the authorities on return. She submits that it is the perception of the appellant in the eyes of the Iranians authorities that is important, and the country guidance establishes that the authorities demonstrate what could be described as a ‘*hair-trigger*’ approach, to those suspected or perceived to be involved in Kurdish political activities or support for Kurdish rights.

Discussion

10. At paragraph [13] of his decision, the FtT Judge carefully records the appellant’s account of the events leading to his departure from Iran. The findings and conclusions of the Judge are set out at paragraphs [15] to [36] of the decision. The FtT Judge rejected the appellant’s account of the events that he claimed occurred, and the findings reached by the Judge

are not challenged. The Judge had the benefit of hearing from the appellant, and of having his evidence tested in cross-examination. It was for the appellant to establish that there is a reasonable degree of likelihood that he faces a risk upon return, and it was for the Judge to make his findings on whether, and to what extent, the appellant's account is credible. The adverse credibility findings made by the Judge were plainly open to the Judge, and cannot be said to be perverse, irrational or unreasonable, or findings that were wholly unsupported by the evidence. The FtT Judge rejected the appellant's claim that he has been associated with PJAK, and his claim that there is a warrant in existence for his arrest, for that association.

11. The focus of the appellant's grounds of appeal and the submissions made before me by Miss Patel, relate to the Judge's assessment of the risk upon return, and rests upon three features of the appellant's case. First, he has been away from the country for a significant period of time. Second, he left the country illegally and third, he may well have travelled through the IKR.
12. At paragraphs [33] and [34] of his decision, the FtT Judge refers to the headnotes from the country guidance decisions in SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 and HB (Kurds) Iran CG [2018] UKUT 00430.
13. The appellant is an Iranian male and even without a passport, is returnable to Iran on a *laissez passer*. The FtT Judge found, at [34], that the appellant would be to demonstrate his identity and nationality by simply contacting his family to obtain documentation or by being interviewed by the Iranian authorities. As to what would happen to a failed asylum seeker who had left Iran illegally, in SSH and HR (illegal exit: failed asylum seeker) Iran CG, the Tribunal stated, 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 co-operated 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...."

14. The Country guidance establishes that a returnee without a passport is likely to be questioned on return. The treatment the appellant would receive will depend on his individual case. In SSH and HR, the Tribunal concluded that if the returnee "... *co-operated 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...*" The Tribunal concluded 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. The appellant is, as Miss Patel accepts, a failed asylum seeker. His claim has been found not to be credible and if he tells the truth when questioned, his profile is that of an individual with no history, other than that of being a failed asylum seeker who had exited illegally.
15. In HB (Kurds) Iran CG, the Tribunal concluded that 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. The Tribunal identified, at paragraphs [6] to [9] of the headnote to the country guidance, 'other factors' which, when combined with the individual's Kurdish ethnicity, may create a real risk of persecution or Article 3 ill-treatment.

16. Having carefully considered the appellant's claim, the FtT Judge found that the appellant has not undertaken any political activities, and there are no outstanding matters against the appellant in Iran. The Judge found that the appellant's claim has been fabricated and is without foundation. Having made his findings, the task of the FtT Judge was to consider what would happen to the appellant on return, in light of those findings.
17. Having properly referred to the relevant country guidance, it was in my judgement open to the FtT Judge to conclude that the appellant does not appear to have any elements which would actually create a real risk to him apart from his ethnicity, his time out of Iran, and his illegal exit from Iran. Although the threshold for suspicion is low, the appellant is not, on the facts as found by the FtT Judge, an individual who would be suspected of, or perceived to be involved in Kurdish political activities, or support for Kurdish rights.
18. The decision must be read as a whole and when properly read, in my judgement, on the unchallenged findings made by the Judge, it was open to the Judge to conclude that the appellant is not at risk upon return. The decision is one that was open to the Judge, and cannot be said to be perverse, irrational or unreasonable. The appellant's grounds of appeal amount to nothing more than a disagreement with a conclusion that was properly open to the Judge.
19. It follows that in my judgment, the decision of FtT Judge Mitchell is not infected by a material error of law and I dismiss the appeal.

Notice of Decision

20. The appellant's appeal against the decision of FtT Judge Mitchell is dismissed and the decision of the FtT Judge is to stand.
21. I continue the anonymity direction previously made.

Signed
2019

Date

21st June

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT

FEE AWARD

I have dismissed the appeal but in any event, as no fee is payable, there can be no fee award.

Signed

21st June 2019

Deputy Upper Tribunal Judge Mandalia