



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

Appeal Number: PA/08136/2019

THE IMMIGRATION ACTS

**Heard at Manchester CJC
On 12 March 2020**

**Decision & Reasons Promulgated
On 19 March 2020**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

**AKA
[ANONYMITY DIRECTION MADE]**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr I Majid, instructed by Minority Development & Advocacy

For the respondent: Mr a McVeety, 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 direction. 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 appellant(s).

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Brookfield promulgated 3.12.19, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 5.8.19, to refuse his claim for international protection made on the basis of a well-

founded fear of persecution or a real risk of serious harm arising out of activities as a smuggler (Kolbar) of illicit goods, including alcohol and tobacco, across the Iraqi/Iranian border. He claimed to have been ambushed and his uncle injured but that he escaped. He also claimed that he did not attempt to get status in Iran because of his father's involvement with the KDPI.

2. Judge Brookfield found the appellant's factual claim not credible, concluding that he had fabricated the account and was not at risk from the Iranian authorities on return, being no more than a failed Kurdish asylum seeker with no political profile. The appeal was, therefore, dismissed.
3. In essence, the grounds assert that the First-tier Tribunal Judge erred in law in relation to the issue of the appellant's nationality and his sur place political activities, attending demonstrations and making Facebook posts.
4. First-tier Tribunal Judge Osborne granted permission to appeal on all grounds on 15.1.20, find it arguable that the judge failed to make a specific finding on the appellant's nationality which was identified in the refusal decision as a matter in dispute.

Error of Law

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that it should be set aside.
6. I confirmed at the outset of the hearing that it was the appellant's case that he is a de facto Iranian national but without documentation. Mr McVeety confirmed that although the respondent did not accept that he was Iranian, on his claim to be so, he would be returned to Iran. It was also confirmed that his family, including his mother continues to reside in Iran. His father passed away some years ago.
7. In relation to nationality, the appellant claimed that his mother is an Iranian national but that he was unsure of his father's nationality. He claimed to have been born in Iraq and that he and his family members all had Iraqi ID documents. However, his family relocated to Iran when he was 7 years of age. He claims that because of his father's involvement with the KDPI, the family did not attempt to get status in Iran.
8. At [26] of the refusal decision, it is pointed out that to obtain an Iraqi ID card one of the parents has to be an Iraqi national; CSID cards are only issued to Iraqi nationals. That would suggest that at least one of his parents is Iraqi. The respondent gave consideration to whether the appellant was an Iranian national because of his mother's claimed Iranian citizenship. At [32] of the refusal decision the respondent concluded that "it is considered that your claimed Iranian nationality is in (sic) unknown." Mr McVeety accepted it was left up in the air without a positive assertion that the appellant is of any other nationality. At [33] it was not accepted that he is an Iranian national, although at [36] it was accepted that he is of

Kurdish ethnicity. At [55] the respondent concluded that his nationality is unknown and at [62] it was not accepted that he is a national of Iran.

9. The primary ground is that the judge should have resolved the issue of disputed nationality. At [2] the grounds assert that the First-tier Tribunal Judge failed to make a clear determination on the appellant's nationality, which, it was submitted, "is a crucial point in this case and formed the main basis on which the Home Office refused the appellant's claim for asylum". The appellant had relied on an expert report as to nationality, which does not appear to have been addressed in the First-tier Tribunal decision. Mr McVeety accepted that the judge should have made a finding on nationality but argued that the failure to do so was not in fact material to the outcome of the appeal.
10. It is clear from a reading of the decision that Judge Brookfield proceeded throughout on the assumption that the appellant is an Iranian national and would be returned to Iran, finding, for example at [11(xx)] that there would be no risk on return to Iran and that his family would be able to have Iranian documentation issued for him and forwarded to him in the UK, which would in turn enable him to obtain either a laissez-passer, or an Iranian passport, and that he would not be at risk of persecution or serious harm on return to Iran.
11. As set out above, the refusal decision did not accept that the appellant was a national of Iran and found that he had failed to establish a real risk of persecution or serious harm in Iran. His nationality was found to be unknown. However, at [63] the respondent proceeded to consider the appellant's claim on the basis of a risk on return to Iran, "as this is the country of which you claim to be a national, the Home Office will argue that you are not a national of that country, so the appeal must fail." At [64] the refusal decision states, "Notwithstanding that conclusion, if the Tribunal considers that you are in fact a national of Iran and that there is no risk on return, you will be returned to Iran."
12. As stated above, the First-tier Tribunal Judge proceeded on the basis that the appellant will be returned to Iran, which is the nationality he claimed in his screening interview. For the cogent reasons set out in the decision, the claim of a well-founded fear of persecution or a real risk of serious harm on return to Iran, which was the entire basis of the appellant's claim, was rejected and there has been no appeal against the adverse credibility findings. Thus, if the appellant is returned to Iran, where he says he has lived since the age of 7 and where his family continue to reside, he will not face any risk entitling him to international protection.
13. Whilst the judge did not resolve the issue of nationality, the judge proceeded on the basis of the appellant's claimed Iranian nationality, accepting that he had at present no Iranian ID documentation. Although the respondent did not accept his claimed nationality, there was no counter-claim or assertion that he was of any other nationality. The appellant's case was therefore taken by the Tribunal at its highest, on the basis of return to Iran. If the appellant claims to be Iranian, the Home

Office has confirmed that he will be returned to Iran, where his family live. However, he will face no risk entitling him to international protection. In the circumstances, it cannot be a material to fail to decide the issue of nationality. In essence, by default, the judge proceeded on the basis of accepting the claimed Iranian nationality. It follows that there can be no material error of law in this regard.

14. The other grounds relate to whether the appellant could delete his Facebook account and be safe on return and his *sur place* attendance at demonstrations. It is argued that the fact that the appellant is a 'Facebook activist' is sufficient to put him at risk on return as a low-level activist. It is asserted that the appellant cannot be required to delete his Facebook account. This ground has no merit in the light of the judge's rejection of his political activism as being not genuine. The appellant failed to provide evidence as to whether his account was set for private viewing by friends only or were in the public domain. At [11(xviii)] the judge pointed out that Facebook posts can be manipulated, including the dates of posting, and the appellant failed to produce a copy of his activity log. Further, if the appellant has no genuine political interest, as found by the judge, he is not entitled to be protected in a lie and there is no reason why he cannot permanently delete his account, or individual postings, before return to Iran. Mr McVeety pointed out that the case law is to the effect that there is no risk to low-level attendees at meetings or demonstrations unless they are already known to the authorities. However, there was no evidence that the Iranian authorities were aware of him or his posts, which seemed unlikely to the judge, given that he has no formal Iranian status and there was no evidence that the Iranian authorities were now or ever had been aware of his former presence in Iran, or that he was resident in Iran, given his claimed lack of Iranian identity documentation.
15. The same point relates to *sur place* participation at demonstrations; there is no reason for the Iranian authorities to link the appellant as a person of adverse interest, as the judge found at [11(xiii)]. On his own account he cannot be known to the Iranian authorities as he has never been documented in Iran. It was for those reasons that the judge was entitled to conclude at [11(xix)] that the appellant would be of no adverse interest to the Iranian authorities as a result of *sur place* activities in the UK. There is no error of law in this regard.
16. For the reasons set out above, none of the grounds demonstrate any material error of law in the decision of the First-tier Tribunal.

Decision

17. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

A handwritten signature in black ink, consisting of a stylized 'A' followed by a vertical line and a loop.

Signed

Upper Tribunal Judge Pickup

Dated 12 March 2020