Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/11702/2019**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On the 23rd February 2021	**On the 29th June 2021**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

AJH
(ANONYMITY ORDER IN FORCE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Schwenk, Counsel instructed by Freedom Solicitors
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make this order because the appellant is an asylum seeker and is entitled to anonymity.
2. This is an appeal by an Iranian Kurd against a decision of the respondent on 15 November 2019 refusing his protection claim.

3. The First-tier Tribunal heard evidence and found that the appellant has been untruthful. He claimed asylum on his arrival in the United Kingdom on 9 March 2018. He said then that he was 17 years old, having been born in August 2000. He was not believed by the local authority or by the judge although, as the judge noted at paragraph 3, on any version of events the claimant was over 18 when he was interviewed about his claim on 14 June 2019.

4. The claimant had no identity documents. He said that he came from a border village near Iraq and was regularly involved in smuggling goods across the border.

5. He said that he faced a real risk of persecution from the Iranian authorities because he is a supporter of the Komala Party and the authorities found items at his home near to the border with Iraq that he collected to pass on to his cousin who was a member of the Komala Party.

6. The appellant claimed that his home was raided before the items were collected. His father was beaten during the raid. The appellant's brother-in-law was angry with the appellant for putting the family in danger but nevertheless helped him escape.

7. The appellant has claimed to have attended three demonstrations against the Iranian regime outside the Iranian Embassy in London and to have posted photographs and comments on his Facebook page critical of the Iranian regime and its treatment of the Kurdish people.

8. The judge did not believe the appellant's evidence about the home being raided and items being found there. Neither did the judge believe the appellant's account of being "politicised by Kurdish politics, by his cousin or by anyone else."

9. The judge noted the appellant relied on sur place activities which the judge described as "not extensive" but included attendance at three demonstrations outside the embassy. There were photographs which the judge found did not show that the appellant aligned himself with a KDP group but the judge said:

> "I accept that he may have attended the embassy and turning away from the embassy held a photo of the Supreme leader with a red line across it. This Appellant has no adverse profile with the Iranian authorities. I do not accept that the extent of his involvement with demonstrations outside the embassy can be viewed as sufficient to identify him or bring him to the adverse attention of the authorities before or after his return."

10. The judge went on to say that there were only a limited number of Facebook posts covering only a short period of time mostly leading up to the hearing before her. The judge found no way of knowing how long the pictures had been posted or if they had been placed and deleted immediately.

11. Crucially, at paragraph 35 the judge said:

> "This Appellant has shown a propensity to lie when it is in his best interests. I am not satisfied that he is genuinely committed to Kurdish politics. I find that if questioned on his return about his Facebook account he will lie about it and he will ensure that any damaging materials have been removed from his Facebook account. He is not politically driven and that will not be a betrayal of his conscience."

12. However, the judge found that the claimant had left Iran illegally but was not satisfied that the post would expose him to real danger.

13. Permission to appeal was granted by Upper Tribunal Judge Norton-Taylor, who, at paragraph 3 of his grounds, said:

> "I note that at [35] the judge found that if questioned on return about the Facebook account, the appellant would 'lie about it'. This is arguably an erroneous view to have taken. The point is covered by ground 3."

14. It is, I think, apt to remind myself that the decision that a person cannot be expected to lie about their loyalties and beliefs when confronted by the authorities is not some kind of urban myth but is based very firmly on a particularly authoritative decision of the Court of Appeal in **RT (Zimbabwe) [2010] EWCA Civ 1285**. Clearly, it would substantially diminish the role of the role of the Refugee Convention in protecting people from persecution if their claims could be answered by telling them to go back to their country of nationality and deny the beliefs, opinions or characteristics that create the risk. Any lurking doubt on this point was resolved by the Supreme Court in **HJ (Iran) v SSHD [2010] UKSC 31**. However, that does not apply seamlessly to the case of someone who has *pretended* to have certain characteristics or professed certain beliefs but who would not be required to deny their true fundamental identity or opinions to avoid persecution because in truth they had never adopted such things. The point was considered by the Court of Appeal in **TM (Zimbabwe) v SSHD [2010] EWCA Civ 916**. The decision in **TM (Zimbabwe)** was scrutinised in **RT (Zimbabwe)**. At paragraph 33 Carnwath LJ (as he then was) set out paragraph 41 of the judgment in **TM (Zimbabwe)** where Elias LJ said:

> "41. On that analysis, there is a good case for saying that where the activity which would create the risk of persecution is the need to deny disloyalty to a political party by someone whose political interests or activities are of marginal interest to their lives, this engages only the margins of their human rights and the AIT would be entitled to conclude that they would in fact be, and could be expected to be, less than frank with the Zimbabwe authorities. They would not be required to modify their beliefs or opinions in any real way. It is one thing for a person to be compelled to deny a crucial aspect of his identity affecting his whole way of life, as in *HJ*. Furthermore, the individual is then forced into a permanent state of denial. The Supreme Court found it unacceptable that someone should have to live a lie in order to avoid persecution. It does not necessarily follow that in no circumstances can someone be expected to tell a lie to avoid that consequence."

15. This is exactly the approach adopted by the First-tier Tribunal Judge in this case. The judge has found that the appellant is dishonest and that he would be dishonest with the authorities in Iran if they challenged him and would not be denying something fundamental to him by denying any support for or interest in Kurdistan separatism.

16. It is an approach that was disapproved in **RT (Zimbabwe)**. I set out below paragraphs 35 and 36 of the judgment in **RT (Zimbabwe)**. The court said:

> "35. In the present cases, whether or not the point was properly raised at the earlier stages, we think we should grapple with it, since it is of considerable practical importance to many people in a similar position to that of the

appellants. As we understand it, neither party objects to us doing so. Although we do not find the point an easy one, we have concluded that the distinction suggested by Elias LJ, and developed in Mr Payne's submissions, is not valid, nor supported by a proper reading of Sir John Dyson's comments.

36. It may be said that there is marked difference in seriousness between the impact of having to lie on isolated occasions about political opinions which one does not have, and the 'long-term deliberate concealment' of an 'immutable characteristic', involving denial to the members of the group their 'fundamental right to be what they are' (see per Lord Hope para 11, 21). We are not persuaded, however, that this is a material distinction in this context. The question is not the seriousness of the prospective maltreatment (which is not in issue) but the reason for it. If the reason is political opinion, or imputed political opinion, that is enough to bring it within the Convention. In this case, we are concerned with the 'imputed' political opinions of those concerned, not their actual opinions (see para 4 above). Accordingly, the degree of their political commitment in fact, and whether political activity is of central or marginal importance to their lives, are beside the point. The 'core' of the protected right is the right not to be persecuted for holding political views which they do not have. There is nothing 'marginal' about the risk of being stopped by militia and persecuted because of that. If they are forced to lie about their absence of political beliefs, solely in order to avoid persecution, that seems to us to be covered by the *HJ (Iran)* principle, and does not defeat their claims to asylum.

37. Accordingly we accept the thrust of Mr Norton-Taylor's second submission, if not the precise wording. It is not a question of what the claimant is 'required' to do. However, if the Tribunal finds that he or she would be willing to lie about political beliefs, or about the absence of political beliefs, but that the reason for lying is to avoid persecution, that does not defeat the claim."

17. I have reminded myself of Ms Cunha's submissions and also the Rule 24 notice signed by Ms Rhona Pettersen, Senior Home Office Presenting Officer, and dated 9 July 2020. I incline to the view that it is not a material error for the judge to have referred to "KDP" when the judge should have referred to "Komala". It is clearly a mistake that ought not to have happened but the judge's point lay in the sincerity of the opposition rather than the name of the party.

18. I cannot follow the judge's reasoning at all about the possibility of the Facebook entries being deleted almost as soon as they had been posted. There is evidence of some limited circulation and evidence of them being kept on the record at least from posting in August 2018 until the print-off in January 2020. However, these things are peripheral. What the judge has not considered properly is the risk generated by the appellant being interviewed in the event of his return. It is almost certain that he would be interviewed. He has been out of the country some time, he is a Kurd and he would be travelling from the United Kingdom. In the guidance given in **HB (Kurds) Iran CG [2018] UKUT 430 (IAC)** the Tribunal was clear to emphasise how very low level involvement might create a risk and used the phrase "hair-trigger" to describe the attitude of the authorities.

19. I have already indicated that it was not open to the judge to say that the applicant could defeat the claim by lying. That was clearly a misdirection.

20. I have no hesitation in saying the First-tier Tribunal erred in law and setting aside its decision.

21. Further, after giving the matter considerable thought, I have decided that this is an appeal that has to be allowed on its own facts. The appellant is a Kurd. He will be returned in circumstances that attract attention. He will be questioned. He may very well be inclined to lie. That has been established uncontroversially on the evidence. However, it is equally plain that he is a rather bad liar because he has been identified as dishonest both by the Secretary of State and by the First-tier Tribunal. There really is no reason to think that he would be any more successful in his efforts to deceive the immigration authorities in Iran. He can be expected to be asked about any political activity in which he was involved and he will not know how much the Iranian authorities know. There is no direct evidence that they have photographed him or otherwise recorded of him or any way of identifying him but the doubt must be there. He risks a lot by making a flat denial of any political involvement and as I have already indicated, he cannot be expected to do that. He is somebody who faces a real risk of being interrogated and that interrogation revealing political activity opposing the Iranian regime and promoting Kurdistan separatism albeit he says insincerely.

22. The reaction of the authorities in the event of the appellant's return to Iran is hard to predict. They might be indifferent but if they are not then he risks severe consequences.

23. I am quite satisfied that there is a real risk to this man being identified as a political opponent and persecuted in the event of his return, not because his circumstances are meritorious but because the Iranian regime has little patience or indulgence towards its opponents.

24. I set aside the decision of the First-tier Tribunal and I substitute a decision allowing the appeal.

Notice of Decision

25. The First-tier Tribunal erred in law. I set aside its decision and I substitute a decision allowing his appeal.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal Dated 25 June 2021