



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002351

First-tier Tribunal No: PA/00272/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

5th September 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

FHM
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person.

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

Heard at Phoenix House (Bradford) on 4 September 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Forster ('the Judge'), promulgated on 29th January 2022 in which the Judge dismissed his appeal against the refusal of his protection and human rights claims.
2. The appellant has, throughout, claimed to be an Iranian citizen but that claim was disputed by the Secretary of State. The appellant initially claimed asylum on 17 August 2007. The appellant claimed at that stage that he could not return

- to Iran as a result of his imputed political opinion arising from his father's involvement with the KDPA, his association with the part in the UK, and because of his Kurdish ethnicity. The application was refused by the Secretary of State and the appellant's appeal against that refusal eventually came before First-tier Tribunal Judge Hands sitting at North Shields on 10 April 2013.
3. In a decision promulgated on 22 April 2013 Judge Hands considered a number of issues, the first of which was the appellant's nationality. Judge Hands had available to her a Sprakab report which had concluded to a high degree of certainty that the appellant is Iraqi and is unlikely to be Iranian. Judge Hands, having considered this evidence together with the arguments put forward by the appellant's representative, concluded she was entitled to place considerable weight on the evidence presented from Sprakab. Judge Hands also concluded that as the appellant was also unable to provide the date of the hearing in the Iranian calendar, he is unlikely to have a linguistic background found in Iran and it is unlikely that he is a native of Iran.
 4. In relation to the credibility of the appellant's claimed events in Iran Judge Hands wrote:
 24. The discrepancies in the Appellant's account of the events leading to his departure from Iran and the illogicality of the method by which he claims to have become wanted by the authorities in Iran leads me to find that he is not a witness of truth and that his account of events cannot be relied upon. I find that he has fabricated the story in order to substantiate his erroneous claim for asylum and that he has in fact travelled to the United Kingdom for reasons known only to him. I am not satisfied he has told the truth about his life whether it be in Iran or elsewhere. The skeleton argument refers to a lot of background material about life in Iran and the restriction of freedom in connection with political matters but the Appellant has failed to provide a credible account of events in respect of his imputed support of the KDPI in Iran and his claimed involvement with the KDPI in the United Kingdom and I do not find he was so involved.
 25. Taking the Appellant's claim at its highest, the Appellant is a young man, now aged 24 who lived his life as a shepherd, the son of a farmer and part of a family of five until the age of 17 years and seven months. He lived in his father's house with his family. I found the Appellant to be evasive and to prevaricate when being examined, even by his own representative. He was willing and able to give opinions of his own about matters but was unable to provide evidence to substantiate those opinions. He has not been consistent or reliable in the evidence he has placed before me. The Appellant's account of events since his arrival in the United Kingdom appears to me to be opportunistic and based on facts that would establish a reason for him to be granted asylum. His inability to provide consistent evidence in respect of dates and where he has attended meetings in support of the KDPI in the United Kingdom, and I do not accept his claimed illiteracy is to blame as he has been able to attend college in the United Kingdom to learn English as well as find work in a takeaway shop, leads me to find that he is not a credible witness and that his account of events cannot be relied upon.
 5. Judge Hands indicated it is more likely the appellant is a citizen of Iraq but states as that was not an issue on which she was required to make a decision she did not do so.
 6. Although the Judge Hands decision was not successfully appealed the appellant was granted discretionary leave on 12 June 2014 to expire on 11 December 2016, which was extended to 29 September 2019. Further submissions made on 5 October 2019 were rejected on 1 December 2020. It was the appeal against that decision which was considered by Judge Forster.
 7. The Judge took as the starting point the decision of Judge Hands in accordance with Devaseelan principles. The Judge noted the appellant's immigration

history, his case, the Secretary of State's case, the applicable legal framework, and the evidence before setting out findings from [15] of the decision under challenge.

8. The Judge notes the basis on which Judge Hands rejected the appellant's appeal and found he was not an Iranian national.
9. At [24] the Judge finds that the appellant had not presented any new evidence to establish that he is Iranian contrary to Judge Hands finding. That is a finding in accordance with the evidence considered by the Judge. The appellant was asked at the error of law hearing what was wrong with that finding, as part of the exercise of establishing whether the Judge had erred in law in a manner material to the decision to dismiss the appeal, but apart from repeating his claim to be Iranian, disagreeing with the findings of both judges that he is not, expressing his disagreement with the Sprakab report, and making an unfounded assertion that the Judge failed to consider or to weigh the evidence properly, the appellant was not able to establish legal error, let alone material error.
10. The appellant did provide some new evidence to which the Judge made specific reference at [27] of the decision under challenge. Having considered that material, and submissions made on the same, the Judge writes at [34]:

34. The "new evidence" submitted by the Appellant to support his new claim gives me no reason to go beyond the findings made by Judge Hands in 2013. The Appellant relies on facts that are not materially different from those put to the previous Judge. I regard the issue of the Appellant's nationality, his claim to be at risk in Iran and his political activity in Iran, to have been settled by the previous Judge. I reach the same conclusions about the Appellant's credibility and find him to be an unreliable witness. I make findings in line with the previous determination rather than allowing the matter to be re-litigated.

11. The appellant, despite his best efforts, was unable to identify any legal error in the Judge's findings. The appellant had to be reminded that the scope of the error of law hearing was restricted to establishing whether the Judge had erred in law in a manner material to the decision to dismiss the appeal and that the hearing was not an opportunity to for him to try and undermine all the previous evidence. It is clear that the appellant disagrees with the Judges decision, does not agree with the weight the Judge gave to the evidence, and has relied upon issues before me that are not set out in the application for permission to appeal or grant of permission to appeal. I find the appellant has not established legal error material to the Judge's decision.
12. The Judges conclusions are set out from [38] in which it is found the appellant had not demonstrated to a reasonable degree of likelihood he faces a risk of persecution, had not established he is Iranian, did not claim to be at risk in Iraq, that the Secretary of State intends to return the appellant to Iraq and to the IKR as he is a Kurd, it is likely the appellant has remained in contact with his family who are in Iraq, and that he he will have the necessary documents to enable him to return to that country.
13. The appellant is a litigant in person for which allowance has been made, but even doing so I do not find the appellant has established the Judge's findings are outside the range of those reasonably open to the Judge on the evidence. The Judge clearly considered the evidence with the required degree of anxious scrutiny. The findings are within the range of those reasonably open to the Judge on the evidence. The appellant's disagreement with the same and desire for a more favourable outcome to allow him to remain in the United Kingdom is not sufficient. No procedural unfairness is alleged or made out.

Notice of Decision

14. The First-tier Tribunal has not been shown to have materially erred in law. The appeal is dismissed.

C J Hanson
Judge of the Upper Tribunal
Immigration and Asylum Chamber
4 September 2023