



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

Case No: UI-2024-003039

First-tier Tribunal No:
PA/58106/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 16th of October 2024

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

**BZ
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Greer, of Counsel, instructed by Broudie Jackson Canter

For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

Heard at Field House on 15 October 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant 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. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Iran born in 1998. He came to the UK by inflatable boat on 14th September 2021 and claimed asylum on arrival. The appellant's appeal against the decision of 26th September 2023 was dismissed by First-tier Tribunal Judge Ruck in a decision promulgated on 4th May 2024.
2. Permission to appeal was granted by Upper Tribunal Judge Hoffman on 30th July 2024 on the basis that it was arguable that the First-tier judge had erred in law in failing to consider the implications of the appellant being questioned by the authorities on return to Iran, applying HB (Kurds) Iran CG [2018] UKUT 430, and given the findings that he had worked as a Kolbar. It is also arguable that the First-tier Tribunal wrongly expected the appellant to explain how the Iranian authorities became aware that he had smuggled political leaflets; had wrongly found that he had given inconsistent evidence about smuggling leaflets for the KDPI; and had wrongly found he had given inconsistent evidence about how he discovered that the authorities wanted to arrest him. Permission was granted to argue all grounds.
3. The matter now comes before me to determine whether the First-tier Tribunal had erred in law, and is so whether any such error was material and whether the decision of the First-tier Tribunal should be set aside and remade.

Submissions – Error of Law & Remaking

4. In the grounds of appeal and in oral submissions from Mr Greer it is argued, in short summary, that the First-tier Tribunal erred in law as follows.
5. Firstly, it is argued, that the First-tier Tribunal erred by failing to take into account the appellant's risk profile at the pinch point of his return to Iran and failing to make findings on this basis of appeal which was put to the First-tier Tribunal. It is argued that as a Kurd who left Iran illegally, which will be obvious to the Iranian authorities as he will be travelling on a travel document issued in the UK and due to his speaking Sorani, and as someone whom it is accepted to have smuggled contraband, working as a Kolbar, and who it is accepted has attended an anti-Iranian regime political demonstration and Christian worship that the appellant ought to have been found to be at risk on return to Iran as he will be questioned about this on entry, and face a real risk of persecution when subjected to further questioning by the Iranian authorities in the context of his Kurdish identity regarding his previous smuggling work into Iraq, the centre of the Kurdish resistance, and for demonstrating against the Iranian state and associating with

Iranian apostates. It is not relevant that the appellant is found to have done these things to enhance his asylum claim or that he is not currently known to the Iranian authorities as this will become known when he is questioned on entry to Iran.

6. It is argued that if this ground is accepted then it follows that the appellant is a refugee based on the findings of the First-tier Tribunal by application of the country guidance in HB (Kurds) Iran and SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 308.
7. In the second ground it is argued that there is an error of law when considering the probability of the appellant's account of being sought by the authorities for smuggling political materials in Iran. It is found to be implausible that the authorities came looking for him after 3 days but, it is argued, that conclusion is not based on any evidence.
8. In the third ground it is argued that weight is given to immaterial matters due to semantic quibbles leading to a finding that the appellant is not a credible witness. At paragraph 15 of the decision it is said that the appellant is inconsistent because he said he was repeatedly asked to do armed men favours but was afraid to do the favours, which, it is argued, makes no sense. At paragraphs 16 and 17 of the decision the appellant is criticised for not being able to explain how the Iranian secret police became aware of his involvement with smuggling when clearly secret police do not disclose their ways of operating. At paragraph 18 again elements of evidence are identified which are said to be inconsistent but which are not, it is argued, logically so.
9. There was no Rule 24 notice for the respondent but at the beginning of the hearing Mr Mullen said that he intended to defend the decision of the First-tier Tribunal. However when I asked him to respond to the first ground of appeal he said that on reflection he agreed that the First-tier Tribunal had failed to deal with the argument of the appellant being at risk at the point of return, and he accepted that on the basis of the positive findings of the First-tier Tribunal that the appellant was entitled to succeed in his appeal, and agreed that the appeal should be remade allowing the appeal on asylum and human rights grounds.

Conclusions - Error of Law & Remaking

10. It is accepted by the respondent that the appellant is a citizen of Iran of Kurdish ethnicity who exited Iran illegally, as set out at paragraph 9 of the decision. It found that he had worked as a Kolbar smuggling cosmetics, electrical items, medical products and alcohol into Iran from Iraq at paragraphs 13 to 14 of the decision. The First-tier Tribunal seems to find, to the lower civil standard of proof, that the appellant attended the demonstration in London against the Iranian regime on 25th February 2024 and also that he has posted anti-regime materials on Facebook at paragraphs 26 and 31 of the decision, albeit it is found that these things were done to bolster his protection claim and not out

of genuine political belief. It is also accepted that he has been attended the Christadelphin Church in Liverpool Bible study classes between November 2023 and April 2024, but again not out of genuine belief but to bolster his protection claim.

11. Applying HB (Kurds) Iran SSH and HR (illegal exit: failed asylum seeker) Iran CG it is found by consent that as a person who has left Iran illegally the appellant will be questioned by the authorities on return, and that it will be obvious that he is of Kurdish ethnic origin at that point, and that he will be asked about whether he has been involved with illegal activities abroad and about his asylum claim, and if he tells the truth about his smuggling activities in Iran, which formed part of his asylum claim, and his UK activities undertaken to bolster his (untrue) asylum claim that he will be at real risk of serious harm during interrogation by the Iranian authorities on account of his imputed political opinions.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal.
3. I re-make the decision in the appeal by allowing it on asylum and human rights grounds.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

15th October 2024