



**Upper Tribunal
(Immigration and Asylum Chamber)**
AA/11030/2013

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Manchester
On 7th May 2014**

**Determination Sent
On 23rd July 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE HARRIS

Between

**MR MIRAN ABDULZARDA
(NO ANONYMITY ORDER MADE)**

First Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Nicholson, Counsel
For the Respondent: Mr A McVeety, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant was born on 1st September 1991. He claims to be a citizen of Iran. The Appellant claims to have arrived in the United Kingdom on 5th October 2013 travelling clandestinely in the back of several lorries. He claimed asylum on 15th October 2013. The Appellant's application for asylum was based upon a fear that if returned he would face mis-treatment due to his political opinion. His

application for asylum and for consideration for a claim for humanitarian protection and under the European Convention of Human Rights was refused by a reasons for refusal letter by the Secretary of State dated 30th November 2013.

2. The Appellant appealed and the appeal came before Judge of the First Tier Tribunal Thorne sitting at Manchester on 7th February 2014. In a determination promulgated on 25th February 2014, the Appellant's appeal was dismissed on all grounds.
3. On 3rd March 2014, the Appellant lodged grounds of appeal to the Upper Tribunal. Those grounds specifically contended that the Appellant maintains that the First Tier Tribunal Judge erred in failing to give any adequate consideration to whether the Appellant is a non-Iranian Kurd would be persecuted or subjected to inhuman or degrading treatment if returned to Iran, (the only country named in the Removal Direction).
4. Permission was granted by First Tier Tribunal Grant on 14th March 2014. Whilst noting the grounds of appeal the Judge granting permission considered that it was more correct to assert that the First Tier Tribunal Judge having found that the Appellant was not an Iranian National or to have allowed the appeal to the extent that it was remitted back to the Secretary of State to reconsider the issue of nationality and/or destination on removal, and that therein lay the arguable error of law.
5. On 3rd April 2014 the Secretary of State responded to the grounds of appeal under Rule 24. That response noted that a Section 10 removal decision has been made in respect of this matter, and that the country of destination was the proposed destination not the actual destination and that that allowed the Appellant to appeal and to establish a claim from where he came from. The Secretary of State did not necessarily accept that assertion and that a Section 10 decision is the Immigration decision which triggered a right of appeal and that removal directions on the other hand are very different from a decision to remove. The Rule 24 response noted that a removal decision could only be made to a country from which a person is a national or if there are reasonable grounds to believe that a country may admit the person. The Rule 24 Response contended that the First Tier Tribunal Judge was right to dismiss the appeal as the Appellant has failed to show that he is outside the country of his nationality and was unable to, or owing to such fear, unwilling to avail himself of the protection of that country.
6. It is on that basis that the appeal comes before me. The Appellant is represented by his instructed Counsel Mr Nicholson. The Secretary of State is represented by her Home Office Presenting Officer Mr McVeety.
7. There is agreement between both Mr McVeety and Mr Nicholson as to whether there is a material error of law in the decision of the First Tier Tribunal and for the stance that they wish me to take. I confirm that having heard their submissions I am in total agreement with all that they suggest.
8. Firstly, it is agreed that there is a material error of law in the decision of the First Tier Tribunal Judge. That is not to say that the vast majority of what the Judge has found is wrong. It is important to note that the Judge made a finding that the Appellant was not an Iranian National. What the Judge thereafter failed to do, was to add additional paragraphs to his decision, and to make findings as to the

position that the Appellant would find himself in being both Kurdish and non Iranian. It was incumbent upon the Judge to give due consideration to this feature and to make findings and he failed to do so. In reaching this decision, I have also given due consideration to the authority of *KF (removal directions and statelessness) Iran [2005] UKIAT 00109*.

9. Neither legal representative nor I are remotely persuaded that the correct course of action is that suggested by the Judge granting permission, and indeed in granting permission, with the greatest of respect to the Judge who has done so, he has failed to address the material issue that was before him and substituted his own analysis. That is not the correct approach.
10. I am urged both by Mr McVeety and by Mr Nicholson to take the rather unusual step of remitting this matter back specifically reserved to First Tier Tribunal Judge Thorne so that he can consider these additional steps that are required to be taken. Bearing in mind Judge Thorne's experience and detailed knowledge of this matter, that seems a perfectly sensible course of action.
11. There is lodged at Court a report from Mr George Joffe. I acknowledge that there may be benefit in referring to objective evidence and I consequently admitted this report pursuant to Rule 15(2)(a).

Decision and Directions

12. (i) The decision of the First Tier Tribunal contains a material error of law solely relating to the consideration of whether the Appellant as a non Iranian Kurd would be persecuted or subjected to inhuman and degrading treatment if returned to Iran.
 - (ii) The decision of the First Tier Tribunal is set aside solely for reconsideration on that specific issue and is remitted to the First Tier Tribunal to be heard reserved to Immigration Judge Thorne sitting at Manchester on the first available date convenient both to the Judge and to the Tribunal.
 - (iii) That the estimated length of hearing be 3 hours.
 - (iv) That leave be granted to the Appellant's Solicitors to rely on the report of Mr George Joffe.
 - (v) That there be leave to both parties to admit such further objective evidence upon which they seek to rely, copies of which are lodged at the Tribunal and served on the other party at least 7 working days pre hearing.
 - (vi) Kurdish (Sorani) interpreter required.
13. No Anonymity Order was made by the First Tier Tribunal. No application is made to vary the Order and none is made.

Signed D N Harris

Date: 16th July 2014

D N Harris
Deputy Upper Tribunal Judge

