



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02903/2019

THE IMMIGRATION ACT

Heard at Manchester Civil Justice Centre
On 16th September 2019

Decision & Reasons Promulgated
On 25th September 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

Mr K R
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Warren, instructed by GMIAU

For the Respondent: Mr Tan, Senior Home Officer Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Parker promulgated on the 28th May 2019 whereby the judge dismissed the appellant's appeal against the decision of the respondent to refuse the appellant's claims based on international protection. Whilst Article 8 of the ECHR is considered in the decision, no grounds of appeal relating to Article 8 have been raised in the application.

2. I have considered whether or not it is appropriate to make an anonymity direction. Having considered all the circumstances I make an anonymity direction.
3. Leave to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Beach on 8th August 2019. Thus the case appeared before me to determine whether or not there was a material error of law in the decision.
4. The material part of the grant of leave provides:-
 - “3) The First-tier Judge has given cogent reasons for her findings of adverse credibility regarding the claimed events in Iran. She considers the risk to the appellant on return to Iran [30 and 31]. She notes the attendances at a demonstration [30] but finds that this would not lead to a risk to the appellant (in fact the appellant’s evidence in his witness statement was that he had attended ten demonstrations in the UK.). However in making his assessment the First-tier Tribunal Judge only makes reference to the decision in SSH & HR (illegal exit; failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC). She does not make reference to the most recent case of HB (Kurds) Iran [2018] UKUT 00430 (IAC). It is arguable that the failure to consider the most recent relevant Upper Tribunal decision means that the First-tier Tribunal Judge did not fully consider all the relevant risk factors and their relevance when assessing the risk to the appellant on return to Iran given his ethnicity, illegal exit and attendance at demonstrations or demonstrations in the UK.”
5. Before me Ms Warren sought to raise a number of issues which were not part of the original grounds of appeal. It has to be accepted that the grounds of appeal had been settled by the appellant in person but Ms Warren neither gave the respondent notice of her intention to raise further issues nor sought leave to argue such issues.
6. Ms Warren sought to argue that the judge had failed to consider a number of matters in coming to a conclusion on the appellant’s account, for example Ms Warren sought to argue that:-
 - a) the judge had failed to take account of the appellant’s evidence that he had attended ten demonstrations in the UK; and
 - b) the judge in paragraph 19 had come to the wrong conclusion on the appellant’s evidence with regard to answers given in the interview and questions 140 and 187; and
 - c) further Ms Warren sought to argue that the judge uses plausibility issues to draw adverse inferences against the appellant, specifically that the background evidence disclosed that where a family member was suspected of anti-regime activity the remaining member of the family would also fall under suspicion. The judge had concluded that the

- appellant's step-mother would not in light of that have informed the authorities of the appellant's activities for dissident political groups; and
- d) further the appellant had made reference to memory problems in his interview and in his age assessment and no proper consideration had been given to such; and
 - e) finally Ms Warren sought to argue that the judge had wrongly concluded that that certain answers in the interview were inconsistent, rather Ms Warren argued they were consistent, in line with the background evidence and therefore supportive of the appellant's credibility.
7. Whilst I was willing to allow Ms Warren some lassitude given that the appellant had settled the grounds of appeal himself, still it was incumbent upon Ms Warren to make application to amend the grounds of appeal and to inform the respondent of her intentions.
 8. That having been said however, the findings of fact made by the judge are properly reasoned and have been made on a careful examination of the evidence. At paragraph 28 the judge clearly considers the claim by the appellant to have attended at 10 demonstrations in the UK. As pointed out the appellant had produced no evidence of his attendance at such demonstrations. Whilst corroborative evidence is not required it is to be noted that the judge in the paragraph that follows make a finding that the appellant has not told the truth with regard to his account. That clearly encompassed the claim by the appellant that he had attended ten demonstrations.
 9. With regard to the issue in respect of the interpreter and inaccuracies the judge in paragraph 19 had specifically considered the issues. Similarly whilst the appellant had referred to memory problems there was no medical evidence to support such. It has to be noted that the appellant had claimed to be a minor the judge concludes that there was clear evidence of the appellant not telling the truth.
 10. The judge has considered all of the evidence, including the issues raised by MsWarren, and has given valid reasons for the conclusions reached, including why he rejects parts of the appellant's account and why he finds part of the appellant's account inconsistent. The judge did consider the issues raised. The judge has given valid reasons for the adverse credibility findings.
 11. With regard to the issue raised within the grant of leave the case of HB headnote [2018 UKUT 00308] sets out that the case of SSH and HR 2016 UKUT 308 referred to by the judge in his decision continues to be good law in specific material aspects. The case goes on to identify that the mere fact of the returnee being of Kurdish ethnicity whether without a valid passport and even if combined with illegal exit does not of itself create a risk of persecution or of article 3 ill-treatment. That having been said Kurdish ethnicity may be, if

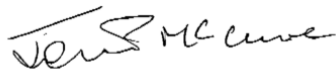
coupled with other factors such as a political profile, a risk factor such as to create a risk of persecution or article 3 ill-treatment.

12. The judge has specifically found that the appellant was not known to be politically active and not otherwise found to be credible with regard to his claims of distributing leaflets or being involved in demonstrations. That having been said the judge goes on to consider whether or not the mere attendance at demonstrations in the United Kingdom would be additional factor giving rise to a risk profile.
13. Having considered all the relevant factors including the fact that the appellant also Kurdish ethnicity and having rejected the appellants claim to have been involved in politics, the judge goes on to find the appellant would have no risk profile causing him to be of interest to the Iranian authorities. That was a finding of fact the judge was entitled to make on the evidence.
14. Whilst it has to be acknowledged that the case of HB recognises the Iranian authorities have a hair trigger approach to those suspected or perceived to have been involved in Kurdish political activities, the findings by the judge are clear that the appellant has no political profile and would therefore be of no interest to the authorities in Iran. Given the findings of fact the judge has found that the appellant has no political profile. On the basis of the findings by the judge there would have been no additional factors which could increase the risk to the appellant. The judge was entitled to conclude that the Iranian authorities would have no interest in this appellant.
15. Accordingly taking account of the guidance given in HB, there were no additional risk factors and the appellant is a returning individual of Kurdish ethnicity and even taking account of the fact that he may have left illegally such would not create a risk of persecution or article 3 ill-treatment.
16. In the circumstances there is no material error of law in the approach of the judge.

Notice of Decision

17. I uphold the decision to dismiss the appeal on all grounds.

Signed

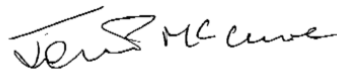


Deputy Upper Tribunal Judge McClure

Date 23rd September 2019

Direction regarding anonymity- rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the appellant or any member of the appellant's family. This direction applies both to the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings



Signed

Date 23rd September 2019

Deputy Upper Tribunal Judge McClure