



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: UI-2021-001712
HU/50512/2020; IA/02900/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 16th August 2022**

**Decision & Reasons Promulgated
On 11th October 2022**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR IH
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer

For the Respondent: Mr T Hussain, Counsel on behalf of Barnes Harrild & Dyer
Solicitors

DECISION AND REASONS

1. The application for permission to appeal was made by the Secretary of State but hereinafter I shall refer to the parties as they were described before the First-tier Tribunal, that is Mr IH as the appellant and the Secretary of State as the respondent.
2. The Secretary of State made an application for permission to appeal against the decision of First-tier Tribunal Judge Turner promulgated on 21st October 2021 which allowed an appeal on asylum grounds against the

decision of the Secretary of State dated 5th September 2020 to refuse the appellant's protection claim.

3. The appellant claims that he is from Iran and that he has been engaged in sur place activity which has been critical of the Iranian regime.
4. The appellant claims he is Kurdish, Sunni Muslim, single with no children. He claimed he had lived in Iran for his whole life save for six months when he lived with his uncle in the IKR in Iraq. This was following the appellant's flight from Iran for his own safety. The appellant's uncle was his maternal uncle who also was Iranian but had to flee Iran due to safety issues.
5. The appellant arrived in the UK on 11th June 2008 and had no documents. The appellant had since been provided with a letter by his cousin signed by a village councillor and three other residents of the appellant's home village which attested to him being born and raised in a village in Iran. The village was small and had no council building but did have one councillor. The appellant also produced a biometric residence permit from the appellant's witness who lived with the appellant in the same village. This witness had subsequently been granted refugee status in the UK and provided a witness statement which confirmed that he and the appellant knew each other in their home village. They met by chance in Middlesbrough in 2008.
6. The appellant maintained that his evidence that his online activity had been persistent for years by way of his Facebook page and was not a recent story that he had merely fabricated. His essential story was that he had come to the attention of the Iranian authorities as a draft evader and a smuggler and was at increased risk on return of someone who left Iran illegally and as a Kurd who had engaged in sur place political activity.
7. The judge recorded that at the outset the respondent maintained that it rejected that he was a smuggler, and his appeal was refused by IJ Buchanan on 27th August 2008 who made adverse credibility findings against the appellant.
8. The judge also recorded similarly that IJ Holmes made adverse findings in 2019. Judge Turner clearly recorded that IJ Holmes found the appellant was "quite prepared to lie at any stage where the Appellant would benefit". IJ Holmes found the appellant's sur place activity to be "opportunistic" and found that the appellant was Iraqi and could return to Iraq where he had previously stayed with family in the IKR. Alternatively, it was found that he could return to Iran given that he had no genuine political belief and had not come to the attention of the Iranian regime previously. The above was outlined as the respondent's case. It was specifically stated that the appellant had failed to explain how he came to possess the document (letter) which was of poor quality. There was evidence of the appellant's sur place activity which the appellant claimed, upon return as a Kurd, would cause him problems particularly as he left Iran illegally.

9. In the alternative, the appellant having lived in Iraq with his uncle and having worked he could return to the IKR and indeed IJ Holmes found that the appellant had lived previously in the IKR and his family there could accept him. The appellant claimed he had no CSID document but his uncle in Iraq could assist him in re-documenting and although it was unlikely he would be able to obtain a new document from the UK due to the implementation of the INID card, he would have to apply and use his uncle to assist him and send him any documents available.
10. The judge made a series of findings from [47] onwards, noting that the main issue in the appeal was the appellant's nationality and noted that the respondent had conceded in the reasons for refusal letter that if the appellant were a national of Iran the appellant's life could be at risk on removal there because of his sur place activities in the UK.
11. The judge noted and acknowledged that the two previous Immigration Judges had determined the appellant was not a credible witness and he stated that IJ Holmes "had found that the Appellant was from Iraq" [48]. As such his previous two appeals had been dismissed. The judge specifically stated that

"Noting that the Appellant had now produced documentary evidence in support of his claim that he was Iranian together with a live witness of fact, I had to agree that in principle, if this evidence came up to proof, this may provide sufficient evidence to allow me to depart from the previous findings of IJ Buchanan and IJ Holmes".
12. The grounds for permission to appeal stated as follows, that Judge Buchanan on 27th August 2008 found the appellant not to be a credible witness and not accepted he was from Iran but rather from Iraq and that in 2019 Judge Holmes did not find the appellant to be a credible witness and found he was prepared to lie and concluded the appellant was Iraqi and could return to Iraq and the appellant had previously claimed asylum in France in 2008 and confirmed his nationality was Iraqi.
13. The main plank of appeal before me was that the judge had failed to give adequate reasoning for departing from the credibility findings from the two previous Immigration Judges and therefore had failed to follow **Devaseelan v SSHD** [2002] UKIAT 00702 . It was asserted that he failed to give adequate reasons for accepting the appellant's oral evidence in the light of the previous judges' findings and had failed to give adequate reasons for accepting a handwritten letter claimed to have been written by village councillors or a photograph as it was unclear where it was taken.
14. Despite Mr Tufan's submissions which essentially relied on the grounds, I am not persuaded that there was pleaded any challenge on the basis of irrationality or on the basis of **Tanveer Ahmed (documents unreliable and forged) Pakistan** * [2002] UKIAT 00439_.

15. As identified in the decision of Judge Holmes the appellant was not represented before Judge Buchanan and there was no new evidence before IJ Holmes that addressed the issue of the appellant's true identity and nationality. He did identify that Judge Buchanan made no positive finding upon the appellant's nationality.
16. Judge Holmes stated that Judge Buchanan disposed of the appeal on the hypothetical basis that if he were indeed Iraqi the appellant had identified no risk as to why he would face a risk of harm on return to the KRG and alternatively, if he were indeed Iranian his claim to face a risk of harm as a draft evader was untrue so that he faced no risk of harm upon return to Iran either.
17. I note that it would appear in fact that IJ Holmes approached the matter on the same basis. What is clear from the decisions and agreed by Mr Tufan is that his nationality is a central fact which the appellant must establish on a balance of probabilities that he is who he claims to be. Judge Holmes based his criticism of the appellant's Iranian nationality on the inconsistency of the appellant's evidence to Judge Buchanan and the objective evidence in relation to military service, that is, if he were genuinely an Iranian male of 21 as he claimed he might be expected to be fully conversant with the requirements for military service. Judge Holmes also appeared however in his determination to be equivocal as to whether the appellant was in fact Iraqi or Iranian and he himself set out the risk to the appellant on returning to either country.
18. I am mindful of [16] of Lord Justice Rix's comments in **MA (Somalia) v Secretary of State for Home Department [2009] EWCA Civ 4:**

"16. On this appeal, Mr Gill sought to submit that IJ Parkes' determination was inadequately reasoned and irrational, and that SIJ Allen's acceptance of it as being free of error of law was equally flawed. In my judgment, however, these submissions lacked any weight and essentially were an attempt to reargue the facts. I bear fully it mind that the fact-finder must approach such asylum and human rights claims with anxious scrutiny, taking full account of differences in culture and avoiding scepticism based on a merely domestic perspective of what might seem improbable. I also understand that in this area of the law this court will want to see that such anxious scrutiny is sufficiently demonstrated by the reasoning of the tribunal. Nevertheless, it is well established that the complaints on which the first ground of this appeal is based, namely lack of adequate reasoning and irrationality, are closely circumscribed. Inadequate reasoning as a ground of appeal really requires this court to be able to say that it is impossible to understand why the tribunal has reached its decision; and irrationality or perversity requires this court to

be able to say that the decision is one to which no tribunal could sensibly come”.

19. **UT (Sri Lanka) [2019] EWCA Civ 1095 at [26]** enjoined appellate courts to be cautious about simply overturning decisions in the First-tier Tribunal where those decisions are disagreed with and *‘that judicial restraint should be exercised when the reasons that a tribunal gives for its decision are being examined’*. There is no evidence to me that the judge failed to apply the principles of **Devaseelan** and **Tanveer Ahmed** was not pleaded in the grounds of appeal by the Secretary of State.
20. The judge correctly started with the two decisions of the Immigration Tribunal but stated at [24] that the judge considered he was in “a very different position now”. He identified that the appellant had been able to produce before the Tribunal a live witness and someone “who had been accepted as a credible witness by the respondent without the necessity of an appeal”. The appellant had also produced a document in support.
21. The judge at [55] specifically and head on noted the criticisms of the document but found the appellant was correct to say that regardless of the name spelling the pronunciation was the same but also addressed the fact that it was a handwritten letter on a blank piece of paper. In my view, the weight to be ascribed to evidence is a matter for the judge and he carefully reasoned and balanced the competing arguments in relation to the contents of the document and its form but took into account the appellant’s witness statement which recorded that the village did not have a council building, only a councillor which suggested a lack of formal administration. That was open to the judge.
22. It is important to recall **HK v Secretary of State for the Home Department [2006] EWCA Civ 1037**, [28] to [30] held that evidence referable to different societies with different customs may be very different. That approach is adopted by the judge is doing here when he states, “the practice and procedure in a small village in Iran is likely to be very different to administration in a village in the UK”. Not least the judge stated quite rightly that “overall I must place this evidence in the round” and that is what he did.
23. The judge identified that the appellant was unrepresented at the appeal hearing before Judge Buchanan where he was criticised for failing to have produced an appeal bundle. He also identified that the judge did not make any detailed findings about the appellant’s nationality but that she found she lacked corroborative evidence but when criticising the lack of a witness statement again Judge Turner noted the appellant was not represented. I further find the conclusion at [58] in relation to the contrast between interview and oral evidence on whether the appellant had stated he was fingerprinted in France was open to the judge on the reasoning given. Any threshold for irrationality is high. The judge adequately explained the appellant may have been nervous at the hearing (when unrepresented) or misinterpreted. Overall, Judge Turner found that he had

been presented with some form of corroborative evidence and that things may have been different before Judge Buchanan. That was a finding open to him and adequately reasoned.

24. As Judge Turner identified, Judge Holmes relied “heavily in his determination” on the fact that the appellant had seemingly not understood the rules relating to exemptions from military service. Judge Turner also identified that IJ Buchanan noted in the CPIN on Iran that being the sole breadwinner for the family was a ground for exemption from military service. The recent CPIN Iran: Military Service April 2020 provided a list of exemptions included breadwinners for unmarried sisters or mothers when their father is deceased, and that logic would suggest that in Iran a great many men would be exempt from military service if they were exempted simply because they were the sole breadwinner. That stated the appellant was uneducated and from a small village without access to information and it was plausible (bearing in mind the low standard of proof in asylum cases that was open to the judge) to find that the appellant may well not understand the rules even if he were exempt from service. It was open to the judge to find that the previous adverse credibility findings would add a significant influence on the view taken by the appellant by Judge Holmes.
25. Judge Turner also addressed the fact that Judge Holmes relied on the fact that the appellant had had sufficient time from the earlier determination of 2008 to contact his family and obtain evidence of nationality and that he must have had some form of ID either in Iran or Iraq. It was identified by Judge Turner that the appellant had never claimed to have such documentation and that he was born and raised in a small village in Iran and where there was little, if any, form of formal administration and as he found it was “plausible that no form of identification document was ever issued to the appellant”. Although one might wonder why a document from the village could now be produced there is, as the judge stated, a live witness who had clearly been found credible by the Secretary of State and he found that IJ Holmes was very much “influenced by the adverse credibility findings made against the Appellant during a hearing when he was unrepresented”.
26. Overall, it was open to the judge to take note of the live witness, to set aside cultural assumptions and having considered the evidence in the round to the lower standard of proof to find that the appellant had been truthful in his account about his nationality and therefore allow the appeal.
27. Although it may be considered that the judge was generous in his approach, that is not an error of law and the weight to be accorded to the evidence is a matter for the judge. The judge had explained why he had made positive credibility findings in the light of the reasons given by the two previous judges contrary to the grant of permission.

28. I find no material error of law in this well-reasoned decision. The Secretary of State's appeal is dismissed, and the decision of the First-tier Tribunal Judge will stand.

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 him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Helen Rimington
Upper Tribunal Judge Rimington

Date 6th September 2022