



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: PA/01021/2018**

**THE IMMIGRATION ACTS**

**Heard at Manchester CJC  
On March 5, 2019**

**Decision      &      Reasons  
Promulgated  
On March 7, 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**SARWAT [H]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Brown, Counsel, instructed by CAB (Bolton)  
For the Respondent: Mr Tan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, an Iranian national, claimed to have entered the United Kingdom on September 3, 2017 and having been encountered by the police on September 6, 2017 claimed asylum. The respondent refused his application on January 7, 2018 under paragraphs 336 and 339F HC 395.
2. The appellant appealed that decision on January 22, 2018 under section

82(1) of the Nationality, Immigration and Asylum Act 2002.

3. His appeal was heard by Judge of the First-tier Tribunal Ennals on June 22, 2018 and in a decision promulgated on June 28, 2018 he dismissed the appellant's appeal on all grounds.
4. Grounds of appeal were lodged on July 10, 2018 in which it was argued that the Judge had materially erred by failing to deal adequately with the evidence of Dr Ibbotson, failing to give adequate reasons for rejecting his account of the fight the appellant had with Mohammed and failing to address the nature of his injuries when considering risk on return through illegal exit.
5. Permission to appeal was initially refused by Judge of the First-tier Tribunal O'Garro on August 8, 2019 but Upper Tribunal Judge Chapman granted permission on all grounds albeit no reasons for the grant were provided.
6. No anonymity order is made.

### **SUBMISSIONS**

7. Mr Brown adopted the grounds of appeal and submitted there was an interplay between first and third grounds in light of HB (Kurds) Iran CG [2018] UKUT 00430 (IAC). He invited the Tribunal to find the Judge's findings about the appellant's injuries were flawed in light of the medical report of Dr Ibbotson. He referred the Tribunal to page 25 of report and pointed out the appellant had had to have extensive surgery on his hand and had suffered other injuries to his left knee and left side. The expert said the injury to his hand was caused as claimed and this injury alone was hardly minor as it left him disfigured and found they were diagnostic of being caused by a blue coloured anti-personnel mine. The appellant's case was he received treatment for this in the KDPI. The Judge's finding about his injuries was unsustainable.
8. Mr Brown submitted the Judge did not engage with the fact he received treatment in the KDPI and this was relevant to the assessment of risk on return. The appellant claimed he spent a significant period of time in the KDPI and this had to be considered when assessing risk on return. Applying the recent guidance in HB he submitted that the Judge failed to engage with the fact that returning Kurds are subject to heightened suspicion and because of his particular characteristics he would be likely to be subject to detention and questioning.
9. Mr Tan opposed the application. He accepted the medical report of Dr Ibbotson described a number of injuries and did not disagree with Mr Brown's description of the injury to the appellant's hand, but he submitted the materiality of the injury had to be viewed against the appellant's account. The appellant stated the mine was put down by third party and he submitted the Judge addressed this at paragraph 25 of his decision. Dealing with the HB point he submitted the Judge accepted he was a Kurd

but as he rejected his claim about his involvement or connection to the KDPI there were no additional risk factors apart from a disfigured hand and that in itself did not mean a connection to the KDPI. It was mere speculation to say the authorities would have an interest in him because the fact he was injured by a landmine did not mean he would be subjected to heightened questioning. As regards illegal exit this was properly dealt with at paragraph 27 of the decision.

10. I reserved my decision.

### **FINDINGS**

11. The appellant is an Iranian Kurd who suffered an injury to his hand and other parts of body when he accidentally detonated a landmine. The medical report of Dr Ibbotson confirmed he suffered a deformity and shortening of the thumb and left index finger as a result of none damage and tissue loss. The doctor confirmed that the appellant had received extensive surgical treatment for this injury. The doctor noted small flecks of blue discolouration on the hand and concluded that this injury together with the scarring to his face and left knee were diagnostic of the type of injury that would be caused by a blue coloured anti-personnel mine.
12. Mr Brown submits, and permission to appeal was granted on this basis, that the Judge's assessment of the injuries was inadequate.
13. The Judge considered the medical evidence from paragraph 16 of his decision. He noted an important starting point was the medical report of Dr Ibbotson but found that the doctor did not express a view in line with the Istanbul Protocol for the purposes of causation. The finding at paragraph 16 is not strictly speaking correct because whilst the doctor provided an opinion about individual injuries between paragraph 13(a) and (f), he concluded his assessment of how those injuries were caused at 13(g) when he stated, "the nature and distribution of the scars are diagnostic of the injuries that would be caused by a blue coloured anti-personnel mine". The Judge's finding at paragraph 17 of his decision is therefore flawed.
14. Mr Tan appeared to acknowledge this point but argued the materiality of the injury suggesting it was speculation how the authorities may perceive he received the injury.
15. The difficulty I have with that approach is that the Judge approaches the remaining aspects of the claim from a flawed starting point. When you add into the mix that the appellant claimed he was living in the KDPI, he is a Kurd, possibly left illegally and will return with an obvious injury (which the Judge accepts was caused by a blast of some form) I accept Mr Brown's submission that the assessment of risk on return was also flawed.
16. If the starting point was the appellant did suffer his injury and had spent 12 months plus in the KDPI then following the guidance in HB there would

be additional risk factors to consider and unfortunately this was not done by the Judge in this appeal.

17. As credibility findings will need to be made afresh, I remit this matter back to the First-tier Tribunal under section 12(1) of the Tribunals, Courts and Enforcement Act 2007. No findings are preserved.

**Notice of Decision**

There is an error in law. I set aside the original decision and remit the matter back to the First-tier Tribunal under section 12 (1) of the Tribunals, Courts and Enforcement Act 2007.

Signed

Date 05/03/2019

A handwritten signature in black ink, appearing to read 'SP Alis', with a horizontal line underneath.

Deputy Upper Tribunal Judge Alis