IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/11627/2019**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On the 6th September 2021	**On the 11th October 2021**
Extempore	

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

A R
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr C Holmes, Counsel instructed by Hazelhurst Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals against a decision of the Secretary of State made on 12 November 2019 to refuse his asylum and protection claims. His appeal against that decision to the First-tier Tribunal was heard by First-tier Tribunal Judge Mather, who in a decision promulgated on 20 April 2020 dismissed his appeal.

2. For the reasons given in my decision of 8 December 2020 (a copy of which is attached) that decision was set aside but importantly, a number of the findings of fact reached by the judge were maintained. It is enough at this stage to summarise the appellant's claim that he is an Iranian citizen of Kurdish origin and of the Yarsan faith. Both of those are accepted by the Secretary of State and form part of the preserved findings of fact by the judge.

3. The judge did not, however, find the appellant to be credible and for the reasons given in my decision, certain facts were preserved. But what the judge did not do on that occasion is consider why the appellant might conceal his faith or why others of his religion might conceal their identity or why this appellant would seek to do so. Further, the judge did not make any findings as to what the appellant would or would not do if he returned to Iran and thus she had failed properly to follow **HJ (Iran)**. She also failed to consider the circumstances of what would happen to the appellant on return to Iran at the point of arrival.

4. I heard evidence from the appellant which was relatively brief and was given in Farsi with the assistance of a court interpreter and with the agreement of the appellant. I also heard evidence from Mr Seyed Elyas Ghodrati Nasrabadi, who is a religious leader in the Yarsan faith. The title given is Seyed. It is also part of his name.

5. In summary, the appellant said that he does practise his religion in the UK, that he and his fellow believers come together, they help people and he identifies with the religion that he was born into and believes in it with his heart. Mr Nasrabadi was asked about his faith and set out in some detail the four parts of things that people must believe to follow the religion. He explained also that his title was inherited partly but also he had studied his faith. He said it is important for every part of every group that it has its own leader and they have to follow his instructions and that in their gatherings they have fruit, pray over that and bless them, talk about the rituals and talk about their religion and try to make members of the group aware of what they need to do. He also explained that if a man wishes to follows the faith, then he is required to grow a moustache (as he had) but it is fair to say, and it is not a criticism of them, it is very difficult to conduct this sort of examination through an interpreter over a video link and limited ability to describe what the metaphysical elements of the religion were other than that the aim is to increase one's spirituality to the extent that one rises to the level of God and becomes free.

6. Turning next to submissions, Ms Everett for the Home Office submitted that the evidence of the appellant and the witness as to the content of the faith was rather limited but that looking at it together with the background evidence, it appears that the faith is not one which manifests itself in public to any great extent. She accepted that there are difficulties with the attitude of the Iranian authorities towards members of minorities but that the background evidence indicates that for ordinary members of the Yaresan faith there appears to be little difficulty although that is not the case for their leaders. It is also unclear how many believers there are in Iran.

7. In order to succeed in his appeal the appellant must show that he has a well-founded fear of persecution in Iran or that he is at risk of serious ill-treatment such as would engage Article 3 of the Human Rights Convention. He needs only do so to the lower standard of proof but the burden is still on him.

8. In reaching my conclusion, I have considered carefully the background evidence to which I have been taken and with which I am familiar, given my earlier decision. It is, an essential point to make that there is little material available about the Yarsan faith although it does appear to have of a membership of some 1,000,000 to 2,000,000. What is evident is that there are two main groups, one of which is very much bigger than the other. The smaller, modernist reformed group in effect identifies itself as a version of Shia Islam and attracts little ill will from the Iranian authorities but the more traditionalist branch is treated as a non-Islamic faith with the adverse consequences that flow from that. In Iran it is not a proselytising religion and members have to be born into the faith. It is also clear that its members face difficulties if they wish to express their religious identity, which is difficult to separate out entirely from a Kurdish ethnic identity as well. There is little detail about what the faith involves, either in terms of ritual or required beliefs but I do not consider that anything in that material causes me concern in light of what I have been told by Mr Nasrabadi.

9. There is little evidence that an ordinary member of the faith who attends the ritual meetings that have been described and a member of the Yarsan is likely to attract the adverse attention of the Iranian authorities. That is not the case if somebody is a leader and that would appear to be consistent with the Iranian government's attitude towards other minority faiths where effort is effectively directed at the leadership and stopping its organising abilities – see for example how Christian church leaders are targeted - PS (Christianity - risk) Iran CG [2020] UKUT 46 (IAC).

10. On that basis, I consider that even though the appellant would be wearing a moustache and that would identify him as a Yaresan it is unlikely that in and of itself would put him at risk in his day-to-day activities in his home area.

11. But what I must consider also is what is going to happen to him at the point of return. In doing so, I have regard both to SSH and HR (illegal exit: failed asylum seeker) Iran (CG) [2016] UKUT 308 and HB (Kurds) Iran CG [2018] UKUT 430. The headnote of the latter provides:

> *(1) SH and HR (illegal exit: failed asylum seeker) Iran CG* [2016] UKUT 308 (IAC) *remains valid country guidance in terms of the country guidance offered in the headnote. For the avoidance of doubt, that decision is not authority for any proposition in relation to the risk on return for refused Kurdish asylum-seekers on account of their Kurdish ethnicity alone.*
>
> *(2) Kurds in Iran face discrimination. However, the evidence does not support a contention that such discrimination is, in general, at such a level as to amount to persecution or Article 3 ill-treatment.*
>
> *(3) Since 2016 the Iranian authorities have become increasingly suspicious of, and sensitive to, Kurdish political activity. Those of Kurdish ethnicity are thus regarded with*

even greater suspicion than hitherto and are reasonably likely to be subjected to heightened scrutiny on return to Iran.

(4) However, the mere fact of being a returnee of Kurdish ethnicity with or without a valid passport, and even if combined with illegal exit, does not create a risk of persecution or Article 3 ill-treatment.

(5) Kurdish ethnicity is nevertheless a risk factor which, when combined with other factors, may create a real risk of persecution or Article 3 ill-treatment. Being a risk factor it means that Kurdish ethnicity is a factor of particular significance when assessing risk. Those "other factors" will include the matters identified in paragraphs (6)-(9) below.

(6) A period of residence in the KRI by a Kurdish returnee is reasonably likely to result in additional questioning by the authorities on return. However, this is a factor that will be highly fact-specific and the degree of interest that such residence will excite will depend, non-exhaustively, on matters such as the length of residence in the KRI, what the person concerned was doing there and why they left.

(7) Kurds involved in Kurdish political groups or activity are at risk of arrest, prolonged detention and physical abuse by the Iranian authorities. Even Kurds expressing peaceful dissent or who speak out about Kurdish rights also face a real risk of persecution or Article 3 ill-treatment.

(8) Activities that can be perceived to be political by the Iranian authorities include social welfare and charitable activities on behalf of Kurds. Indeed, involvement with any organised activity on behalf of or in support of Kurds can be perceived as political and thus involve a risk of adverse attention by the Iranian authorities with the consequent risk of persecution or Article 3 ill-treatment.

(9) Even 'low-level' political activity, or activity that is perceived to be political, such as, by way of example only, mere possession of leaflets espousing or supporting Kurdish rights, if discovered, involves the same risk of persecution or Article 3 ill-treatment. Each case however, depends on its own facts and an assessment will need to be made as to the nature of the material possessed and how it would be likely to be viewed by the Iranian authorities in the context of the foregoing guidance.

(10) The Iranian authorities demonstrate what could be described as a 'hair-trigger' approach to those suspected of or perceived to be involved in Kurdish political activities or support for Kurdish rights. By 'hair-trigger' it means that the threshold for suspicion is low and the reaction of the authorities is reasonably likely to be extreme.

12. Whilst this deals primarily with Kurdish political activity, it is important to note at paragraph 10, that the Iranian authorities demonstrate what could be described as a "hair-trigger" approach to those suspected of or perceived to be involved in Kurdish political activities or support for Kurdish rights. By hair-trigger it means that the threshold for suspicion is low and the reaction of the authorities is reasonably likely to be extreme.

13. In this case, following the guidance set out in those cases, I consider that the appellant would be returned on a laissez passer to Iran; that it would be evident to those interviewing him that he was of Kurdish ethnicity and it is wholly unlikely given what is known about the authorities in Iran that they would not seek to find out why he had been in the United Kingdom. He cannot be expected to lie about that and it would become clear to them that he had claimed asylum on the basis of his religion which is not part of the Islamic faith. As a Kurd and given that the Yaresan

faith is identified with the Kurdish culture and identity and the fact that the appellant has, as Mr Holmes submitted, returned after a relatively extended stay in the West, I find, taking all of these factors into account and given that the appellant identifies as a member of the Yaresan faith, something about which he cannot lie, that there is a real risk of him being subjected to a second level of additional questioning by the Iranian authorities on return which will result in a prolonged detention and physical abuse as is frequently the case with those in Iran who are seen to be opposed to the regime.

14. I am satisfied also that this would be on account of his Kurdish ethnicity and/or religion and for these reasons, I am satisfied he has a well-founded fear of persecution for reasons set out within the Convention and I allow the appeal on that basis.

15. Having found that the appellant is entitled to refugee status, it follows that he is not entitled to humanitarian protection as a matter of law.

16. For the sake of completeness, I am satisfied that his return to Iran would, in the light of the likelihood that he would be persecuted, be in breach of the United Kingdom's obligations pursuant to Article 3 of the Human Rights Convention and thus the appeal falls to be allowed on human rights grounds also.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

2. I remake the appeal by allowing it on asylum and human rights grounds.

3. I dismiss the appeal on humanitarian protection grounds.

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 his 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 Date 7 September 2021

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul

ANNEX – ERROR OF LAW

IAC-AH-SC-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11627/2019

THE IMMIGRATION ACTS

Determined at Field House Without a Hearing
On 25 November 2020

Decision & Reasons Promulgated

……

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

A R
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge C Mather, promulgated on 20 April 2020, and dismissing his appeal against a decision of the respondent made on 12 November 2019 to refuse his asylum and protection claim.

The Appellant's Claim

2. The appellant's case is that he is an Iranian citizen of Kurdish origin and of the Yarsan faith, also known as Ahl-e-Haq. He stated that he had not been able to

continue his education in Iran as he had destroyed a Quran in his classroom; that he and his family are practising Yarsan and now he nor any of his family were involved with the political party.

3. After the incident in school in which he had torn up a Quran and hit a religious education teacher with it, he ran away from home and went to stay at his aunt's house. The incident had been reported to the authorities who had come to the family house looking for him since his departure which had been facilitated by an agent. He left Iran on 2 October 2015 travelling to Turkey, then to Greece and then to Denmark where he stayed for nearly two years. He then travelled via Germany, Belgium and France before coming to the United Kingdom.

4. The appellant's evidence in front of the judge was that he had progressively discovered, since leaving Iran, that he can communicate and talk about his religion openly and freely to anyone and anywhere without fear of persecution; that he was now used to disclosing his religion publicly and could not hide it anymore in public, which meant he would not return to Iran where he would constantly be lying about his religion by telling the public and officials that he was Muslim only to avoid being persecuted.

5. The Secretary of State accepted that the appellant was Kurdish, Iranian and of the Yarsan faith. She did not accept the rest of his account and drew inferences adverse to his credibility from inconsistences in his account and from his failure to claim asylum in safe countries en route to the United Kingdom.

6. The judge heard evidence from the appellant who was represented. She found that:-

   (i) the appellant was not a credible witness; he could not have stayed at his aunt's house for six days after the alleged incident despite the authorities looking for him had he been of such interest to them [19];

   (ii) it was not credible that the appellant did not know he was travelling to Denmark or that he was unaware of his paternal cousin there nor that his paternal cousin was claiming asylum on almost the same basis as him [21];

   (iii) it was not credible that the appellant had been carrying out the activities of praying together with his friends of the Yarsan faith, keeping the annual fast and distributing fruit and food to the needy [22] nor did she accept that he had ripped up a Quran as claimed [23];

   (iv) the appellant's credibility was further damaged by his failure to claim asylum in Belgium, France or Germany [24];

   (v) he had not publicly and actively asserted his Yarsan identity religion either in Iran or the United Kingdom or would do so on return and thus would not face persecution on return to Iran [27].

7. The appellant sought permission to appeal on the grounds that the judge had erred:-

   (i) in failing to consider why the appellant concealed his faith, that is whether it was fear of persecution or for another reason;

(ii) the judge had failed to give reasons for finding why the appellant would not publicly assert his religion, the background evidence showing that if Yarsanis assert themselves as Yarsanis they would not get a higher education or certain jobs and the evidence indicated that to avoid persecution Yarsanis have to lie about their faith and, accordingly, the judge had failed properly to apply HJ (Iran) [2010] UKSC 31.

8. On 24 August 2020 Upper Tribunal Judge Kekić granted permission stating:

> "I consider it arguable that the judge's findings and reasonings are inadequate; specifically the issue of whether the appellant would publicly assert his faith in Iran and, if not, why."

9. The judge also gave directions stating that it was her provisional view that it would be appropriate to determine whether the making of the First-tier Tribunal's decision involved the making of an error of law and if so whether it should be set aside and should be dealt without a hearing. She also gave a timetable for submissions and objections to be made by both parties.

10. Subsequent to these directions, on 6 October 2020 the respondent applied the grounds of appeal under Rule 24 stating that the decision was well-reasoned and detailed and that taking a holistic approach to the determination as a whole and the findings at [27] the judge provided a number of reasons why it is not accepted that the appellant had or would publicly assert his faith in Iran. It is further said that the grounds have no merit and simply amount to a disagreement with the adverse outcome of the appeal.

11. On 8 October 2020 the appellant replied that whilst asserting the appellant's faith is the natural effect of practising it and would lead to persecution, the alternative is concealment which would amount to persecution. It is also submitted that the judge erred in failing to consider that the appellant may not have told the truth about the Quran but may be telling the truth in other aspects of his claim.

12. In considering whether to proceed to determine the appeal without a hearing, I bear in mind the amended guidance note by the President of the Upper Tribunal and the decision of Fordham J in **JCWI v the President of the Upper Tribunal [2020] EWHC 3103** and the order made therein. I bear in mind that the appellant has at all stages been legally represented and has not objected to the issue being determined without a hearing. I bear in mind also the provisions of Rule 34.

13. I am satisfied that in all the circumstances of this case, it would be appropriate to proceed to determine the issue of whether there is an error of law and, if so, to set aside the decision.

14. There is no real or substantive challenge to the judge's findings of credibility. She gave adequate and sustainable reasons for doubting the appellant's account of having ripped up the Quran and for drawing inferences adverse to him from his failure to claim asylum en route to the United Kingdom without a proper

explanation. Similarly, the judge gave adequate and sustainable reasons for concluding that the appellant had not, contrary to his evidence at the hearing, given that he had said earlier that he had not undertaken such activities. This is in the context of no evidence coming from his friends with whom he is said to participate in his religion. At the hearing, the judge not accepting that they were too busy to attend the hearing.

15. That said, the judge had insufficient regard to the background evidence about those of the Yarsan faith, having accepted that the appellant is of that faith although she did rely on a quotation from a refusal letter. The appellant had provided a full copy of the relevant document which the judge appears not to have considered in detail. Nor does she address the fact that the same witness, Dr Kreyenbroek, refers to the Yarsan communities being pressured to associate with Islam more openly at certain periods or that the government does from time to time take measures against the Yarsani community and it was difficult to establish whether persecution of individual Yarsan believers was based on suspicion of religious identity or political grounds. The same document quotes Dr Moradi who considered that the Yarsanis were of interest to the authorities. Dr Moradi:

> "Further said that although the Yarsani, according to their faith, were not allowed to lie about their faith or their identity as Yarsani, the vast majority of almost 2,500,000 of the Yarsani were forced to do so, or face problems with the authorities. If an individual is active, religiously or politically or both, and for example is caught in a position with materials considered elicit, he or should could face arrest and interrogation by the authorities. Typically, he or she would consequently be ordered to discontinue any such activities or face prison."

16. A second report notes the Minority Rights Group International Report from March 2018 where the Iranian government classifies the Yarsanis as Muslim, a strategy also adopted by some members of the community to avoid discrimination. It is also observed that nearly all the Yarsanis are Kurdish and therefore face intersectional discrimination on the basis of both religion and ethnicity.

17. The US Commission on International Religious Freedom notes that Yarsanis whose religious identity is publicly known face discrimination in education, employment and running for political office. The US State Department notes that the authorities reportedly continue to deny members of the Yarsani community access to higher education and government employment unless they declare themselves Muslim on application forms.

18. What the judge has not addressed is why people may conceal their identity as Yarsani or why the appellant would seek to do so. That is over and above a failure properly to explain why he thought that he would not publicly or assertively assert his identity. Whilst I accept that there are strong, sustainable credibility findings, the judge does not address the express statement from the appellant about how he has now found he had religious freedom. There are simply no findings about that.

19. Taking these together, despite the submissions to the contrary made by the respondent, I am satisfied that the decision of the First-tier Tribunal did involve the making of an error of law in that the judge has not properly explained her findings as to what activities she thought the appellant would or would not undertake if returned to Iran and why he would not undertake any religious activities or the consequences of doing so. To that extent there has been a failure properly to follow **HJ (Iran)** and accordingly I set aside the decision for that reason.

20. In terms of remaking the decision, I consider that the findings of credibility must stand. I consider also that the rejection of the appellant's account of not knowing why he went to Denmark and of him having ripped up a Quran are sustained. The remaking we will have to consider however, the extent to which the appellant can manifest his faith, why he could not do so on return to Iran, the consequences of doing so if he did and whether this would amount to persecution. In addition, it would be necessary to consider whether as a Kurd of Yarsan faith he would face difficulties on return as an undocumented, failed asylum seeker.

Notice of Decision

(1) The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

(2) The decision will be remade in the Upper Tribunal on a date to be fixed.

(3) The appellant and his solicitors must within fourteen days indicate whether they wish to call the appellant and/or anyone else to give further evidence in this matter and if so whether an interpreter will be required and if so in which language.

(4) If it is intended to call supplementary evidence there must be a witness statement capable of standing as examination-in-chief in respect of any additional matters or evidence it is sought to adduce.

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 Date 1 December 2020

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul