Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/02697/2019**

THE IMMIGRATION ACTS

Heard at Birmingham Civil Justice System	**Decision & Reasons Promulgated**
On 30th September 2019	**On 2nd January 2020**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

OR
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard, Solicitor, Fountain Solicitors
For the Respondent: Mr D Mills, A Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge EMM Smith promulgated on 4th June 2019. The judge had dismissed the Appellant's protection claim.

2. Mr Howard summarised his grounds of appeal. In his oral submissions before me he said there were three grounds namely the judge placed too a high a reliance on the screening interview; the judge failed to deal with a specific document; and thirdly the judge did not properly or adequately deal with the refugee sur place activities.

3. Mr Mills in his response had said that ultimately there was very little to the issue in relation to the screening interview. The judge's concern was there was no sufficient or any reference to the Etelaat or indeed to the matters which the Appellant says he was dealing with namely weapons and such like. If that really was the Appellant's case then he should have explained that in his screening interview. Selling satellite dishes, in effect, is very different to be dealing with weapons.

4. Insofar as the document is concerned albeit there is a slight typographical or similar error in relation to whether or not there was an envelope at paragraph 30 the judge corrected this at paragraphs 32 and 42 of his decision because he does indeed refer to these documents having been sent electronically.

5. Insofar as the refugee sur place activities are concerned Mr Mills says that this is fully and adequately dealt with by the judge because in the end the judge concluded at paragraph 43 that he was satisfied that the Facebook detail that the Appellant had provided could not be used against him because he had not established the page for the Facebook was actually anything to do with him. This was as I note also referred to at paragraph 38.

6. The grounds as I see them are hand drafted and I suspect they are probably drafted by the Appellant himself but even if not they are very brief in their format. The issue which arose however during the submissions under discussion this afternoon was that the judge said in relation to the refugee sur place activities as follows at paragraph 43.

> "The Appellant has I am satisfied tried to answer his claim by attending a rally in London on behalf of Kurdish people. He prior to then showed no interest in seeking out political involvement either in Iran or the UK. He said that he actually attended two meetings but no evidence of the other. The photographs he has produced are all of him central to the camera taken as if to enhance his presence not to enhance the purpose of the demonstration. I am satisfied that there would be evidence for the Appellant to confirm his clear reasons for attending does not I do not accept that he is genuinely and politically active and further satisfied that Facebook details provided would not be used against him as he had not established a page for Facebook he has produced is actually anything to do with him."

7. The parties helpfully reminded me of the background of how it is that the most recent country guidance case of **HB (Kurds) Iran CG [2018] UKUT 430 (IAC)** came to exist is namely a reference to earlier country guidance which in the past in the head note says as follows:

> 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".

8. It was also said:

> "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. 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."

9. So what does one make of all of these submissions in court which has been reached. In my judgment the judge was perfectly entitled to conclude that had the Appellant's truthful reasons for seeking protection in the United Kingdom being anything to do with the distribution or otherwise of weapons then this would have been set out and explained by or indeed involvement as an informant for Etelaat and as was pointed out by Mr Mills not only was the Appellant asked once there was a follow-up question as well. The response from Mr Howard was that the Appellant does mention the KDPI later in his screening interview and that indeed well after the screening interview there was a witness statement explaining why the Appellant felt scared to refer to these matters.

10. Be that as it may the difficulty with that submission from Mr Howard is the judge does deal with the reason as to why the screening interview was deficient. The judge rejected that evidence of the Appellant in my judgment the reasoning of the judge is more than adequate.

11. Moving on to the issue of the document this is the document from the Hengaw website and while it is correct that the judge initially referred to among them he does correct this at paragraphs 32 and indeed 42. I see no basis on which it can be said that there was a lack of anxious scrutiny in relation to this part of the case. I reject the ground of appeal which says otherwise. In my judgment it is quite plain that it is no more than a typographical error at the initial paragraph which refers to the envelope. This was properly and fully corrected by the judge in the later paragraphs of his decision.

12. Insofar as the assessment of the refugee sur place activities is concerned I see no reason to go against the judge's findings that there was no basis on which it could be said that the Appellant could be linked to his claimed Facebook details. Again the judge gave more than adequate reasons at paragraphs 38 and 43.

13. One issue remains though and that is an important one. If the Appellant is returned to Iran the parties agree that the Appellant will be questioned by the authorities alternatively the parties also agree that at the very least, to the required lower standard of proof it is likely that the Appellant will be questioned. This questioning will be not least because of his Kurdish background. There will be relatively straightforward questions asked of

him during that questioning such as have you attended demonstrations or events against the Iranian regime. The Appellant will have to answer truthfully. The Appellant will say "Yes". That will therefore lead to further questioning and in view of the country guidance case law, that will lead to persecution or ill-treatment.

14. There cannot be any doubt that the Appellant cannot be expected to lie and that is clear for Supreme Court authorities such as **RT (Zimbabwe) v SSHD** [2012] UKSC 38 where when reviewing its old decision in **HJ (Iran)** the Supreme Court made clear that having to lie to protect oneself from persecution is impermissible. So I ask the rhetorical question here. If the Appellant is returned to Iran, could he do what is suggested by Mr Mills namely all the Appellant would have to say is that he did attend a demonstration against the Iranian regime in London on behalf of Kurdish people but a judge at the First-tier Tribunal had found that he did not do so for genuine political reasons.

15. In my judgment such a nuanced response from this Appellant is almost certain to fall on deaf ears in Iran and in view of what is reported in the country guidance case in my judgment the heightened sense of concern by the Iranian regime and of such Appellants and such politically active persons would lead to further questioning. That therefore will lead to a real risk to the Appellant.

16. In the circumstances I find as follows. The grounds in respect of the screening interview, the document and the general sur place aspects are grounds which I reject. However the issue in respect of whether or not the Appellant would be questioned on return forces me to hesitate. I have to ask is there a real risk that the Appellant will be questioned on return. I conclude in view of his Kurdish background, there is a real likelihood that he will be questioned. That may initially be, "routine" questioning. The matter which makes that routine questioning more serious is that the Appellant is accepted to have attended a demonstration against the Iranian regime in this country. Therefore this is not a case in which the Appellant is merely being returned as a person of Kurdish ethnicity. The fact that he has attended a demonstration places his case in a different category. There is a risk of ill-treatment during such questioning amounting to persecution in view of the country guidance that I have referred to.

17. It is of note that although the judge referred to whether or not there was genuine political engagement by the Appellant, the case law is clear that it matters not as to whether or not the Appellant has been opportunistic in his sur place activities. Indeed the judge referred at paragraph 37 to the Court of Appeal's decision in **YV (Eritrea) v Secretary of State for the Home Department [2008] EWCA Civ 360** where the judge said the Court of Appeal sounded a note of caution in relation to that argument that if the Appellant was found to have been opportunistic in his sur place activities his credibility was in consequence low.

18. In my judgment these are difficult cases because one does not want to give the wrong impression to any Appellant that simply making things up and presenting them to the Tribunal will lead to success. However the case law makes clear that the circumstances of the current regime in Iran are such that in my judgment the risk is simply too high to enable me to conclude that the Appellant will be able to somehow persuade the authorities that he should not be persecuted, detained or ill-treated. I deplore the Appellant's attempts at lying to the authorities about his protection claim in this country, but it remains the position that the country guidance forces me to say that the appeal has to be allowed.

19. In the circumstances I conclude:

    (1) That there is a material error of law in the decision of the First-tier Tribunal.
    (2) I set aside the decision of the First-tier Tribunal.
    (3) I remake the decision by allowing the Appellant's appeal on asylum 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 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: A Mahmood Date: 30 09 2019

Deputy Upper Tribunal Judge Mahmood

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed: A Mahmood Date: 30 09 2019

Deputy Upper Tribunal Judge Mahmood