Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: UI-2022-003507**
PA/52634/2021; IA/12922/2021

THE IMMIGRATION ACTS

Heard at Bradford IAC
On 16 November 2022

Decision & Reasons Promulgated
On the 24 January 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

HA
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms G Patel instructed by Hallmark Legal Solicitors.
For the Respondent: Ms Z Young, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Hillis ('the Judge') promulgated following a hearing at Bradford on 24th May 2022, in which the Judge dismissed the appellant's appeal

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against the refusal of his application for leave to remain in the United Kingdom as a refugee and/or on any other basis.

2. The appellant is a citizen of Iran born on 21 March 2002.

3. The Judge noted the agreed issues that required resolution at [52].

4. The Judge rejected the appellants claim to face a real risk for acting as a Kolbar and in light of his sur place activities.

5. The appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal on 18 July 2022, the operative part of the grant being in the following terms:

> 2. At paragraph 70 the judge found that the Appellant was holding up pieces of A4 paper which in his judgement meant the Appellant being construed as anti-regime by the Iranian authorities. The judge also accepted further in that paragraph that the Iranian authorities to have agents in the crowds. It is therefore arguable that the judge's findings in concluding that the Appellant's Facebook posts could not be construed by the Iranian authorities as antiregime in line with the guidance set out in XX (PJAK – sur place activities – Facebook) Iran UKUT 0023 (IAC). This would also have a bearing on the findings on risk to the Appellant on return to Iran airport. Grounds (iii) and (iv) are therefore arguable in view of the authorities referred to in the application for permission to appeal. I find that the issue of the Appellants sur place activities and the issue of risk on return give rise to an arguable error of law.

Error of law

6. Ground (i) asserted the Judge erred by failing to put material matters to the appellant. This is a challenge to the findings at [63 to 65]. It is said the Judge made adverse findings without putting the matters to the appellant for comment. The grounds assert procedural irregularity and also factual error in relation to the finding at [64] where the Judge undertook a conversion of the Iranian currency to pound sterling using figures based on the respondent's CPIN from October 2019, without putting that to the appellant or his representative, and used a conversion rate that was not up to date.

7. At [64 – 65] the Judge wrote:

> 63. I do not find it credible that the Appellant would earn 1 million tomans for each time he smuggled goods for Mr. Ahmed prior to smuggling the political literature. At AI 90 when challenged about carrying goods such as car parts on his back he stated he only carried one tyre at a time and that the alcoholic drinks were not very big. It is, in my judgment, not credible that Mr. Ahmed would pay 1 million tomans for such a small load as it would not be economically viable to do so. In reaching this conclusion I have taken into account the contents of the Country Policy and Information Note Iran: Smugglers Version 4.0 dated February, 2022 with particular reference to Section 3.1.4 which states that kolbars are paid depending on the weight and type of goods they carry. At paragraph 3.1.3 the Peace For Asia article of December 2020 states the goods the kolbars smuggle often weigh sometimes between 25 to 75 kilograms and are transported by foot through

the mountains for meagre wages which at paragraph 3.2.4 are said for foot soldiers to be “a pittance” of around US$25 or occasionally up to US$64 for particularly heavy or valuable loads. Horse couriers earn US$30 per load.

64. At the time the Appellant claims he was being paid by Mr. Ahmed one toman was the equivalent of ten Iranian rials which is the official Iranian currency. One GB£ was equivalent to approximately 51,011 rials as set out at paragraph 6.1.1 in the Country Background Note: Iran Version 6 October 2019. There is no evidence or submission before me that the Appellant was being paid in rials. One million rials converts to approximately USGB£19.60. I, therefore, conclude that one million tomans is the equivalent of approximately GB£196.

65. On the Appellant’s account when he smuggled the political literature he was paid 500,000 tomans in addition to the one million he was already being paid per trip. This would be the equivalent of GB£294 which, in my judgment, is wholly inconsistent with the background material and could not under any circumstances be categorised as a “pittance.” On the Appellant’s own account in his AI, he made up to three trips per week prior to smuggling the political material in the box which would give him an income of approximately GB£600 for that particular week which is, in my judgment, simply not credible or reliable if on those occasions he would carry, for example, one tyre and a few bottles of alcohol and some cigarettes on his back.

8. The Judge is criticised as it is stated that the conversion rate applied at [64], when converting the Iranian currency to Sterling was wrong. It was submitted before me that the actual figure is substantially lower than that claimed by the Judge, in that 10 Toman = 1 Rial in Iranian currency, meaning 1,000,000 Toman is therefore 100,000 Rial, and not as found by the Judge at [64] that 10 Rials is equivalent to 1 Toman. On the basis of Ms Patels submission the conversion rate at the date of this hearing for this quantity is in the region of $27.61 or £23.25 and not as the Judge found, that 1 million Toman is the equivalent of £196, which is the source of the further finding that the appellant earned approximately £600 for a week’s work which, on the basis the background evidence, would not have been credible; albeit using a different exchange rate.

9. The official currency in Iran is the Iranian Rial which is that which appears on notes, coins and official documents. A Toman is 10 Iranian Rial. I find therefore that the Judge has not erred in fact at [64] when finding 10 Rials are equivalent to 1 Toman making 1 million Toman equivalent to 10,000,000 Rial. I find the submission that 10 Toman equal 1 Rial is not supported by country information regarding the Iranian currency which was the basis of the submission that 1 million Toman equal 100,000 Rial, which would have made the Judge’s calculation as to the value of the amount the appellant was claiming to be paid grossly exaggerated. This is not however the case when one applies the correct conversion of Iranian currency as did the Judge.

10. It was not made out before me the Judge committed any procedural irregularity as alleged in the ground seeking permission to appeal. Proceedings in this jurisdiction are litigious. The Judge has not undertaken post-hearing research in relation to a matter that was not raised before him upon which he was required to make a finding. There was no obligation on the Judge to assess the evidence, think about potential findings, but not commit them to the determination until he had returned to the appellant to ask for his comment upon the same. Information referred to by the Judge was in the public domain and in fact reflected some of the country information relied upon by the appellant. It is not made out the conversion rate used was so inaccurate as to distort the claimed value of the reward the appellant asserted he received for his work, which was considerably at odds with the country information. It was not made out before me that if a different conversion rate had been applied the outcome would have been materially different in relation to the relevant period at which these issues were being considered.

11. The Judge was not required to set out findings in relation to each and every aspect of the evidence. The Judge clearly considered the evidence with the required degree of anxious scrutiny and the findings are adequately reasoned. I find no merit in the assertion the Judge failed to consider the material matter raised at ground (ii). The appellant's account of taking the box home related directly to his work as a Kolbar. The Judge gives adequate reasons for why that aspect of the claim was not believed. The appellant may have given an explanation to try and persuade the Judge why the income he received was much greater than the country material would suggest he would have and what he did with the boxes they allegedly brought back, but the Judge did not find it appropriate to attach the weight to that evidence that the appellant would have liked. There is no basis for concluding that the weight given by the Judge to the evidence was in any way irrational.

12. The grounds also assert the Judge failed to properly apply the country guidance case of BA (Iran) [2011] UKUT 36, the head note of which reads:

> 1 Given the large numbers of those who demonstrate here and the publicity which demonstrators receive, for example on Facebook, combined with the inability of the Iranian Government to monitor all returnees who have been involved in demonstrations here, regard must be had to the level of involvement of the individual here as well as any political activity which the individual might have been involved in Iran before seeking asylum in Britain.
>
> 2 (a) Iranians returning to Iran are screened on arrival. A returnee who meets the profile of an activist may be detained while searches of documentation are made. Students, particularly those who have known political profiles are likely to be questioned as well as those who have exited illegally.

(b) There is not a real risk of persecution for those who have exited Iran illegally or are merely returning from Britain. The conclusions of the Tribunal in the country guidance case of SB (risk on return -illegal exit) Iran CG [2009] UKAIT 00053 are followed and endorsed.

(c) There is no evidence of the use of facial recognition technology at the Imam Khomeini International airport, but there are a number of officials who may be able to recognize up to 200 faces at any one time. The procedures used by security at the airport are haphazard. It is therefore possible that those whom the regime might wish to question would not come to the attention of the regime on arrival. If, however, information is known about their activities abroad, they might well be picked up for questioning and/or transferred to a special court near the airport in Tehran after they have returned home.

3 It is important to consider the level of political involvement before considering the likelihood of the individual coming to the attention of the authorities and the priority that the Iranian regime would give to tracing him. It is only after considering those factors that the issue of whether or not there is a real risk of his facing persecution on return can be assessed.

4 The following are relevant factors to be considered when assessing risk on return having regard to sur place activities:

(i) Nature of sur place activity

- Theme of demonstrations – what do the demonstrators want (e.g. reform of the regime through to its violent overthrow); how will they be characterised by the regime?
- Role in demonstrations and political profile – can the person be described as a leader; mobiliser (e.g. addressing the crowd), organiser (e.g. leading the chanting); or simply a member of the crowd; if the latter is he active or passive (e.g. does he carry a banner); what is his motive, and is this relevant to the profile he will have in the eyes of the regime
- Extent of participation – has the person attended one or two demonstrations or is he a regular participant?
- Publicity attracted – has a demonstration attracted media coverage in the United Kingdom or the home country; nature of that publicity (quality of images; outlets where stories appear etc)?

(ii) Identification risk

- Surveillance of demonstrators – assuming the regime aims to identify demonstrators against it how does it do so, through, filming them, having agents who mingle in

the crowd, reviewing images/recordings of demonstrations etc?

- Regime's capacity to identify individuals – does the regime have advanced technology (e.g. for facial recognition); does it allocate human resources to fit names to faces in the crowd?

(iii) Factors triggering inquiry/action on return

- Profile – is the person known as a committed opponent or someone with a significant political profile; does he fall within a category which the regime regards as especially objectionable?

- Immigration history – how did the person leave the country (illegally; type of visa); where has the person been when abroad; is the timing and method of return more likely to lead to inquiry and/or being detained for more than a short period and ill-treated (overstayer; forced return)?

(iv) Consequences of identification

- Is there differentiation between demonstrators depending on the level of their political profile adverse to the regime?

(v) Identification risk on return

- Matching identification to person – if a person is identified is that information systematically stored and used; are border posts geared to the task?

13. The Judge finds that the appellant will not be at risk as a result of his sur place activities both in relation to his attendance at demonstrations before the Iranian Embassy in the UK and in relation to his Facebook account, which it was accepted had its settings as "open", although it does not appear to be the case that all the information that was identified as being relevant in the country guidance case of XX [2022] UKUT 23 was provided to the Judge.

14. I note the submission made that there is country guidance other than XX in relation to Facebook and associated risk, but XX is the latest guidance on this point. The Judge was entitled to place the weight he did upon the Facebook postings and entries when considering that evidence together with the guidance provided. The head note of XX reads:

> The cases of BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC); SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC); and HB (Kurds) Iran CG [2018] UKUT 00430 continue accurately to reflect the situation for returnees to Iran. That guidance is hereby supplemented on the issue of risk on return arising from a person's social media use (in particular, Facebook) and surveillance of that person by the authorities in Iran.
>
> Surveillance

1) There is a disparity between, on the one hand, the Iranian state's claims as to what it has been, or is, able to do to control or access the electronic data of its citizens who are in Iran or outside it; and on the other, its actual capabilities and extent of its actions. There is a stark gap in the evidence, beyond assertions by the Iranian government that Facebook accounts have been hacked and are being monitored. The evidence fails to show it is reasonably likely that the Iranian authorities are able to monitor, on a large scale, Facebook accounts. More focussed, ad hoc searches will necessarily be more labour-intensive and are therefore confined to individuals who are of significant adverse interest. The risk that an individual is targeted will be a nuanced one. Whose Facebook accounts will be targeted, before they are deleted, will depend on a person's existing profile and where they fit onto a "social graph;" and the extent to which they or their social network may have their Facebook material accessed.

2) The likelihood of Facebook material being available to the Iranian authorities is affected by whether the person is or has been at any material time a person of significant interest, because if so, they are, in general, reasonably likely to have been the subject of targeted Facebook surveillance. In the case of such a person, this would mean that any additional risks that have arisen by creating a Facebook account containing material critical of, or otherwise inimical to, the Iranian authorities would not be mitigated by the closure of that account, as there is a real risk that the person would already have been the subject of targeted on-line surveillance, which is likely to have made the material known.

3) Where an Iranian national of any age returns to Iran, the fact of them not having a Facebook account, or having deleted an account, will not as such raise suspicions or concerns on the part of Iranian authorities.

4) A returnee from the UK to Iran who requires a laissez-passer or an emergency travel document (ETD) needs to complete an application form and submit it to the Iranian embassy in London. They are required to provide their address and telephone number, but not an email address or details of a social media account. While social media details are not asked for, the point of applying for an ETD is likely to be the first potential "pinch point, " referred to in AB and Others (internet activity – state of evidence) Iran [2015] UKUT 00257 (IAC). It is not realistic to assume that internet searches will not be carried out until a person's arrival in Iran. Those applicants for ETDs provide an obvious pool of people, in respect of whom basic searches (such as open internet searches) are likely to be carried out.

Guidance on Facebook more generally

5) There are several barriers to monitoring, as opposed to ad hoc searches of someone's Facebook material. There is no evidence before us that the Facebook website itself has been "hacked," whether by the Iranian or any other government. The effectiveness of website "crawler" software, such as Google, is limited, when interacting with Facebook. Someone's name and some details may crop up on a Google search, if they still have a live Facebook account, or one that has only very recently been closed; and provided that their Facebook settings or those of their friends or groups with whom they have interactions, have public settings. Without the person's password, those seeking to monitor Facebook accounts cannot "scrape" them in the same unautomated way as other websites allow automated data extraction. A person's email account or computer may be compromised, but it does not necessarily follow that their Facebook password account has been accessed.

6) The timely closure of an account neutralises the risk consequential on having had a "critical" Facebook account, provided that someone's Facebook account was not specifically monitored prior to closure.

Guidance on social media evidence generally

7) Social media evidence is often limited to production of printed photographs, without full disclosure in electronic format. Production of a small part of a Facebook or social media account, for example, photocopied photographs, may be of very limited evidential value in a protection claim, when such a wealth of wider information, including a person's locations of access to Facebook and full timeline of social media activities, readily available on the "Download Your Information" function of Facebook in a matter of moments, has not been disclosed.

8) It is easy for an apparent printout or electronic excerpt of an internet page to be manipulated by changing the page source data. For the same reason, where a decision maker does not have access to an actual account, purported printouts from such an account may also have very limited evidential value.

9) In deciding the issue of risk on return involving a Facebook account, a decision maker may legitimately consider whether a person will close a Facebook account and not volunteer the fact of a previously closed Facebook account, prior to application for an ETD: HJ (Iran) v SSHD [2011] AC 596. Decision makers are allowed to consider first, what a person will do to mitigate a risk of persecution, and second, the reason for their actions. It is difficult to see circumstances in

> which the deletion of a Facebook account could equate to persecution, as there is no fundamental right protected by the Refugee Convention to have access to a particular social media platform, as opposed to the right to political neutrality. Whether such an inquiry is too speculative needs to be considered on a case-by-case basis.

15. In relation to attendance at demonstrations, it is important to read the Judge's findings as a whole. The findings regarding political activities in the UK commence at [70]. The Judge clearly considered the photographic and other evidence relied upon with the required degree of anxious scrutiny. The Judge noted the appellant was holding up a piece of paper which was capable of being construed as antiregime by the Iranian authorities but this on its own is not sufficient. As the Judge notes, a single photograph gives no indication as to how long the piece of paper was held up, as it could have been a momentary event for the purposes of obtaining a photograph for use within the asylum claim. The Judge also notes that in the photograph the appellant was facing away from the Iranian Embassy, and it is a finding open to the Judge that it was no reasonably likelihood of that being caught by any CCTV cameras or people photographing the crown from the direction of the Embassy. The Judge accepts that the Iranian authorities place individuals in the crowd. The country guidance case recognises this but does not find that for that reason alone an individual will face a real risk. The Judge's finding, having assessed the evidence, that the appellant's profile would not be sufficient to create a real risk and that his actions as evidenced in the very limited material on this point did not indicate a profile that would draw him to the adverse attention of the Iranian authorities has not been shown to be outside the range of findings reasonably available to the Judge on the evidence.

16. Having undertaken the necessary holistic assessment, the Judge finds the appellant failed to show that he genuinely holds political beliefs adverse to the Iranian authorities, which is a finding reasonably open to the Judge on the evidence. The Judge finds the appellant on his own account was not politically active in Iran and rejected his claim to smuggle political materials. The Judge's conclusion that the appellant could delete his Facebook account before applying for the Emergency Travel Document (ETD) is a finding in accordance with the overall conclusions of the Judge, has not been shown to breach the HJ (Iran) principle, and is in accordance with the findings in XX.

17. The assertion in the grounds that the appellant could not be expected to lie about his reasons for claiming asylum does not established legal error as the appellant can only be expected not to deny something that represents a genuinely held view or something that forms part of his fundamental identity. The Judge did not find the appellant's claim to have acted as a Kolbar to be credible or that his activities within the UK represented a genuinely held belief. An individual has no right to have a Facebook account and it is not made out the appellant will be required to reveal its existence to the authorities which, in any event, they could not access as it would have been deleted.

18. Miss Patel correctly referred to the key issue not being whether the activities were genuine, but how they will be perceived in the eyes of the Iranian authorities. The Judge's finding is that notwithstanding his UK based activities, it was not made out that if the appellant was questioned on arrival at the "pinch point" it will give rise to a real risk on return or that the authorities will be interested in the appellant. Reference is made in the grounds to [116] of XX, which may in fact be a reference to [118] in which it was found that deleting the Facebook material and closure of account before application for an ETD would serve no purpose, but that is a finding in relation to an appellant to whom it was specifically found that their activities, including attendance at events and the prominence of the person he had secured a photograph with, would mean that he was already subject to surveillance by the Iranian state, which is like to have included his Facebook account. The basis of the finding is therefore that there is no point in expecting a person to avoid risk by deleting his social media of which the authorities are already aware. That is a material difference to the facts of this appeal where there was insufficient evidence before the Judge to show that the appellant is of interest to the Iranian authorities such as to create a real risk for him at the pinch point or on return generally.

19. I find the appellant has failed to establish arguable legal error material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in relation to this matter.

Decision

20. The Judge has not been found to have materially erred in law. The determination shall stand.

Anonymity.

21. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

Signed……………………………………………….
Upper Tribunal Judge Hanson
Dated 18 November 2022