



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005935

First-tier Tribunal Nos: PA/54496/2021
IA/13584/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 24 May 2023**

Before

UPPER TRIBUNAL JUDGE KEITH

Between

'S.O.H.A. (Iraq)
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms Sepulveda, legal representative, instructed by Hanson Law Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 24 April 2023

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. 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.

DECISION AND REASONS

1. These reasons reflect the oral decision which I gave to the parties at the end of the hearing.
2. The appellant appeals against the decision of First-tier Tribunal Judge Lawrence (the "FtT"), who, in a decision dated 21st September 2022, dismissed the appellant's appeal on protection and human rights grounds. At the core of the appellant's appeal is his claim to fear persecution as an Iraqi national of Kurdish ethnic origin, based on 'sur place' activities in the UK, specifically his support for the New Government Movement or 'NGM', which is said to be critical of both the

Iraqi government and the Kurdistan Regional Government. His sur place activities include attendance at the Iraqi embassy in London at demonstrations and posting material on Facebook. The FtT separately considered an Article 3 ECHR risk as a result of the appellant needing to obtain an identification ('CSID' or 'INID') document to travel to the IKR.

3. The FtT rejected the appellant's claims. He concluded that the appellant's political opinions were genuine, but not strongly held, and that the appellant had bolstered them through his activities. However even those activities were limited. The Facebook activity merely comprised reposts which had attracted very limited attention, and the appellant had not disclosed his full social media profile, see: XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 23 (IAC) in relation to the limited disclosure of Facebook material, and the evidence did not support claims that sur place activities outside the IKR would result in a risk of persecution, for a low-level supporter. The FtT also did not accept the appellant's claim to have lost contact with his family, given the late stage at which he had contacted the ICRC tracing service, which the FtT regarded as contrived. The FtT did not accept that he would be unable to obtain his CSID card from his family members and there was no reason to apart from findings of a previous FTT Judge, Judge Davies, whose earlier decision had also rejected a protection claim.

The grounds of appeal and grant of permission

4. The appellant appealed on six grounds:
 - (a) Ground (1) - even if the appellant's sur place activities were contrived, the timing of them could still put the appellant at risk, as per the authority of Danian v SSHD [1999] EWCA Civ 3000.
 - (b) Ground (2) - the FtT had failed to consider country evidence of mistreatment and possible persecution as a result of sur place activities - see paragraph 23 of the FtT's decision.
 - (c) Ground (3) - the FtT had failed to consider that the appellant would not continue his political activities in Iraq. The FtT's reasoning at paragraph 24 was not adequate.
 - (d) Ground (4) - the FtT had failed to consider SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110), as meaning that the appellant would not be able to obtain an identity card.
 - (e) Ground (5) - the FtT had failed to consider unspecified evidence in relation to NGM.
 - (f) Ground (6) - the FtT had failed to apply properly XX (PJAK), noting that people and 'friends' had shared and commented on the appellant's Facebook posts.
5. While permission to appeal was initially refused, Upper Tribunal Judge Pickup granted permission on 27th January 2023. The grant of permission was not limited in its scope.

The hearing before me

6. In terms of the hearing before me, I considered the representations from both representatives. I do not recite these in full but instead explain why I have preferred one set of arguments over the other.

Ground (4)

7. I deal with the grounds slightly out of order and take ground (4) first. The FtT had found that the appellant would be able to obtain his CSID card from his family members in Iraq, with whom he remained in contact. While the challenge refers to SMO & KSP, bearing in mind that this is case where the FtT (and a previous judge) had referred to the existing CSID card being sent him, Ms Sepulveda accepted this was not a challenge to the issuing of INID cards, Rather, she argued that the FtT's findings on whether family contact continued was in error. However, the FtT explained why he did not accept the new claim that while there had been contact at the time of the 2017 FtT decision, contact had since been lost. This was based on the vagueness and implausibility of the appellant's evidence, that those whom he had asked in Iraq to provide details of their searches for family members had refused, because they were too busy. He also regarded the timing of contact with the ICRC Tracing service (2022) as contrived. The appellant asserts that the FtT failed to consider the ICRC correspondence, which is plainly in correct, as he did (at paragraph 20). Ground (4) discloses no error of law.

Grounds (1), (2) and (6)

8. The remainder of the grounds are interlinked. Ground (1) cites the proposition that even contrived sur place activity might form the basis of a well-founded fear of persecution, particularly where a government which persecutes its own citizens does not distinguish between genuine and contrived opposition. That may be correct, but the FtT clearly considered the extent of the social media activities and the appellant's 'social graph' (see XX (Facebook)). When I explored with Ms Sepulveda how it was argued that the FtT's application of XX (Facebook) was not correct, she was unable to assist further (ground (6)). Rather, her focus was on ground (2), that the FtT had ignored country evidence relating to the risk of persecution of those within the IKR. Ms Sepulveda took particular issue with paragraph 23 of the FtT's reasons:

"23. My assessment of the evidence referred to by the Appellant and the Respondent is that any risk of mistreatment and possible persecution regarding political activity in the KRI is centred around protesting against the KRG more generally, rather than as a result of being a supporter, member or carrying out activities on behalf of a specific political party. There is moreover no evidence of any risk of mistreatment and possible persecution in Iraq arising from political activity outside of Iraq. I do not find that the evidence establishes a real risk of serious harm or persecution to a supporter of NGM who has, at most, played a low level part in protests or other political activity against the KRG in the UK and having no profile as an organiser of such activities, which I find is the Appellant's position. Therefore, I find that the Appellant has failed to demonstrate that he has a profile that would have been of any significant interest to the authorities in Iraq in relation to his activities in the UK."

9. She reiterated the risk to those participating in opposition activities in the IKR, including the monitoring of social media. When I asked whether the evidence commented on the monitoring of sur place activities, however, she confirmed that it did not. In the circumstances, grounds (1), (2) and (6) disclose no error of law.

Ground (5)

10. In relation to ground (5), when I asked Ms Sepulveda what NGM evidence had been ignored, she referred to a letter dated 20th December 2020. The FtT referred to this expressly at paragraph 12, and considered its limited contents. Ground (5) also discloses no error of law.

Ground (3)

11. Turning to the remaining ground (3), which had particularly concerned Judge Pickup, the appellant challenges the adequacy of the reasoning as to why the appellant would not continue his activities in Iraq. As Ms Sepulveda argues, if, as here, his political belief were genuine, it was not explained why, upon return to Iraq, the appellant would not continue to manifest those beliefs and engage in activities just as he had done in the UK. The FtT had not considered whether he might not do so, out of fear of persecution. If that were the case, his asylum claim must succeed. However, I accept that Ms Everett's submission that there can be a valid distinction between those who have genuine political beliefs, which are manifested in the strongest possible terms, and those with equally genuine beliefs who simply do not manifest them, or would not manifest them, not out of fear, but because those views are not strong enough that the individual is motivated to carry out political activities. The FtT here had found that while the appellant's beliefs were genuine, his sur place activities (and their timing) was to bolster his claim and that he would not repeat them in the IKR, not because he was afraid, but because, by implication, the motivation (to bolster a claim to the remain in the UK) had ceased. These findings were unarguably open to the FtT to make on the evidence before him.
12. Ground (3) also fails and is dismissed.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal stands.

The anonymity directions continue to apply.

Judge J Keith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

9th May 2023