IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER Case No: UI-2022-003247
First-tier Tribunal No: PA/55420/2021 (IA/16391/2021)

THE IMMIGRATION ACTS

Decision & Reasons Promulgated
On 30 April 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD

Between
ER
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Woodhouse, HS Immigration Consultants
For the Respondent: Mr Gazge, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 14 March 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) 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 (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Hobson promulgated on 13 June 2022 in which she dismissed the Appellant's appeal against a decision of the Secretary of State made on 29 October 2021 refusing the Appellant's protection claim.

The Appellant's Case

2. The Appellant is a national of Iran of Kurdish ethnicity. He claims asylum on the basis of having a well-founded fear of persecution in Iran due to his political opinion, namely his support for the Maktab Quran party. Specifically, the Appellant claims he distributed leaflets and attended meetings; on the way to a meeting, he saw a friend being arrested; he sought help from his uncle who contacted his mother and discovered the family home had been raided by plain clothes officers; his room had been searched and material seized which linked him to political opposition; his father was arrested but released a few hours later having been told by the authorities to hand over the Appellant; the Appellant's friends had told the authorities that he was working with them; his uncle arranged for him to leave Iran the next day; his father has since been arrested twice and interrogated. He claims to have worked as a kolbar (smuggler) before he left Iran. He says he has posted on Facebook about Maktab Quran since being in the UK. The Appellant claims that on return he fears he will be executed by the Iranian government.

3. In a letter dated 20 October 2021 ("the Refusal Letter") the Respondent accepted that the Appellant was from Iran and of Kurdish ethnicity, had worked as a kolbar and had left illegally. However, the Respondent did not accept the Appellant's account of having supported Maktab Quran. Although it was accepted that the Appellant's account of the party and its history were consistent with background information, it said his evidence about his own involvement was vague and inconsistent. As regards Facebook, the Respondent said that the Appellant's privacy settings were set to share with friends only as opposed to with the public at large and he began posting from 10 February 2020, some time after he made his asylum claim; as such he would not be of particular interest to the Iranian authorities as a result of his Facebook activity. Overall, the Respondent did not accept that the Appellant held any political profile in Iran or the UK which would attract the adverse attention of the authorities; it said he would not be at risk of persecution or harm if he were to return to Iran.

4. The Appellant appealed that decision. The appeal was heard by First-Tier Tribunal Judge Hobson ("the Judge") on 7 June 2022, after which her decision was promulgated on 13 June 2022.

The First-tier Tribunal's decision

5. The Judge heard evidence from the Appellant via a Farsi interpreter, and submissions from his representative, Mr Mohzam. The Respondent was represented by presenting officer Ms O'Mahoney.

6. The Judge's key findings, with reference to the relevant paragraph numbers, were as follows:

   (a) The Appellant had an extensive knowledge of the history and beliefs of Maktab Quran [33].

   (b) She had a number of concerns about the Appellant's credibility [34] because:

      (i) He had been inconsistent about the distribution of leaflets.

      (ii) His account about the high level of secrecy involved with attending meetings was inconsistent with his keeping dangerous material relating to the group at his home and with M keeping a list of the meeting's attendees.

      (iii) There was considerable inconsistency in the Appellant's account of M's arrest and the events following it, concerning the timeline in particular.

   (c) She found the Appellant had learned about the group in detail from external sources, so that he was able to provide detailed information about it. However, the account he gave of his own involvement was inconsistent, not credible and was not accepted, even on the lower standard of proof [35].

   (d) Having considered XX (PJAK – sur place activities - Facebook) Iran CG [2022] UKUT 23 (IAC) and in light of the finding that the Appellant was not suspected of political opposition in Iran, it was unlikely that the Appellant would have been specifically targeted for surveillance by the Iranian authorities [37]-[39].

   (e) There was nothing in the Facebook material which suggested that the Appellant could be identified in any internet search carried out under his name; it was not accepted that his Facebook page and its posts were publicly available [40].

   (f) It was not accepted that the Appellant used his Facebook account in order to express a genuinely held political opinion. As such, he was likely to minimise the risk on return to Iran by closing his account and it would be reasonable for him to do [42].

   (g) It was not accepted that the Appellant would face a risk on return to Iran as a result of his sur place activity [43].

   (h) Having considered HB (Kurds) Iran CG [2018] UKUT 00430 (IAC) ("HB") [45], although the Appellant had worked as a kolbar, on his

own evidence the Iranian authorities did not record his details when he was apprehended in that role, and so that fact was unlikely to be a matter considered by the authorities on his return

(i) It was not accepted that the Appellant faced a real risk of persecution in Iran on account of his actual or perceived political opinion, or that he would be at risk of harm in Iran, or of a breach of his rights under Article 2 or 3 ECHR [47].

(j) He was likely to be able to resume family life in Iran with his wife and his parents without significant difficulty and did not meet the requirements of the Immigration Rules [52]-[53].

(k) The interference with the Appellant's Article 8 rights brought about by the Respondent's decision was proportionate [56].

Appeal History

7. The Appellant sought permission on 10 August 2022 from the First -tier Tribunal to appeal to the Upper Tribunal. The grounds were not very clearly drafted but can be characterised as follows:

(a) The Judge failed to consider whether the Appellant would be at risk for being perceived as anti-Iranian due to being someone of Kurdish origin, who had worked as a Kolbar.

(b) The Judge failed to answer whether, at the pinch point of arrival, in light of the "hair trigger" approach to those suspected of or perceived to be involved in Kurdish political activities or support for Kurdish rights and pursuant to HB, the Appellant would be at risk on return.

(c) The Judge failed to consider whether the Appellant being a Kolbar and someone who exited illegally, would put him at risk. In accordance with HJ (Iran) the Appellant would need to tell the full truth about his activities in the UK and Iran.

8. On 25 July 2022, First-tier Tribunal Judge Boyes refused permission to appeal, saying:

> "2. The grounds assert two general matters that the Judge is alleged to have erred in. The grounds are not headed correctly, they are not signed, they are not dated and they are not numbered. Nowhere therein does it reference the particular section or part of the judgment concerned and nowhere does it reproduce the actual wording of the Judge which is said to be in error.
>
> 3. It is not my role to fish through a judgment looking for errors. Permission is either requested properly or not at all.

> 4. Permission is refused as nowhere in the grounds does it identify where specifically the Judge is said to have fallen into error."

9. On 19 January 2022, the Appellant sought permission from the Upper Tribunal to appeal to the Upper Tribunal on ostensibly the same grounds, but adding that the Judge also failed to consider whether at the time of applying for ETD (which abbreviation was not explained) the Appellant would delete his Facebook activities and if not, why.

10. On 20 September 2022 Upper Tribunal Judge Smith granted permission to appeal on all grounds, saying:

> "The appellant is a Kurdish citizen of Iran and so potentially subject to the risks arising from the 'pinch point' at the border upon his return. The judge said at paragraph 44 that the Secretary of State accepted the appellant's evidence to have been a kolber, that is, smuggler. That being so, arguably it was incumbent upon the judge expressly to address whether the appellant would be at risk from having, if asked, to declare that fact at the border upon his return. Arguably, the mere fact that the Iranian authorities appear not to have any pre-existing records of the appellant's activities in this respect (see paragraph 46) is not the determining factor, since, if asked at the border 'pinch point', the appellant cannot be expected to lie".

11. The Respondent did not file a response.

The Hearing

12. The appeal came before me on 14 March 2023.

13. It serves no purpose to recite the submissions here at length as they are set out in the record of proceedings. Essentially, Mr Woodhouse expanded on the grounds of appeal, making the following submissions of particular note:

    (a) It was incumbent on the Judge to consider whether the fact alone of the Appellant being a kolbar would place him at risk considering any resulting prosecution could include punishment amounting to a breach of articles 2 and 3. He confirmed that the authorities would only know about the Appellant being a kolbar as he would be asked about it at airport and he could not be expected to lie. The most recent CPIN at the time (issued 4 February 2022) was not in the Appellant's bundle but was in the public domain; the version in the bundle was an older version which did not contain the quotation in the grounds.

    (b) At [40] the Judge said the Appellant's Facebook page was not publicly available which is plainly incorrect because if you google him, his is the first profile to appear. He admitted this argument was not in the grounds of appeal.

14. Mr Gazge replied:

    (a) The decision at [46] held the Judge was not satisfied the Appellant was involved in even low level political activity and that although he worked as a kolbar, the authorities did not record his details so it was unlikely to be a matter considered by them on return.

    (b) As regards whether the Appellant would volunteer such information at the border concerning his past, at [42] the Judge said he was likely to minimise the risk on return by closing his Facebook account; if so, it follows he would not volunteer information which would put him at risk by saying he was a kolbar.

    (c) There was nothing in the evidence to say he would volunteer this information. The CPIN was not pointed out to the Judge as evidence in this regard.

    (d) The Judge addressed all of these matters adequately and the appeal should be dismissed.

15. Mr Woodhouse replied to say that [42] relates to the disingenuousness of political beliefs; the smuggling is different, it was accepted he was a smuggler and he cannot be expected to lie about it, the Judge should have assessed this accordingly. He said even if the Appellant was a smuggler for a matter of months, he was not sure it mattered when it comes to Kurds and the extreme approach taken to them.

Discussion and Findings

16. I cannot see that it was specifically argued before the Judge that the Appellant would be at risk of being perceived as anti-Iranian due to being someone of Kurdish origin who had worked as a kolbar. Rather it was argued that being a kolbar would put him at risk because smuggling was illegal, not that being a kolbar meant he would be perceived as anti-Iranian.

17. This was certainly the view taken by the Respondent of the Appellant's case, as shown by paras 15-19 of the Refusal Letter saying that kolbars are not a Particular Social Group for the purposes of the Refugee Convention. At para 69 the letter said:

> "You have not provided any evidence to suggest that you came to the adverse attention on account of your work as a Kolbar and there is no suggestion you would do so on return. It is considered that you could secure alternative employment on return so as not to place yourself at risk of adverse attention on this basis on return. It is therefore considered that you face no risk on return on account of having worked as a Kolbar."

18. I cannot see any attempt by the Appellant to counter this assertion, nor did he clearly raise anything further in evidence. In his initial questionnaire dated 23 August 2019 he said he was a porter (1.14) and did not mention

this aspect at 4.1 when asked to explain all the reasons he was claiming asylum.

19. In his preliminary information questionnaire of 11 March 2021, the Appellant focussed on his being a member of a religious party, mentioning that 'I was a kolber, bringing items such as nuts, material and tea illegally from Iraq to Iran' only when asked what was his role before he left the country.

20. In his substantive asylum interview on 16 March 2021, the Appellant referred to his work as a kolbar as follows:

    (a) Question 26 States he was working as a goods carrier – kolbar.

    (b) Question 70 Says "there are not many employments in our area, everybody had become a kolbar - not by choice"

21. At question 46 when asked why he feared the authorities, he said only that it was because he was a member of a party called Maktab Quran. At question 86 when asked whether he came to the attention of the authorities, he did not mention anything due to being kolbar.

22. In his witness statement of 21 January 2022 he states:

> "I briefly worked as a kolbar for 3-4 months in the winter period of 2019 (1398)" (para 4)
>
> "This was a very hard and dangerous job. I used to walk for 10-12 hours through cold mountains to reach the border. Then I had to walk 10-12 hours to get back. I also know that border police would sometimes shoot kolbars so I was always scared of this happening (para 5)"
>
> In response to Paragraph 69 of the Home Office decision: I am in danger because of my job as a kolbar. I have come to the attention of the authorities for this before. They found me and took the parcel I was carrying. They then burned it and I had to pay back the money for the parcel. I know other kolbars who have been punished worse than this – like being imprisoned and shot at by border police. Every day, bad things happen to Kurdish kolbars. I would try to find different work, but I would have little choice but to become a kolbar again if I went back to Iran and managed to avoid being arrested straight away at the airport (para 52)

23. The Appellant's skeleton argument did not mention the Appellant's work as a kolbar. Rather, the focus was on the claimed political activity of distributing leaflets and attending meetings.

24. The Judge's decision referred to Appellant's work as a kolbar in the following paragraphs:

> "[31]In relation to his work as a kolber, the Appellant said he had been caught by the Iranian authorities on one occasion and the cargo he was carrying was destroyed. He said they did not take his name or any other details during that incident."

> "[46]The Appellant has not lived in the KRI. For the reasons I have already set out, I was not satisfied that he has been involved in even low-level political activity. Although he has worked as a kolber, on his own evidence the Iranian authorities did not record his details when he was apprehended in that role, and so that fact is unlikely to be a matter considered by the authorities on his return".

25. Mr Woodhouse admitted that the country policy and information note containing the paragraphs now being relied on (2.4.6 and 2.4.7) was not in evidence before the Judge. I have not been given the full title of the relevant note. There was only one such note referred to in the Appellant's bundle before the Judge, being the "UK Home Office, Country Policy and Information Note - Iran: Kurds and Kurdish political groups (January 2019), 30 January 2019". The latest version of this note, issued in May 2022, does not contain the paragraphs now being referred to. Instead they are contained in the "Country policy and information note: smugglers, Iran, February 2022".

26. Therefore, the correct note was not in evidence before the Judge and does not appear to have been cited to her (and indeed has not properly been cited to me even now). Whilst such notes are not binding upon judges of the Tribunal in the same way as country guidance caselaw, nevertheless they are the Respondent's published position statements and they should be reviewed to ascertain what they say on material issues. This is arguably an error.

27. Having said that, even had the relevant note been adduced and the Judge had reviewed it, I cannot see that it was argued before the Judge in any clear way that the Appellant was at risk on return due to his work as a kolbar, whether due to imputed political opinion, illegality or otherwise. As above, it is only in his witness statement that he provides any real detail as to this work and it is relayed in the sense that the job itself was risky and he would have no option but to do it again on return. It is trite law that a Judge cannot be expected to deal with arguments not properly raised by parties unless they are 'Robinson Obvious'; such occasions only likely to arise by reason of lack of skill, knowledge or pressure of time such as when a party is not represented. The Appellant here was represented before the Judge and had several opportunities to raise his arguments clearly.

28. As to the pinch point of return, I disagree that the Judge made inadequate findings about what would happen should the Appellant be questioned about his work as a kolbar. As above, the Judge was not asked in clear terms to make a finding on this. The Judge correctly applied HB in considering the risk factors appertaining to the Appellant, which she listed at [44]. These led to her specifically finding at [46] that the Appellant's work as a kolbar was unlikely to be a matter considered by the authorities on his return, as he himself admitted they had kept no record of his details when he was apprehended previously. I consider this to be a finding adequately reasoned on the basis of the evidence before the Judge and

was one open to her to make. The Judge made specific findings that the Appellant was not credible, including that he did not have any genuinely held political opinion such that he could reasonably be expected to, and would, delete his Facebook account. Although I cannot second guess what the Judge would have said if specifically asked to make a finding on the point, it was not said to her that the Appellant's work as a kolbar, lasting 3-4 months as it did, formed such a crucial part of his identity that this aspect would have been treated any differently from his Facebook activity i.e. he could be expected to do the equivalent of deleting it by not mentioning it.

29. As regards the added ground that the Judge failed to consider whether at the time of applying for ETD the Appellant would delete his Facebook activities and if not, why, this was clearly dealt with in [42]:

> *"On the evidence presented to me, the Appellant has posted seven items which may be perceived as political. Most of them are, in fact, simply re-postings of news articles with no comment from him. I was not satisfied, on the evidence presented, that the Appellant uses his Facebook account in order to express a genuinely held political opinion. In those circumstances, he is likely to minimise the risk on return to Iran by closing his account. In my judgment, it would be reasonable for him to do so, given my finding that he was not involved in political opposition to the Iranian government in Iran".*

30. Mr Woodhouse sought to expand on the grounds before me, saying that the Judge's finding at [40] that the Appellant's Facebook account was not publicly available was incorrect. As this was not pleaded prior to the hearing and did not form part of the grounds for which permission was granted, I do not consider myself obliged to deal with it. Even if I were so obliged, since no evidence of the alleged google search is before me, I would have seen no reason at all to depart from the Judge's findings which were properly reasoned and open to her, having carefully analysed the nature of the evidence before her against the guidance in XX. Even had the Appellant's account featured top of any google search this does not address [36] of the Judge's findings that the Appellant's profile information stated his gender as 'female', his home town as Nottingham and his education as 'Cole and Marmalade University' in Tampa such that it does not follow he would be identified in any case.

31. Overall, I find the grounds to be in the nature of mere disagreement and they disclose no error(s).

32. To conclude, I find the decision is not infected by any errors of law. The decision therefore stands.

Notice of Decision

1. The appeal to the Upper Tribunal is dismissed. The decision of First-tier Tribunal Judge Hobson promulgated on 13 June 2022 is maintained.

2. An anonymity direction is made due to the nature of the issues underlying the appeal.

Signed: L. Shepherd

Date: 28 March 2023

Judge of the Upper Tribunal
Immigration and Asylum Chamber