IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000357

First-tier Tribunal No:
HU/50598/2022
IA/01001/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

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9th September 2023
Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

SA
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Bradshaw (Counsel, instructed by
For the Respondent: Miss Arif (Senior Home Office Presenting Officer)

Heard at Birmingham on 29th August 2023

Order Regarding Anonymity

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. The Appellant was born on the 17th of January 2003 and he is a citizen of Iraq of Kurdish ethnicity. The Appellant's asylum claim was refused by the

Respondent and his appeal dismissed by First-tier Tribunal Judge Feeney following a hearing at Birmingham on the 21st of September 2022 in the decision by Judge Feeney of the 29th of September 2022.

2. The Appellant sought permission to appeal from the First-tier Tribunal which was refused. The Appellant's grounds can be summarised as follows: 1, the Judge failed to apply the guidance in BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 26 (IAC); 2, the Judge erred in the approach to the Appellant's Facebook account having regard to his illiteracy; 3, the Judge did not have proper regard to the Appellant's presence at a demonstration when he was 12 or 13 and his evidence that it opened his eyes to Kurdish issues; 4, the findings with regard to the actions of the Ettela'at were flawed as based on plausibility; 5, the Judge had not properly considered the Appellant's vulnerabilities, and; 6, the Judge had not applied the correct standard of proof.

3. The renewed application to the Upper Tribunal was considered by Upper Tribunal Judge Perkins on the 13th of March 2023. He granted permission on each ground and added "I am particularly concerned that the Judges' finding that the appellant is not sincere in his political opinion is reasoned inadequately and the Judge has not applied properly the guidance in BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 26 (IAC).

4. At the hearing the Appellant's representative informed me that the Appellant was not in attendance but that the hearing could continue in his absence, the Home Office did not raise any objection. Mr Bradshaw made submissions firstly on grounds 2 and 3 together before moving on to ground 1 and then grounds 4 to 6.

5. In summary Mr Bradshaw observed that the Judge's reasoning was brief but accepted that that is not itself an error. It was argued that it was wrong to hold against the Appellant the fact he did not put up the posts given he is illiterate and uneducated, there being no other way it could have been done. I raised the question of HB (Kurds) Iran CG [2018] UKUT 430 (IAC) and the hair-trigger approach of the authorities and his family in Iran. The evidence was that the Appellant had last spoken to his mother on route and had been told it was not safe to return. There were no findings on the demonstrations and the arrest warrant should have been considered.

6. The Respondent had accepted the Appellant's attendance at a demonstration when he was 12 or 13 and that had opened his eyes, the Judge (paragraph 9) had not taken his motives into account. The Rule 24 response did not address the points in grounds 2 and 3 regarding genuineness.

7. Turning to ground 1 it was argued that paragraph 24, dealing with his attendance at demonstrations it was not clear if the summary were findings or if the Appellant's account was accepted. There was no analysis of the risk of identification from his attendance, photographs were taken and it was submitted his identity would become known. There was no reference to the Appellant's photographs on Facebook. It was not necessary for there to be

direct evidence of monitoring and there was no analysis of the impact of social media.

8. Regarding ground 4 it was not credible that the Ettela'at would tell others of their interest. On count 5 it was argued that the Appellant's vulnerability had not been considered the Appellant's vulnerability and the age he was when he first attended an event. Finally there had only been one reference to the standard of proof and the lower standard had not been acknowledged when considering he Appellant's weaknesses.

9. The Respondent resists the appeal and submitted a Rule 24 response of the 27th of March 2023. In addition Mr Lawson submitted that it had been found that the Appellant was in contact with his family, referring to the article 8 findings, noting that the Appellant had family support. It was submitted that the Appellant had applied the country guidance case of BA, the Appellant's evidence had been set out with a clear application of the guidelines referring to paragraph 24 – the Appellant had a low profile and had not attracted media coverage.

10. Facebook had been considered at paragraph 23 and 25. His activities were not know beyond his friends and one had to be accepted as a friend. Regarding grounds 2 and 3 Mr Lawson relied on the rule 24 response with regard to grounds 2 and 3 and the overlap and how BA had been applied and did not repeat the submissions in respect of grounds 4 to 6.

11. In reply with regard to paragraph 23 of the decision Mr Bradshaw observed that the Appellant had 2,100 friends and although there were a few outliers there were a high number of likes. That highlighted the need to assess the risk of the photographs seen. Just because the Appellant had accepted friends did not mean he knew who they were. Paragraph 23 showed a lack of analysis. The decision was reserved.

12. Lord Hoffman observed in Piglowska v Piglowska [1999] 1 WLR 1360 “Reasons should be read on the assumption that, unless he demonstrated to the contrary, the Judge knew Home Office he should perform his functions and which matters should be taken into account.” The decision has to be read as a whole and fairly without taking parts out of context or with a narrow textual analysis. Plausibility is not necessarily a helpful term and the question is whether the rejection of an account is justified by the circumstances described and the evidence relied on.

13. Although pleaded as the final ground the burden and standard of proof applies thought the consideration of an appeal and so I will address that first. The Judge set out the correct burden and standard in paragraph 8 of the decision. There was no need to refer to them again in the course of the discussion that followed and the terminology used in the discussion does not suggest that the Judge erred in the application of the relevant principles. In the course of the decision the Judge had referred to the Appellant's age and features and the assessment of evidence given his features. The references did not have to appear more than once in the decision or at a specific part.

14. At paragraph 9 the Judge did refer to the Appellant's attendance at a demonstration as an observer when he 12 or 13 but noted that had not led to any problems with the authorities. The Judge then expressly referred to the Appellant's age and the difference that could make in assessing the Appellant's evidence. In paragraphs 11 to 17 the Judge addressed a number of issues where she took the view that the Appellant had been inconsistent in his evidence. The wording of the decision does not suggest that the Judge applied an incorrect standard or inappropriate approach the Appellant's age and features.

15. Turning to the other grounds the Judge's observation about the lack of detail in the Appellant's witness statement, prepared with the assistance of a solicitor, was justified. Ordinarily such witness statements are taken in less pressured circumstances compared to the stress of a formal interview and accordingly can attract more weight. The fact that details given in the interview were omitted from the witness statement is a feature and that was assessed against the Appellant's age and background and justified a finding that the Appellant's credibility was undermined.

16. In paragraph 17 the Judge summarised the Appellant's case of the events following the arrest of his employer. One question that arose was whether it would be credible that the Ettela'at would indicate that the Appellant was of interest to them and so provide him with an opportunity to avoid them. While the grounds note that there is no evidence about how the Ettela'at operates it is an organisation not known for its leniency towards opponents of the regime and has been operating for many years in Iran, in that time considerable operational experience will have been gained. The Judge was entitled to find that an experienced and feared organisation would not act in the way that the Appellant described.

17. It should also be noted that there were other factors in the Judge's assessment and that this was not the only point relied on to find against the Appellant concerning what he said had taken place in Iran.

18. With regard to the Appellant's sur place activities the bona fides of his actions is an issue but the central question is whether Appellant's activities are such that he would be at risk on return, genuine or not. The assessment was made against the finding that the Appellant did not have a profile in Iran with his account having been rejected, that did not determine the outcome but provided the background for the assessment of the evidence.

19. The Judge addressed what the Appellant did in paragraph 24 when considering the guidance in BA and paragraph 25 and the guidance in XX (PJAK Sur Place Activities Facebook) Iran CG [2022] UKUT 23 (IAC). So far as the Appellant's attendance at demonstrations is concerned this was limited. The Judge did not need to go through the points made in the guidance in turn but to assess the evidence in the light of the guidance.

20. The Judge was aware of how the Appellant's posts came to be created. His lack of formal education would mean he was dependent on others to create the profile and for the posts to be uploaded. He would only know

what others told him about the contents. This was not an adverse feature in the reasoning in paragraph 23.

21. The principal concern of Judge Perkins was the finding that the Appellant's activities were not genuinely motivated. That informed whether he would delete his Facebook account, relevant to the situation at the pinch point on return. The Judge had rejected the core of the Appellant's account in respect of events in Iran and had found that the Appellant did not have a profile there. As indicated above the finding on the Appellant's credibility informed, but did not dictate the remaining findings.

22. Brief as the findings are the Judge did not just state baldly that the account was rejected. Reasons were given on the different aspects of the Appellant's case. The decision has to be read as a whole, when done so I am satisfied that the Judge gave sufficient reasons for finding that the Appellant would not fall into a risk category as identified in the Country Guidance cases and that the decision was open to the Judge for the reasons given. In finding that the Appellant's activities in the UK were not genuinely motivated and would not be known to the authorities in Iran it followed he could properly delete posts that did not reflect his views and so this would not be an issue on return.

Notice of Decision

23. This appeal is dismissed.

Judge Parkes

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 12th September 2023