**IN THE UPPER TRIBUNAL**
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023 000483
First-tier Tribunal No: PA/51478/2022
IA/03897/2022

**THE IMMIGRATION ACT**

**Decision & Reasons Issued:**
**On 4 December 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE FARRELLY**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR SALAMI HUSSEINI**
**(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**
For the Appellant: Mr N Wain HOPO.
For the Respondent: Ms E.Aras,Counsel,instructed by Tann Law, Solicitors.

**Heard at Field House remotely on 25 August 2023**

**DECISION AND REASONS**

**Introduction**

1. The Secretary of State is the appellant in these proceedings. For convenience I will continue to refer to the parties from now on as in the First-tier Tribunal.

2. The appellant is a Kurdish national of Iran. Following an age assessment his date of birth was taken as January 1991. The appellant had claimed he was two years younger. He claimed to have entered the United Kingdom on or about the 14th or 15th of August 2009. He made a claim for protection on 17 August 2009. The gist of his claim was that he left school at the age of 11 and helped in the family shop. He smuggled alcohol from Turkey. The shop was raided by the security forces but he was not caught. He left Iran in June 2009.

3. His appeal was heard by Immigration Judge North at Stoke-on-Trent on 22 February 2010. His appeal was dismissed in a decision promulgated on 8 March 2010.The judge made adverse credibility findings and concluded his claimed

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low-level activities would not bring him to the adverse attention of the Iranian authorities. The judge was critical of his failure to give his correct personal details. The appellant has remained here since.

4. On 16 January 2021 the respondent made a deportation order. In September 2014 he was convicted in the Magistrates court of selling counterfeit tobacco to a minor. He was fined. On 6 November 2020 he was convicted in the Crown Court for offences relating to the sale of tobacco and also having identity documents not belonging to him. He was sentenced to imprisonment totalling 12 months.

5. The appellant then raised human rights issues and a further protection claim including claims about his activities in the United Kingdom. These were rejected on 30 March 2022. He then appealed.

6. He said that he would be at risk if returned because of his Sur Plas activities. These included involvement with a Kurdish political party since 2017 and taking part in demonstrations outside the Iranian Embassy and of Facebook activity. The respondent did not accept he was involved as claimed.

The impugned appeal

7. His appeal was heard before First-tier Tribunal Judge Dieu on 24 January 2023 by way of a hybrid hearing. Both parties were represented

8. The judge accepted he had been active as claimed. The judge referred to Facebook evidence produced and concluded he was at risk on return. Consequently, his protection claim was allowed.

9. Permission to appeal that decision was granted by First-tier Tribunal Judge Lawrence to the Secretary of State on the basis it was arguable the judge erred in the assessment of the risk. It was arguable the judge made inadequate findings in relation to the appellant's activities or what he was likely to do if returned to Iran nor had the judge explained how the situation was distinguishable from the country guidance decision of XX (Pjak - sur place activities - Facebook) Iran CG [2022]UKUT 00023.

10. The respondent referred to the earlier appeal before First tier Judge North.

At hearing

11. Mr Wain submitted there was inadequacy of reasoning in the decision. He said the judge had failed to apply the earlier adverse credibility findings. He referred to paragraph 19 of the previous determination where the appellant was given false details and false documentation was used to get into the United Kingdom. The judge arguably did not adequately consider the extent and volume of the posts.

12. Ms Aras relied upon her skeleton argument. She said the Devaseelan principle from the earlier determination was the starting point but it was not binding. The postings occurred over a number of years and his activities had

been corroborated by witnesses. She submitted that respondents challenge amounted to no more than a disagreement with the conclusions.

13. She made the point that the judge had found the Facebook entries to be inflammatory and mentioned the pinch point notion for returnees to Iran.

14. In reply, Mr Wain acknowledge that the judge did not need to go through everything advanced but could conclude the appellant's presence at the demonstrations did not place him at risk.

Consideration

15. The Devaseelan principle has limited application in the present circumstances. The earlier claim was completely different and the hearing took place 10 years ago when the appellant was much younger. The most that can be said is that in the past he has been prepared to lie.

16. In the present impugned decision the judge made findings at paragraph 49 onwards. The judge was aware of the Devaseelan principle but made the point, as I do, that the earlier claim was different. The present claim related to sur Plas activities. The judge had regard to the evidence and was satisfied he had been posting politically sensitive material on Facebook and had attended demonstrations. These were factual findings open to the judge. The judge referred to extensive Facebook evidence and printouts and photographs. The judge found the extent of the material and its spread over a number of years made it less likely to have been manipulated. The judge specifically refers to XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 00023 (IAC) and says it can be distinguished. The judge does not specifically say how it is being distinguished but it can be inferred from the acceptance of the extent of his activities and the genuineness of his belief.

17. XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 00023 (IAC) was headed by the President and Vice President and so is particularly authoritative. The tribunal found a disparity between the Iranian state's claims and its actual capabilities .The evidence did not show they are able to monitor on a large scale, Facebook accounts. The focus would be on individuals of adverse interest. The risk that an individual is targeted was a nuanced one. The risk to someone of interest would not be mitigated by the closure of the account as there is a risk that the person would already have been the subject of surveillance. The Upper Tribunal went on to find a returnee who requires a laissez-passer or an emergency travel document faces the first potential "pinch point, ". They are an obvious pool of people, in respect of whom basic searches are likely to be carried out. The timely closure of an account neutralises the risk provided that the account was not monitored earlier. The country guidance case also gave general advice about assessment of evidence. Production of a small part of a Facebook may be of very limited evidential value It is easy for an internet page to be manipulated .Decision makers are allowed to consider what a person will do to mitigate a risk and the reason for their actions.

18. The judge went on to consider what the appellant was likely to do on return and why he would do it. The judge was satisfied that he held genuine political beliefs in support of Kurdish rights and was opposed to the Iranian

regime. The judge found entirely plausible he would have pursued their cause. The judge also heard from Kurdish witnesses in support of the appellants claim. The judge accepted they could give a well-informed observation of the appellant’s activities. They confirm his presence at demonstrations and found his beliefs were sincere. They were not giving evidence simply as friends to support the claim.

19. I find the decision demonstrates an awareness of the country guidance decisions. The judge has analysed the evidence carefully and made findings open to them. The judge was satisfied the beliefs held were genuine and the appellant would either wish to pursue them on return or restrict his activities solely out of fear.

20. By way of conclusion I find no material error of law demonstrated. It was a matter for the judge to assess the evidence and the risk, bearing in mind the country guidance. The judge has done so.

**<u>Notice of Decision</u>**

No material error of law has been established in the decision of First-tier Tribunal Judge Dieu. Consequently, that decision allowing the appeal on protection grounds shall stand.

Francis J Farrelly
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 November 2023