IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001651

First-tier Tribunal Nos: PA/54345/2021
IA/12996/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 26 July 2023

Before

UPPER TRIBUNAL JUDGE KEITH

Between

KO
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: *Ms K McCarthy*, instructed by Barnes Harrild & Dyer Solicitors
For the Respondent: Mr N Terrell, Senior Home Office Presenting Officer

Heard at Field House on 29th June 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. This is because the appeal relates to a claimed fear of persecution.

DECISION AND REASONS

1. These written reasons reflect the full oral reasons which I gave to the parties at the end of the hearing.

2. At the core of the appellant's appeal against a decision of First-tier Tribunal Judge Cary promulgated on 20th February 2023, is whether the appellant is an Iranian national, which the Judge had found was not proven; and if he had a

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genuine and well-founded fear of persecution based on opposition or perceived opposition to the Iranian regime. It is not disputed that the appellant is of Kurdish ethnic origin. He claims to have been born and brought up in a border town of Iran and had fled Iran because of state interest in his opposition activities in Iran. These claims were rejected by an earlier First-tier Tribunal in 2011 (Designated Immigration Judge Phillips and IJ Troup).

3. The appellant made further submissions, which the respondent and the Judge considered and rejected. These submissions relied on three new strands of evidence in relation to claimed Iranian nationality. The first was the witness testimony of a claimed childhood acquaintance, since recognised as an Iranian refugee, who testified as to having known the appellant when they grew up together in the same village.

4. The second was the report of a Professor Matras, a linguistic expert whose expertise was not contested, who said that the appellant's spoken language was consistent with the appellant's claim.

5. The third was a report from someone whose expertise was challenged, a Dr Farmanfarmaian, an academic, who expressed views on the genuineness of a 'shenasnameh' or Iranian identification card.

6. The appellant also relied on genuine sur place activities in the UK, namely attendance at a demonstration and Facebook 'posts', although the appellant has limited literacy.

The Judge's decision

7. For reasons I come on to discuss, the Judge did not accept as proven the claim of Iranian nationality. He concluded that the sur place activities were contrived. They would not have resulted in the appellant already having attracted adverse attention and the appellant could (and would) close his Facebook account before applying for an emergency travel document. He would not face risk of adverse interest, even as someone of Kurdish ethnic origin and because of what is sometimes referred to as the "hair-trigger" reaction of the Iranian authorities, see HB (Kurds) Iran CG [2018] UKUT 430 (IAC). The Judge concluded that there was little evidence about the demonstration which the appellant had attended in the UK, and in relation to the Facebook material, given the appellant's very limited literacy and mere 're-posting' of others posts, it was likely that someone had helped the appellant produce the contrived account. As per HJ (Iran) (FC) v SSHD [2010] UKSC 31, there was no reason why the appellant could not be expected to delete the account, and not because of any genuine fear of persecution.

The appellant's grounds of appeal and the grant of permission

8. I do no more than summarise the appellant's grounds of appeal, which First-tier Tribunal Judge Dempster allowed to proceed. The first set of grounds comprises three parts, which all related to the appellant's claimed nationality. The second set relates to the Judge's conclusions about the appellant's fear of persecution, if he is an Iranian national.

9. The first ground is that the Judge erred in discounting the report of the linguistics expert, Professor Matras on the basis of caveats to which Professor

Matras had referred, namely the limited length of two of the sound recordings provided to him. They were around a couple of minutes long, rather than the 20 minutes requested. Ms McCarthy's answer to this is that Professor Matras had recognised that limitation, but still felt able to conclude, with a high degree of certainty, that the appellant's voice recordings were consistent with his having been brought up in the border town, as he claimed. The Judge had been wrong to focus on Professor Matras's caveat, and not his conclusion. The Judge had also assumed that Professor Matras was unaware of that nationality was contested, when he was.

10. The second ground, in relation to nationality, was that the Judge had erred in discounting the evidence of the claimed childhood acquaintance. The Judge had not provided adequate reasons for accepting or discounting that evidence. Alternatively, he had conflated the issue of the witness's knowledge of claimed persecution of the appellant before he left Iran (which had been rejected by the First-tier Tribunal in 2011) with his evidence on them growing up in the same village. Ms McCarthy said it was also perfectly possible that the witness may have heard of the appellant's persecution, before he left Iran, and still be honest, even if that part of the evidence was not, ultimately, correct.

11. The third ground in relation to nationality was the Judge's rejection of the Iranian identification card or shenasnameh, despite the report of Dr Farmanfarmaian, purely on the basis of a claimed discrepancy (which Ms McCarthy says was no discrepancy at all) in how a copy of it was obtained via Facebook communications. The expert had given a balanced report on the likely genuineness and reliability of the shenasnameh, which the Judge had erred in rejecting.

12. The second strand of grounds related to the Judge's reasons in rejecting the claim, even if the appellant were Iranian.

13. First, it was argued that the Judge had not given reasons, or sufficient reasons for why it was not credible that the appellant was a genuine opponent of the Iranian regime, which was perfectly plausible given his Kurdish background and exit from Iran.

14. Second, the Judge had erred in concluding that the appellant could reduce or remove the risk of persecution simply by deleting his Facebook posts, which ignored the fact that the appellant would need to apply for an emergency travel document from the Iranian Embassy in London; would be questioned on return to Iran, in the context of his Kurdish ethnicity; and he could not be expected to lie about having attended demonstrations in the UK which would, inevitably, as per the 'hair-trigger' approach of the Iranian authorities, result in a risk of persecution.

15. The respondent provided a Rule 24 Reply in response to the appeal. In resisting the appeal, the respondent reminded this Tribunal that the appellant could be expected to take reasonable steps to establish that he is not an Iraqi national, see: MW (Nationality; Art 4 QD; duty to substantiate) Eritrea [2016] UKUT 00453 (IAC)MW [2016] UKUT 453, as reflected by the Judge in his reasoning.

16. The Judge was not bound by Professor Matras's conclusions, even where it accepted his expertise, and the Judge was entitled to assess his report critically in the light of all the evidence, and of the reasoning supporting its conclusions, see:

SSHD v MN and KY (Scotland) [2014] UKSC 30, at §46. The Judge was entitled to take into account Professor Matras's concern, at §3 of the report, that the voice recording samples provided were too small to allow for any meaningful statistical evaluation, even if he felt able to offer a conclusion on the claimed linguistic origin. The Judge's reference at §62 to Professor Matras appearing to not have been given information about the basis for the respondent's assertion that the appellant was from Iraq (the reference to Iran in §62 to Iran must be a typographical error) was correct. While Professor Matras was aware that the applicant's nationality was contested, the instructions to him did not make clear the details of the respondent's position on his Iraqi nationality.

17. In relation to the evidence from the claimed childhood acquaintance, the Judge was entitled to consider that an important part of the claimed narrative reiterated a claim which had been rejected in 2011, which the Judge took that as his starting point. The weight attached to the witness was a matter for the Judge, regardless of whether the witness had had their nationality and asylum claim recognised, when the evidence was considered in the round.

18. In relation to the shenasnameh, only a photocopy had been provided and Dr Farmanfarmaian's expertise was disputed. This was because she had no relevant expertise in document verification. The Judge had also explained his concerns about the account of how the copy came into the appellant's possession (via Facebook) and how the original was claimed to have been lost by unnamed previous legal representatives. All of those concerns were permissible and disclosed no error of law.

19. In relation to the second strand of the grounds, assuming that the appellant was Iranian, the Judge had assessed the appellant's credibility and concluded that his 'sur place' activity, including Facebook posts, were contrived. He was illiterate and the Tribunal in 2011 had concluded that he lacked expected knowledge, when asked about aspects of Iranian life. Given the appellant's lack of profile, his attendance at demonstrations in the UK would not put him at risk on return to Iran, see BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC), notwithstanding the appellant's Kurdish ethnicity.

Discussion and conclusions

20. First, I remind myself that I should not substitute my view for what I would have decided and instead to focus on whether the Judge erred in law. Second, it is important to focus on the entirety of the Judge's reasonings and not to take isolated matters out of context.

21. Ms McCarthy pragmatically accepts that the appellant needs to succeed on both strands of the grounds, namely to be an Iranian national and to be at risk because of either contrived or genuine 'sur place' activities, so that the Judge would have had to err in law in both respects for his errors to render his dismissal of the appellant's appeal unsafe.

22. Dealing with the appellant's challenge to the Judge's reasons on nationality, §§61 to 62 of the Judge's decision state that Professor Matras was only provided with "very brief" sample of recordings of the Appellant's language. There was just over 2 minutes of speech. There was no face-to-face meeting or interview. "He describes "both speech samples" as being very limited in scope. It is his view that the "material that is available" was consistent with the appellant's account

to have been socialised in the region around Piranshahr which he understood to be in Iran, an area close to the border with Iraq. Professor Matras considered whether the Appellant's speech differed or differed slightly from "that attested in the Manchester database or Piranshahr". He concluded that the sample provided was on the whole too small to allow for any meaningful statistical evaluation. He also said "on the whole, however, we can establish that the applicant's speech differs in a number of features from the control sample from Piranshahr. At the same time, it also differs from the Suleimaniya sample and at time shows features that differs from both Piranshahr and Suleimaniya". Suleimaniya is in the Kurdistan Region of Iraq." From this, it is clear that the Judge appreciated Professor Matras's conclusions, which were caveated as based on the evidence available, the speech samples in respect of which were "very limited in scope." The Judge identified the consistencies and differences, as well as evaluating the report in the context of the other evidence (§63). I do not accept that the Judge erred, when assessing Professor Matras's report in the round, with the other evidence. He was entitled to place weight on the limitations expressed in that report, within the context of a claim of growing up within a border area and in the context of the credibility concerns identified in the 2011 decision and the weaknesses in the other new evidence. The Judge's reasoning was consistence with the principles set out in MN & KY. I also do not accept as justified the appellant's criticism of the Judge's reference at §62 to Professor Matras's lack of knowledge of the detail of why the respondent regarded the appellant as Iraqi. The Judge was entitled to make that remark, given the apparent lack of clear instructions to Professor Matras on that point, but in any event, the Judge's core focus was on the limitation in the evidence provided to Professor Matras.

23. In relation to the analysis of the appellant's acquaintance's evidence, the Judge was unarguably conscious of the claim that the friend had known the appellant since childhood, (see §25 of the Judge's reasons). I accept Mr Terrell's submission that the Judge's reference to not accepting the friend's account was in part informed by his rejection, at §63, of the pre-departure claims of persecution, which the Judge was entitled to take as his starting point. They were not, however, the whole of Judge's concerns about the witness's evidence, which also related to the extent of his knowledge of the appellant's claimed sur place activities. The 2011 starting point was, as Mr Terrell pointed out, a rejection of the claim of Iranian nationality, including on the basis of the appellant's ignorance about the Iranian currency, the Ba'athist regime, and the limitations in the acquaintance's evidence. The Judge did not conflate the issues of pre-departure claims of persecution with the witness's other evidence about the appellant. The Judge did not attach much weight to the witness's evidence. His explanation for not doing so was sufficiently clear and does not amount to an error of law.

24. I turn to the appellant's challenge to the Judge's analysis of Dr Farmanfarmaian's evidence and the photocopy of the shenasnameh. I accept Mr Terrell's submission that the Judge was entitled to assess Dr Farmanfarmaian as having no expertise in document verification. The CV for Dr Farmanfarmaian refers to general academic knowledge of Iran, with no specific document verification expertise to which Ms McCarthy was able to refer me. Moreover, there were other aspects of the appellant's account of obtaining the photocopy of the ID document, which caused the Judge significant concerns. Even if I take Ms McCarthy's submission on whether the appellant was consistent in how he obtained a photocopy at its highest, the Judge was also concerned about the appellant's claim that his former solicitors had lost the original, with no evidence

that the appellant's current solicitors had chased them or complained about them (§53). All of that, in the Judge's view, lessened the evidential weight of the shenasnameh. The Judge's concerns were open to him and disclose no error of law.

25. I come to the second strand of appeal and the appellant's challenges that the Judge had inadequately explained why the appellant's claimed political loyalties were contrived or even if they were, whether he nevertheless had a well-founded fear of persecution; and whether he could be expected to conceal the fact of his attendance at demonstrations, if questioned, particularly in the context as someone of Kurdish ethnic origin.

26. The Judge could not have been clearer, at §§66 and 68 of his reasons, that he was aware of the appellant's Kurdish ethnic origin and the so-called "hair-trigger" approach of the Iranian authorities, even for low-level political activities. He had also correctly reminded himself that even opportunistic (i.e. contrived) sur place activity was not an automatic bar to asylum (§69), but had explained, §§70 to 73, why there was no real risk that the appellant would already have been observed by the Iranian authorities, and at §77, why the appellant could mitigate any future risk by deleting his Facebook posts, in the context (§79) that he did not have a genuinely held political belief. I accept Mr Terrell's submissions and those in the Rule 24 reply, that the respondent's rejection of the genuineness of the appellant's political loyalties was in the context of his general credibility; a rejection of pre-departure persecution; the contrived nature of the Facebook posts when the appellant himself had limited literacy; and the clear impression to the Judge that others had assisted him in producing Facebook posts, for the purpose of manufacturing an asylum claim. The Judge also explained in significant detail (at §§65 to 81) why he did not accept the appellant was of, or would be of interest to the Iranian authorities, notwithstanding his Kurdish ethnic origin, such that there would be a well-founded fear of persecution on return. There was little evidence of the demonstrations he had attended in the UK (§72), with one example of a single photograph giving no indication of how long a piece of paper or flag was held up, and which could have been staged (§73). The Judge concluded that it was not reasonably likely that the appellant's Facebook posts would have been viewed by the Iranian authorities, (§78), or that there was evidence that he would reveal the fact of his sur place activities on return (§79). All of those conclusions were open to the Judge on the evidence before him and disclose error of law.

27. For the reasons set out I therefore reject the appeal.

Notice of Decision

28. The Judge did not err in law in making his decision, which stands.

J Keith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

19th July 2023