IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001725

First-tier Tribunal No: PA/53201/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 6th of October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE HARIA

Between

SMA (Iran)
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Mohzam of Counsel instructed by C B Solicitors
For the Respondent: Mr Mullen Senior Home Office Presenting Officer

Heard at Field House on 7 September 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 Khurram ("the Judge") dated 18 April 2023 ("the Decision") dismissing his appeal against a decision of the respondent dated 3 August

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2022 to refuse his application for asylum and humanitarian protection made on 5 November 2019.

Background

2. The appellant is of Kurdish ethnicity and a national of Iran born on 14 July 1993. He arrived in the UK on 4 November 2019 and claimed asylum on 5 November 2019.

3. In essence, the appellant's protection claim was on the basis that he claimed a fear of the Iranian authorities due to his race and imputed political opinion. The issues for the appeal are summarised in the Decision as follows:

> "(i) the appellant's credibility relating to his activities in Iran and adverse attention from the Iranian authorities, and
> (ii) the sur-place activity in the UK with risk on return".

4. It was conceded in the appellant's skeleton argument that the claim for humanitarian protection under articles 2 and 3 were capable of disposal by analogy with the findings on asylum grounds and the article 8 claim would stand and fall with the protection claim.

5. The respondent accepted the appellant's Kurdish ethnicity and nationality.

6. The respondent accepted the appellant had illegally exited Iran.

7. The respondent did not accept that the appellant was a supporter of the Komala party or that he had come to the adverse attention from the authorities.

8. The respondent did not accept that the appellant was an activist with a high profile and rejected his claim to have been politically active online or within the UK.

9. The respondent noted the guidance in HB (Kurds) Iran CG [2018] UKUT 430 (IAC) and since the respondent did not accept the appellant was a supporter of KDPI or a political activist in the UK, the respondent considered the appellant will not face persecution or a breach of his Article 3 rights on return to Iran on the basis of his Kurdish ethnicity.

10. Based on the appellant's own evidence that his parents and four sisters still live in Iran, the respondent considered it is reasonable to expect them to assist the appellant in proving his identity and nationality when applying for a laissez passer. The respondent considered the appellant could be returned on a laissez passer and did not accept the appellant would face a real risk of persecution or serious harm on return to Iran on the basis of his illegal exit and lack of passport.

11. The appellants claims for asylum, humanitarian protection, Article 2, 3 and 8 were refused.

The First-tier Tribunal Decision

12. The Judge on the basis of the appellant's discrepant and vague evidence considers the appellant had not been truthful about the core of his account to be a supporter of the Komala Party and to have been subject to adverse attention in Iran [20].

13. In relation to the appellant's sur place activities within the UK, the Judge considers these to lack the sincerity behind the political convictions and to have been deliberately manufactured in pursuance of a sur place claim [22].

14. The Judge considers the Country Guidance in BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC) and finds the appellant has no political profile in Iran and that he does not have any prominent or significant profile as a demonstrator in the UK [23-24].

15. The Judge assesses the appellant's Facebook posts and finds that these do not demonstrate significant following or far reaching influence [25].

16. The Judge notes the country guidance case - law and acknowledges that there is a real risk the appellant will on return to Iran be a person of interest as a Kurdish male who is failed asylum seeker [26]. The Judge finds the appellant will close his Facebook account prior to applying for an ETD and will not volunteer the fact he had closed his account and concludes the appellant will not be at real risk of persecution on return to Iran [27-30].

17. The Judge dismisses the appellant's claim for asylum and humanitarian protection and article 8 claims.

18. The appellant appealed to the Upper Tribunal.

Permission to appeal

19. The application for permission does not specify the number of grounds on which permission is sought but instead sets out the grounds of appeal in seven paragraphs.

20. On 19 May 2023, First tier-Tribunal Judge C Scott granted permission and summarised the grounds as alleging the Judge erred in making his decision by failing to :
    a. give adequate reasons on material matters, and
    b. have regard to HB(Kurds)Iran CG [2018] UKUT 430 (IAC).

21. Permission is granted by First - tier Tribunal Judge C Scott on the basis that the second ground is arguable as the Country Guidance decision in HB (Kurds) Iran is not referred to nor is reference made to relevant parts of the headnote.

22. Judge C Scott has not limited the grant of permission stating that the other grounds maybe advanced at the oral hearing.

Rule 24 Response

23. The respondent in the Rule 24 response dated 5 June 2023, opposes the appellant's appeal on the basis that the Judge directs himself appropriately. The respondent makes the following submissions in the Rule 24 response:
   a. The Judge was wholly aware of the fact that even if the appellant was not genuine in his activities that consideration would nonetheless have to be given to whether he was still at risk on return [23].
   b. The Judge assesses where the appellant may potentially come into contact with the Iranian regime and what could potentially occur [23-31]. It was open to the Judge to find that given the earlier findings that the appellant did not have genuine political opinions/views, it would be open to him to delete his Facebook account before returning and that his lack of profile in the absence of a Facebook account would not place him at risk on return.
   c. The Judges findings in considering the appeal were reasonably open to them on the evidence presented and it is submitted that there was no material error of law.

Upper Tribunal hearing

24. The representatives for both parties had been given permission to attend remotely and so attended the hearing remotely, whilst I was present at court. At the start of the hearing, I checked that the documents with the representatives. Mr Mullen for the respondent had not seen the Rule 24 response, he was having issues with his laptop and was not able to obtain a copy, nevertheless he proceeded to address me and conceded that there was a material error of law as the Judge had failed to apply the country guidance case of HB (Kurds) Iran and made no reference to it.

25. I had received the Rule 24 response which was dated 5 June 2023. I noted the concession made by Mr Mullen was not in line with respondent's position as stated in the Rule 24 response. I took into account the overriding objective under Rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008, and in the interests of fairness, I informed the representatives that the concession made by Mr Mullens was not consistent with the Rule 24 response. Mr Mozham stated that he too had not seen the Rule 24

response. Both representatives agreed that they were content for me to read out aloud the contents of the Rule 24 response. I read out the Rule 24 response and offered the representatives time to consider the Rule 24 response before proceeding. Both representatives indicated they were ready to proceed. Mr Mullen having heard the contents of the Rule 24 response withdrew his earlier concession and submitted there was no error of law in the First - tier Tribunal decision. Mr Mohzam did not object to the withdrawal of the concession.

26. Both representatives proceeded to make detailed oral submissions, which I summarise below.

27. Mr Mozham confirmed that the grant of permission accurately summarises the application as comprising two grounds. He adopted the grounds of appeal and the grant of permission and invited the Tribunal to find there had been an error in law. Mr Mullen adopted the Rule 24 response and invited the Tribunal to find there was no error in law and that the issues raised were simply a disagreement with the outcome.

28. Ground One: Mr Mozham stated that ground one relates to the assessment of the appellant's sur place activity, he submitted that the Judge had not given proper and clear reasons as to why he found the appellant had manufactured a claim in the UK. Mr Mozham stated that the Judge had simply found that the appellant's activities to be vague and generic when in fact the appellant had given specific evidence as to his activities in his asylum interview. Mr Mullen did not specifically address ground one.

29. Ground Two: Mr Mozham stated that ground two relates to the assessment of risk on return. He submitted that the Judge whilst acknowledging the appellant would be a person of interest to the authorities [26] fails to consider in accordance with HJ(Iran)v SSHD UKSC 31 principles whether the appellant would be questioned upon his return and whether his attendance at demonstrations would be disclosed. Mr Mozham further submitted that in relation to risk on return the Judge fails to apply HB (Kurds) Iran but instead applies BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC) and finds the appellant is a person with a low profile. Mr Mozham whilst not accepting the finding that the appellant's activities are low profile submitted that the Judge had erred in failing to consider the hair trigger approach of the authorities to the appellant's sur place activities.

30. Mr Mullen submitted that although the Judge does not specifically refer to HB (Kurds) Iran, it is clear that the Judge has taken into consideration that Kurds are of particular interest to Iranian authorities and he is mindful of the fact that even low level activity marks someone out but in this case the Judge had found the appellant not to be credible and in any event HB (Kurds) Iran does not state that a person with such a profile should be given refugee status.

31. At the end of the hearing, I reserved my decision.

Decision on error of law

32. Before proceeding to consider the grounds in detail, I remind myself of the many authorities on the approach an appellate court or tribunal should take when considering findings of fact reached by a first instance judge. A recent summary of the well settled principles can be found in Volpi & Anor v Volpi [2022] EWCA Civ 464 at [2] where Lewison LJ stated:

> "i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
>
> ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
>
> iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.
>
> iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.
>
> v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.
>
> vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

33. I appreciate that judicial restraint should be exercised when examining the reasons given by the First-tier Tribunal Judge for his decision and that I should not assume too readily that the Judge misdirected himself just because not every step in his reasoning is fully set out. This is the guidance given by the Court of Appeal at paragraph [77] of KM v SSHD [2021] EWCA Civ 693.

Ground One:

34. I have looked with great care at the Decision. I am conscious that the Judge's reasoning must be read as a whole and that it is important to be wary of appeals based on isolated passages of evidence (so-called "island-hopping" – see: Volpi v Volpi [2022] EWCA Civ 464).

35. The Judge at [19] states that he considered the appellant's account in the context of the country information and relevant jurisprudence served by both parties and contained within the various bundles.

36. The Judge proceeds to make findings as to the appellant's activities and adverse attention in Iran at [20] and for the numerous reasons given such as lack of detail, material inconsistencies and lack of credibility, the Judge finds the appellant has not been truthful about the core of his account. These findings are not challenged in the application for permission.

37. Contrary to what is asserted, I find the Judge gives adequate reasons for finding the appellant "…deliberately created evidence in pursuance of a manufactured sur place claim". The Judge turns at [21] to consider the appellant's sur place activities, he identifies the evidence relied upon by the appellant and at [22] finds the appellant's "…evidence relating to the aims of his activities to be vague and generic…", he takes into account his findings as to the credibility of the appellant's account about the circumstances that caused him to flee Iran and considers this to undermine the credibility of the appellant especially in relation to his claimed conviction behind supporting the Komala party and his activity in the UK. The Judge does not need to recite every piece of evidence considered. The findings are rational and were open to the Judge. Therefore I find, Ground 1 discloses no material error of law.

Ground 2:

38. The Upper Tribunal in HB (Kurds) Iran considered the existing country guidance cases on Iran and confirmed that SSH and HR (illegal exit: failed asylum seeker) Iran (CG) [2016] UKUT 308 (IAC) remains valid country guidance in terms of the country guidance offered in the headnote but stated for avoidance of doubt that the "… decision is not authority for any proposition in relation to the risk on return for refused Kurdish asylum-seekers on account of their Kurdish ethnicity alone". The Upper Tribunal in HB (Kurds) Iran sets the country guidance relating to people of Kurdish ethnicity in Iran.

39. In relation to risk on return the Judge acknowledges this to be a key issue in the appeal and at [23] reminds himself that "… when determining an individual's sur place activities, the sincerity of his beliefs or actions are irrelevant. The key issue for the Tribunal is whether such activity leads to a real risk of ill -treatment that would engage either Convention".

40. The Judge at [24] refers to the Country Guidance case of BA in assessing the appellant's profile and whilst accepting the appellant has attended several demonstrations where large groups of individuals

gathered outside the Iranian Embassy finds the appellant is not at any risk as he does not have "...any prominent or significant profile amongst the demonstrators since he was "...simply one individual in a large crowd protesting...".

41. The Judge gives cogent reasons at [24] for finding that the appellant's attendance at demonstrations was an attempt to bolster a false protection claim stating that, "...There is no evidence that any of these demonstrations he has attended have attracted media attention within Iran or that they were being monitored by the Iranian authorities."

42. The Judge gave adequate and cogent reasons at [25-27] for placing little weight on the Facebook activity in accordance with XX (PJAK – sur place activities – Facebook) (CG) [2022] UKUT 00023. The submission the appellant was at risk on account of his Facebook activities was rejected, especially as he could delete his Facebook profile prior to any interaction with the Iranian authorities, as what is recorded there has not been found to be genuine reflection of the fundamental view held by the appellant. Furthermore, The Judge's finding that the appellant's sur place activities will not have come to the adverse attention of the Iranian authorities is a finding within the range of those reasonably open to the Judge on the evidence.

43. Whilst the Judge may not have specifically cited the case of HB (Kurds) Iran, he was not required to provided he applied the country guidance given in that case. The Judge as clearly aware of the case of HB(Kurds) Iran as it is referred to in the respondent's refusal decision. The Judge at [19] clearly states he has "...considered the appellant's account in the context of the country information and relevant jurisprudence served by both parties and contained within the various bundles submitted". At [26] the Judge acknowledges the country guidance case law suggests that Iranians returning to Iran are screened upon arrival and those who have been in the UK for a prolonged period might be subject to scrutiny but not persecution, the Judge accepts that there is a real risk that the appellant would be questioned as he is a Kurdish male who left Iran illegally and would be returned to Iran as a failed asylum seeker from the UK having spent several years here. As a consequences Judge finds that the appellant will be a person of interest on his return to Iran. The Judge continues his assessment at [28- 30] On the facts as found the Judge was entitled to conclude that the appellant was not politically active in Iran and that his " ...sur place activities within the UK ...to be part of a manufactured ground lacking political conviction ..." and furthermore that the have appellant will close his Facebook account and not volunteer the fact of a previously closed Facebook account prior to the application for an ETD concluding that he is not at a real risk of persecution upon return to Iran.

44. The findings made by the Judge suggest that the Judge had in mind the country guidance case of HB(Kurds) Iran albeit that it was not specifically mentioned. The argument that the Judge failed to apply anxious scrutiny to the appellant's case because HB (Kurds) Iran was not cited, is without

merit. What matters is that the Judge applied the country guidance in substance. The Judge made rational findings of fact on the evidence before him and gave adequate reasons for those findings and applied the law and the country guidance to those findings. It was open to the Judge to find as he did that the appellant would not be at risk of persecution on return. The Judge addressed the evidence in thorough and detailed manner. On reading the Decision as a whole, the suggestion that the Judge assessed the appellant's case on an erroneous basis has no foundation. The Decision was open to the Judge and not undermined by an error of law for the reasons given.

Notice of Decision

45. The Judge did not make a material error of law. The Decision of the First-tier Tribunal shall stand.

Judge Haria
Deputy Upper Tribunal Judge Haria
Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 September 2023