IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002762

First-tier Tribunal No:
PA/51755/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 6th of October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MR HKK
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Malik, Counsel
For the Respondent: Mr Tan, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 19 September 2023

DECISION AND REASONS

1. The Appellant claimed to be a national of Iran, date of birth 20 May 1997, who on 9 November 2015 applied for asylum.

2. The Respondent refused his original application for protection in a decision dated 8 March 2016. His appeal was dismissed by the Tribunal on

9 August 2016. His latest submissions were lodged on 18 December 2019 and these were refused by the Respondent on 30 March 2021.

3. The case was listed before Judge of the First-tier Tribunal Davies (hereinafter referred to as the FTTJ) on 27 April 2023 who dismissed the Appellant's appeal under the Refugee Convention, the Qualification Directive and on human rights grounds in a decision promulgated on 18 May 2023.

4. The Appellant sought permission to appeal on 1 June 2023 arguing the FTTJ had erred. Permission to appeal was granted by Judge of the First-tier Tribunal Saffer on 24 June 2022 who found:

> "It is arguable that the Judge has materially erred regarding ground 4 in not making an adequate finding on the risk posed by his sur place activities. The rest of the ground appear to me to have less merit, but I do not limit the grant. All grounds may be argued.."

5. Mr Malik adopted the grounds of appeal and the grant of permission and invited the Tribunal to find there had been an error in law. The grounds argued were as follows:

   a. The FTTJ had a pre-conceived view the Appellant was an untruthful witness by labelling the Appellant untruthful in paragraphs [49] and [50] of his decision.

   b. The FTTJ wrongly labelled the Appellant's political views in Iran as entirely implausible.

   c. The FTTJ wrongly assumed that R would have known from the Appellant's parents if his father was part of the KDPI. The FTTJ then relied on the previous Tribunal decision and made no finding of his own in respect of the witness evidence.

   d. The FTTJ considered the decision of XX (PJAK, sur place activities, Facebook (CG) [2022] UKUT 00023 and found at paragraph [70] the authorities cannot monitor on a large scale. However, the FTTJ made no findings after paragraph [76] and did not explain why the Appellant was opportunistic. He also failed to give any weight to his positive findings in paragraphs [57], [65], [67] and [68] or to the fact the Appellant was Kurdish. The Tribunal should have given weight to the principles set out by the Court of Appeal in paragraphs [84] to [86] in WAS (Pakistan) v SSHD [2023] EWCA Civ 894.

   e. The FTTJ failed to consider the totality of the Appellant's evidence.

6. Mr Tan adopted the Rule 24 response dated 21 July 2023 and submitted the FTTJ had properly considered the evidence. He considered the original

findings and then considered the new evidence and made findings. He identified inconsistencies (eg paragraph [46]) and said if they had been in contact since 2015 the witness knew little about the Appellant and his family. The FTTJ's findings were well reasoned. The FTTJ had identified the risk factors, but the main ground of appeal was based on the premise the Appellant was Iranian which had been rejected by the FTTJ. The FTTJ, despite this finding, then made findings on risk posed by his sur place activities.

7. Mr Tan submitted the FTTJ was aware of the Kurdish issue but given the FTTJ upheld the earlier finding he was not Iranian then his concerns were not made out. The FTTJ was entitled to find the Appellant was opportunistic, posted on FB despite being illiterate, his attendance at demonstrations was low level, there had been no previous engagement with the Iranian authorities, the Facebook evidence not in form stated in XX and he could be expected to delete his account before he left this country. Whilst he noted what the Court of Appeal said there was nothing to suggest his posts had come to the attention of the authorities.

8. Mr Malik maintained the more active a person was the more he placed himself at risk.

9. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (512008 /269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

DISCUSSION AND FINDINGS

10. There were a number of issues raised in the grounds of appeal and in giving permission to appeal Judge of the First-tier Tribunal Saffer primarily concentrated on whether the FTTJ materially erred in not making an adequate finding on the risk posed by his sur place activities. Having considered the grounds of appeal I am satisfied there was no error in law.

11. The FTTJ approached this appeal from the starting point that there had been a previous appeal hearing in which much of what was now being argued had been rejected including his claim to be an Iranian national. The FTTJ examined the previous decision and gave reasons for not departing from that decision and those findings were clearly open to him.

12. The FTTJ's finding that the Appellant was untruthful was supported by his examination of the evidence and subsequent findings which could be found from paragraph [22] of his decision. The finding made at paragraph [24] that the handing out of leaflets would be highly risky was a finding the FTTJ made with regard to the country evidence and in particular the evidence that the Iranian authorities are very oppressive towards people

who oppose them. Whilst the use of "implausible" is not best practice it does not amount to an error in law.

13. Contrary to what was argued before me, the FTTJ had considered the evidence of witness R but pointed out that R, despite claiming to be the Appellant's cousin, was unaware of the Appellant's father's execution despite being in regular contact with their family. The previous Tribunal did not accept the Appellant's account about his father's involvement with the KDPI and pointed to a lack of supporting evidence from the KDPI. In assessing the Appellant's claim on this issue, the FTTJ noted that despite being represented no such evidence had been sought. Both these findings were open to the FTTJ having regard to the totality of the evidence.

14. The FTTJ further considered the Appellant's evidence as to his identity and nationality and in particular the passport and birth certificate. His findings on this evidence can be found at paragraphs [30] to [42] and then at paragraph [43] he rejected the Appellant's account giving his reasoning. Again, contrary to what was submitted by Mr Malik the FTTJ also considered the evidence of witness R and noted that he had not been called at the Appellant's previous appeal despite being in this country since 2013. The FTTJ summarised the evidence given by R and made findings at paragraphs [48] and [49]. Having considered all this evidence, the FTTJ then gave his reasoning for not departing from the previous decision and those conclusions were open to him.

15. Having made those findings, the FTTJ then considered the Appellant's sur place activities. The FTTJ noted that despite being illiterate the Appellant was still able to post on Facebook and that he had attended at a number of demonstrations albeit his involvement was low level.

16. Mr Malik argued that the FTTJ erred by saying the Appellant's sur place activities were opportunistic. However, in making that finding it is important to consider the whole decision and what the FTTJ said at paragraph [77] of his decision.

17. In finding the Appellant's activities were opportunistic the FTTJ clearly took into account his findings "the Appellant was untruthful and his supporting documentary evidence was unreliable. He has not shown that he is Iranian. He has not shown that he or his father have ever engaged in political activities in Iran. He has given an inconsistent account about his father's fate." These findings were clearly open to him.

18. Mr Malik argued that the FTTJ's finding in paragraph [77] was flawed because no findings were made. He submitted the finding "I am satisfied based on the country guidance decisions on sur place activities and social media that the Appellant does not face a real risk of persecution on return to Iran" was lacking.

19. The FTTJ had referred to the case of XX in paragraphs [68] to [75] of his decision and in doing so summarised the law. The FTTJ's finding at paragraph [77] was brief but has to be looked at against the background the FTTJ had totally rejected his claim about what had occurred in Iran. He had upheld the previous Tribunal finding the Appellant was not an Iranian national. The FTTJ had considered HB (Kurds) Iran CG [2018] UKUT 00430 at paragraphs [55] to [57], and whilst some of his findings were brief they did not undermine the core finding that he would not be of interest to the authorities. Neither his findings nor approach breached the principles of WAS.

20. Having rejected his claim of what happened in Iran all the FTTJ was left with was his limited activities of a demonstrator and I am satisfied the FTTJ's decision was one that was properly open to him.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law and I uphold the Tribunal's decision.

Deputy Judge of the Upper Tribunal Alis
Immigration and Asylum Chamber

28 September 2023