IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002031
First-tier Tribunal No: PA/50627/2022
IA/01768/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 11 April 2024

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

MR
(ANONYMITY ORDER CONTINUED)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr T Hussain, Counsel instructed by Barnes Harrild & Dyer Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Heard at Field House on 22 March 2024

DECISION AND REASONS

1. By my decision promulgated on 20 September 2023 (a copy of which is appended to this decision), I set aside the decision of the First-tier Tribunal. I now remake the decision.

2. The appellant is a Kurdish citizen of Iran. He claims that the Iranian authorities have an ongoing interest in him because of transporting political documents. This claim was rejected in the First-tier Tribunal and the findings of the First-tier Tribunal on this point have been preserved. I will therefore not be revisiting this issue.

3. The appellant also claims to face a risk on return as a result of his political activity (comprising of attending demonstrations at the Iranian embassy and publishing Facebook posts critical of the Iranian regime) undertaken whilst in the UK.

© CROWN COPYRIGHT 2024

4. In addition, the appellant claims that, if returned to Iran, he would face a risk because he would express his political beliefs. Alternatively, he claims that the *HJ (Iran)* principle applies to him because he would be discreet about his political beliefs in order to avoid the persecution he would face if he were to reveal them.

5. The preserved findings of fact from the First-tier Tribunal include the following:

   (a) The appellant lied about the Iranian authorities having an interest in him.

   (b) The appellant is a low profile support of Kurdish rights who has attended demonstrations in the UK and has a public Facebook account where anti-regime material is posted.

   (c) The appellant's political convictions are not strong and his support for Kurdish rights can be characterised as low level. However, they are not contrived.

6. Although the appellant attended the hearing - and a court interpreter was present - he did not give oral evidence.

7. It is well established that a person cannot be expected to conceal genuinely held political beliefs – even where the beliefs are not strong - in order to avoid persecution. See *HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department* [2010] UKSC 31 and *RT (Zimbabwe) & Ors v Secretary of State for the Home Department* [2012] UKSC 38. This is often referred to as the *HJ (Iran)* principle.

8. It is a preserved finding of fact that the appellant is a genuine supporter of Kurdish rights and whilst in the UK has expressed that support by attending demonstrations and posting anti-regime material on Facebook. If the appellant were to engage in similar activities in Iran there is a real risk that he would face persecution. This is clear from the extant Country Guidance case law. See *HB (Kurds) Iran* CG [2018] UKUT 00430 (IAC), where at paragraphs 7-10 of the headnote the following is stated:

   > (7) Kurds involved in Kurdish political groups or activity are at risk of arrest, prolonged detention and physical abuse by the Iranian authorities. Even Kurds expressing peaceful dissent or who speak out about Kurdish rights also face a real risk of persecution or Article 3 ill-treatment.
   >
   > (8) Activities that can be perceived to be political by the Iranian authorities include social welfare and charitable activities on behalf of Kurds. Indeed, involvement with any organised activity on behalf of or in support of Kurds can be perceived as political and thus involve a risk of adverse attention by the Iranian authorities with the consequent risk of persecution or Article 3 ill-treatment.
   >
   > (9) Even 'low-level' political activity, or activity that is perceived to be political, such as, by way of example only, mere possession of leaflets espousing or supporting Kurdish rights, if discovered, involves the same risk of persecution or Article 3 ill-treatment. Each case however, depends on its own facts and an assessment will need to be made as to the nature of the material possessed and how it would be likely to be viewed by the Iranian authorities in the context of the foregoing guidance.
   >
   > (10) The Iranian authorities demonstrate what could be described as a 'hair-trigger' approach to those suspected of or perceived to be involved in Kurdish political

> activities or support for Kurdish rights. By 'hair-trigger' it means that the threshold for suspicion is low and the reaction of the authorities is reasonably likely to be extreme.

9. I have no doubt – and find as a fact – that, if returned to Iran, the appellant will not engage in any public expression of his political beliefs about Kurdish rights. I reach this conclusion because in the UK he has only been a low level supporter of Kurdish rights and before coming to the UK he was not politically active at all. In my view, it is extremely unlikely that the appellant is sufficiently politically motivated to expose himself to the risk that would follow from public expression of pro-Kurdish views in Iran. He would, I find, be discreet about his political beliefs and thereby avoid any adverse attention from the authorities.

10. Application of the *HJ (Iran)* principle requires me to consider why the appellant would desist from any public expression of his support for Kurdish rights in Iran. The answer to this question is clear: to avoid the persecutory treatment he might face as a result.

11. As the appellant would refrain from any public expression of his genuinely held political beliefs in order to avoid persecution, it follows – applying the *HJ Iran* principle – that he has a well founded fear of persecution and therefore is entitled to protection as a refugee.

12. As the appellant succeeds in his protection claim by application of the *HJ (Iran)* principle, it is not necessary to determine whether he faces a risk on account of his *sur place* activities.

Notice of Decision

The appellant's appeal is allowed on the ground that his removal from the UK would breach the UK's obligations under the Refugee Convention.

D. Sheridan
Judge of the Upper Tribunal
Immigration and Asylum Chamber
27 March 2024

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002031
First-tier Tribunal Nos:
PA/50627/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

....

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

MR
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr T Hussain, Counsel instructed by Barnes Harrild & Dyer Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Heard at Field House on 21 July 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 is a Kurdish citizen of Iran who claims to face a risk of persecution because:

(a) the authorities in Iran have an ongoing interest in him for transporting political documents (which he was forced to do by the Peshmerga when working as a “kolbar” on the Iran/Iraq border); and

(b) since coming to the UK he has participated in demonstrations and (despite his illiteracy) posted numerous anti-regime political posts on Facebook.

2. The respondent rejected the appellant’s claim in its entirety. It was not accepted that he had been forced to transport political material or that the authorities in Iran have had (or would have) any interest in him.

3. The appellant appealed to the First-tier Tribunal, where his appeal came before Judge of the First-tier Tribunal Atkins (“the judge”). In a decision dated 5 May 2023, the judge dismissed the appeal. The appellant now appeals against this decision.

Decision of the First-tier Tribunal

4. The judge found that the appellant was not being truthful about the events that occurred in Iran. The judge gave several reasons for this, including:

(a) The appellant gave an inconsistent account as to how often he was forced by the Peshmerga to transport documents.

(b) The appellant’s account of being escorted by the Peshmerga and allowed to make his other deliveries before delivering the documents is not plausible. The judge stated in paragraph 91:

> “First, if Peshmerga were to arrange for a third party to deliver documents to reduce the risk of their own discovery, it would make no sense to accompany that third party. Second, it is highly unlikely that the Peshmerga would be willing to add to the substantial risk of discovery by escorting the appellant to his deliveries in Iraq first.”

(c) The appellant gave an inconsistent account of when he was notified by a neighbour as to when a raid took place on his home.

(d) The appellant has not taken the opportunity to explain inconsistencies in his evidence.

(e) The appellant sought to distance himself from a questionnaire dated 3 March 2020 by stating he had nothing to do with it and it had been prepared by former representatives when in fact it was prepared by his current representatives and he admitted to signing it. The judge found that his attempts to “disown the questionnaire” were “motivated by a desire to gloss over the inconsistencies in his evidence”.

(f) The appellant travelled through multiple countries before arriving in the UK and did not claim asylum in Greece despite having family in that country.

5. The judge then considered the appellant’s claim to be at risk because of his sur place activities.

6. The appellant claimed to not only have attended anti-Iran demonstrations in the UK, but also to have been involved in organising them, and to have had a high profile. The judge observed in paragraph 97 that the appellant's claim to have had a significant role in demonstrations was not supported by any evidence from organisers or other attendees. The judge stated that such evidence would not be hard to obtain if the appellant had had the roles he claimed.

7. The judge found in paragraph 101 that:

> "It is clear that the appellant does not hold particularly strong political convictions. He is not a member of any party and had no plans to join one. He has provided no evidence of taking a leading role in the demonstrations. He was only able to talk in generalities about human rights abuses in Iran, the rights of Kurds in Iran, or the rights of kolbars."

8. The judge stated in 103:

> "Taking all of that together, I find that the Appellant's sur place activities. amount to:
>
> (a) attendance at demonstrations as a low-profile supporter; and
>
> (b) publication of anti-regime material on his publicly accessible Facebook account."

9. The judge referred in paragraph 110 to the appellant being a "low profile" supporter. He stated:

> "There is evidence of the Appellant's sur place activities which can assist me to determine these questions. I have found above in relation to the theme, role, and nature of the activities that he attends demonstrations in the UK as a low profile supporter, and that he has a public Facebook account which publishes anti regime material. He has alleged that he is at risk of being identified due to his photograph being taken at demonstrations, and his public Facebook profile."

10. The judge find that the appellant would not be at risk on return. In paragraph 114 the judge found that the appellant did not have "a high enough profile" at demonstrations to be the subject of active monitoring by the Iranian authorities. The judge found that it is possible photographs would have been taken of him but that:

> "Any pictures that they have will be of low quality as he can be seen to stay away from the front of demonstrations. Even if they do have pictures of him that does not mean that they will be aware of his identity."

11. The judge also found at 116 that it is indicative of the appellant not being at risk that his evidence was that his family in Iran have not been targeted.

12. In paragraphs 118-120 the judge stated:

> "118. However, given that the Appellant does not have strong political convictions, I consider that it would be likely that, if he were to return to Iran or take preparatory steps to doing so (such as by requesting an emergency travel document from the Iranian embassy), he would delete his Facebook profile. I do not think that the Appellant's political convictions would outweigh his natural instinct to protect himself. If he deleted his Facebook profile, then it would not be any potential source of risk to him.

119. For the same reasons, I also do not consider it is likely that he would mention, if questioned upon return, his political activities in the UK. Nor is it likely that he would take steps to draw the attention of the Iranian authorities to his Facebook account.

120. Even given that the Iranian authorities have a low threshold for suspicion, and if that suspicion is aroused their reaction is reasonably likely to be extreme, I do not consider that the Appellant is likely to arouse that suspicion upon return to Iran. That is because the Appellant is sufficiently low profile to have escaped their attention, and is not sufficiently motivated by his political ideals to keep a risky Facebook profile or draw his activities or himself to their attention were he to return."

Grounds of Appeal

13. There are four grounds of appeal.

14. Ground 1 submits that the judge erred by unlawfully requiring corroborative evidence. One of the adverse findings in the decision is that the appellant did not adduce any evidence to corroborate his claim to have had a high profile in demonstrations in the UK against the Iranian regime. The judge noted that there were no photos of him at the front of the crowd, and that there was no evidence from organisers or others attending the demonstration. In ground 1 the appellant submits that the judge fell into error because there was no requirement for the appellant to corroborate this aspect of his case.

15. Ground 2 concerns the appellant's sur place activities. Within ground 2 are two distinct arguments. The first (which I will refer to as ground 2(a)) is that the judge failed to follow *RT (Zimbabwe)* [2012] UKSC 38 because his finding that the appellant would not face a risk on return depended on the appellant being discrete about his genuine support for Kurdish independence in opposition to the Iranian regime. The second argument in ground 2 (which I will refer to as ground 2(b)) is that the judge erred by failing to consider the appellant's "social graph" in accordance with *XX (PJAK - sur place activities - Facebook) Iran CG* [2022] UKUT 00023 (IAC).

16. Ground 3 submits that the judge speculated when finding that any pictures taken by the authorities of the appellant at demonstrations would be of "low quality".

17. Ground 4 argues that the judge's assessments of the appellant's credibility, in respect of events in Iran, is undermined because it was not "put to" the appellant that a negative inference was being drawn because his account was that the Peshmerga escorted him and allowed him to make deliveries prior to completing the transportation of the documents. It is submitted in the grounds that the appellant never stated in evidence that he was escorted by Peshmerga.

Analysis

18. Both Mr Hussain and Mr Melvin made helpful submissions. I have not set these out, but they are reflected in my analysis below.

Ground 1: requiring corroboration

19. As the Court of Appeal emphasised in *MAH (Egypt) v Secretary of State for the Home Department* [2023] EWCA Civ 216, there is no requirement on an appellant

to produce corroborative evidence in a protection claim. However, the absence of corroborative evidence can be of evidential value in some circumstances, such as where it could reasonably have been obtained and there is not a good reason for not obtaining it. As stated in paragraph 86 of *MAH*:

> It was common ground before this Court that there is no requirement that the applicant must adduce corroborative evidence: see Kasolo v Secretary of State for the Home Department (13190, a decision of the then Immigration Appeal Tribunal, 1 April 1996). On the other hand, the absence of corroborative evidence can, depending on the circumstances, be of some evidential value: if, for example, it could reasonably have been obtained and there is no good reason for not obtaining it, that may be a matter to which the tribunal can give appropriate weight. This is what was meant by Green LJ in SB (Sri Lanka) at para. 46(iv).

20. In this case, the judge did not draw an adverse inference from the lack of corroboration of the appellant's account of events in Iraq. The only absence of corroboration given weight by the judge concerned the appellant's claim about organising, and having a high profile in, demonstrations in the UK. As these were events in the UK, it was entirely reasonable to expect the appellant to provide at least some documentation corroborating his involvement in organising them. The appellant did not provide (and it is difficult to conceive of) any good reason for not being able to provide such documentation. I therefore am not persuaded by ground 1.

Ground 2(a): failure to apply the principles in *HJ (Iran) v Secretary of State for the Home Department* [2010] UKSC 31

21. The principle in *HJ (Iran)* (and *RT (Zimbabwe)*) is concerned with what a person would do – or would wish to do - following return.

22. The judge found that the appellant is a low level supporter of Kurdish rights who would not express any political views on return to Iran. There is no finding that his political beliefs are contrived.

23. In accordance with the principles in *HJ (Iran),* the judge was required to consider why the appellant would be discrete about his low level, but nonetheless genuine, political beliefs. In *HJ (Iran)* it is made clear that it is no answer to a claim for protection to say to an appellant that adverse consequences can be avoided by being discreet about (or hiding) a political view. It would be inconsistent with *HJ (Iran)* to find that the appellant would not face a risk because, due to a fear of persecution, he would keep his political beliefs to himself. In my view, the judge's finding (in paragraphs 118-119) that the appellant would not be at risk because his instinct to protect himself would mean that he would keep his political activity to himself is inconsistent with *HJ (Iran).* I am therefore persuaded by ground 2(a).

Ground 2(b)): failure to consider the appellant's "social graph" in accordance with *XX (PJAK - sur place activities - Facebook) Iran* CG [2022] UKUT 00023 (IAC)

24. In *XX* the Upper Tribunal considered the risk to Iranian nationals arising from having a Facebook account where anti-regime material is posted. In *XX* the appellant, who had a public Facebook account with almost 3000 "friends", was found to have created the account for entirely contrived reasons. Despite this, the Upper Tribunal found that he faced a real risk on return. This was because, as stated in paragraph 118 of XX:

> "His carefully curated (albeit contrived) social graph is, in this particular case, just sufficient in our judgment to establish a risk that he has been subject to surveillance in the past that would have resulted in the downloading and storing of material held against his name. Put another way, he has drawn enough attention to himself by the extent of his "real world" activities, to have become the subject of targeted social media surveillance."

25. In my view, the judge erred by not considering whether the appellant's "social graph" was sufficient to establish a real risk that he had been subject to surveillance. The appellant has an open/public Facebook account with over 2,200 "friends" and has attended demonstrations where he has been photographed. His circumstances are therefore, superficially at least, similar to those of the appellant in *XX*. In the light of the similarities, it was, in my view, necessary for the judge to explain why the outcome for the appellant differed to the outcome for the appellant in *XX*. The appellant therefore succeeds under ground 2(b).

<u>Ground 3: the finding that any pictures taken by the authorities of the appellant at demonstrations would be of "low quality".</u>

26. The judge found that any pictures taken of the appellant at demonstrations would be of "low quality as he can be seen to stay away from the front of demonstrations".

27. I agree with the appellant that this finding is not sustainable. There was no evidence before the First-tier Tribunal indicating that because a person stays at the back of a demonstration any photographs taken of him would be of a low quality. The country guidance case *BA (Demonstrators in Britain – risk on return) Iran* CG [2011] UKUT 36 (IAC) indicates that the Iranians do not have visual recognition technology in use in the UK; it does not suggest that they take photographs of a low quality if a person is at a distance from the embassy. There is, in my view, no evidence or country guidance authority to support the proposition that photographs taken of the appellant would be of poor quality. Nor is there any evidence indicating that that the appellant's risk is reduced because of the quality of photographs. It may be that the judge intended only to comment on the lack of visual recognition technology, which would be open to him. However, the unambiguous finding of the judge concerned the quality of the photography and this, in my view, is an unsustainable finding.

<u>Ground 4: credibility assessment of events in Iran</u>

28. The assessment credibility is a matter for the trial judge, who has the benefit of considering and hearing all of the evidence. The higher courts have made clear that caution must be exercised before characterising as an error of law what is no more than a disagreement with the assessment of facts. See for example *KM v Secretary of State for the Home Department* [2021] EWCA Civ 693.

29. In this case, the judge gave multiple reasons for not finding the appellant's account credible, as summarised in paragraph 4 above. These reasons, considered together and cumulatively, are amply sufficient to support the conclusion reached in respect of the events in Iran.

30. The appellant contends that he was treated unfairly because the judge's concern about his claim to have been accompanied by the Peshmerga was not put to him. There is no merit to this submission. A judge does not need to put to an appellant every point. What matters is that the appellant is aware of the gist

of the case against him. In this case, it was clear from the respondent's refusal decision, as well as the submissions of the respondent's representative at the First-tier Tribunal hearing (as summarised in the decision), that the appellant's claim to have transported documents on behalf of the Peshmerga (and all of the circumstances surrounding this) was disputed. In these circumstances, where the appellant knew that everything in respect of his account of transporting documents was in dispute, there was no need for the judge to "put to" the appellant his findings on this issue before finalising the decision.

Conclusion and Disposal

31. In the light of the errors identified above, the decision of the First-tier Tribunal cannot stand. However, the following findings are not undermined by the errors and are preserved:

(a) The "general credibility" findings in paragraphs 79 – 84.

(b) The findings in respect of events in Iran in paragraphs 85 – 95.

(c) The finding in respect of his sur place activities and extent of political beliefs in paragraphs 96-103.

32. Having considered *AEB v SSHD* [2022] EWCA Civ 1512 and *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 00046 IAC, I am satisfied that the appeal should remain in the Upper Tribunal. The parties have not been deprived of a fair hearing or of an opportunity to advance their case; and the extent of further fact-finding is likely to be limited given the preserved findings of fact.

Notice of Decision

33. The decision of the First-tier Tribunal involved the making of an error of law and is set aside.

34. The decision will be remade at a resumed hearing in the Upper Tribunal.

35. The findings of the First-tier Tribunal identified in paragraph 31 above are preserved.

Directions

36. The parties have permission to rely on evidence that was not before the First-tier Tribunal. Any such evidence must be filed with the Upper Tribunal and served on the other party at least fourteen days before the resumed hearing.

D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

9.5.2023