IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004192

First-tier Tribunal No: PA/53884/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 15th of October 2024

Before

UPPER TRIBUNAL JUDGE LANDES

Between

A H
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Singh, Solicitor, Twinwood Law Practice
For the Respondent: Ms Simbi, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 6 September 2024

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. This is the remaking, under section 12 (2) (b) (ii) of the Tribunals, Courts and Enforcement Act 2007 of the decision of Judge Hena promulgated on 3 September 2023 dismissing the appeal of the appellant (a national of Iran of Kurdish ethnicity) against the respondent's decision of 13 September 2022 to refuse his international protection claim made on 8 April 2020.

2. This remaking follows the setting aside of Judge Hena's decision by Upper Tribunal Judge Hanson and Deputy Upper Tribunal Judge McCarthy (see error of law decision annexed) insofar as it was necessary to reopen the aspects in respect of which it was found that the judge made inadequate findings specifically:
   (a) Whether there is a reasonable degree of likelihood that if the appellant were to reveal the basis of his asylum claim, he will be at risk,
   (b) Or whether, if he conceals his reasons for claiming asylum out of a fear of persecution, he is entitled to protection.

3. The error of law decision is annexed below.

The issues before me

4. Judge Hena had already found that the appellant had not told the truth about being a Kolbar and had not come to the attention of the authorities as a result.

5. She found that the appellant had limited sur place activities; he had attended 4 demonstrations but there was little evidence that the regime would be able to identify him in particular. There was not enough to demonstrate that the postings made would be something to cause risk to the appellant upon return.

6. In addition, given the nature of how the appellant posted (others writing posts for him) she found there was doubt as to whether he himself held any political views or whether the views were the views of others.

7. The two issues identified above came initially from the appellant's skeleton argument. However they do not make the issues clear. What the drafter of the skeleton argument meant can be seen more clearly at the end of the skeleton argument from paragraph 36 onwards.

8. The real question as is apparent from the relevant part of the skeleton argument and the grounds is whether the appellant genuinely holds the political opinions he claims. If he does genuinely hold those political opinions, then the only reason he would be concealing them would be for fear of persecution. A person who has a well-founded fear of persecution if he conceals genuine political opinions is entitled to protection.

9. Ms Simbi agreed that if the appellant were expressing genuinely held political opinions, then he would be at risk on return.

10. That is the main issue to be decided (see paragraphs 38 and 39 of the appellant's original skeleton argument) and paragraphs 16 to 19 of the grounds of appeal.

11. The subsidiary argument is whether, even if the appellant's expressed opinions were not genuine, he would be at risk on return if he revealed the basis of his asylum claim (see paragraph 41 of the original skeleton argument).

The hearing

12. I heard evidence from the appellant confirming the truth of his May witness statement and screenshots from Facebook showing attendance at three additional protests, on 29 October 2023, 19 November 2023 and 21 January 2024.

13. In cross-examination the appellant confirmed that no-one from the Iranian authorities had approached him as a result of his Facebook page and since he had been posting in the UK no-one from the Iranian authorities had approached his family members.

14. The appellant explained that what he did in demonstrations was not anything specifically different from what the other demonstrators did. They would burn pictures of the President, stamp on them and speak out against the Iranian regime. He was not an organiser of the group; he was informed when something was posted. He had said in his witness statement that he had actively contributed to the planning and execution of demonstrations, but he had meant that he planned how to get there with his friend, he had not meant that he was planning the actual demonstration. When he had said that he was a recognisable figure within the Kurdish community he had meant that other Kurdish people would know that he would take part in demonstrations. In recent demonstrations more than 100 people but less than 1000 would take part. He had asked one of his friends to video record the demonstrations so he could show that he was taking part in the demonstrations and conveying his purpose. He would then publish the pictures on Facebook to show support for the Kurdish cause and to demonstrate against the Iranian regime; all the world could see. They would see this on his social media. He was not doing anything for the Kurdish cause other than attending demonstrations and his Facebook activity.

15. I asked the appellant why he had not been to any demonstrations since the beginning of the year and he said that as he only received £45 a week he could not afford to go to London unless he could find a friend who would give him a lift. I asked him what his response was to the suggestion that he was not being genuine in going to demonstrations and posting on Facebook and he said that he was supporting Kurdish causes and rights in Iran and because he was against the Iranian regime; until the day he died he would always be against the regime.

16. Ms Simbi reminded me of the case law and that I should place little weight on Facebook evidence without the full download information. Without that very little weight could be put on the Facebook account including whether it was indeed public and would be seen by anyone. No-one in the appellant's family had received adverse interest from the authorities because of his Facebook account. She referred me to paragraph 2.4.16 of the CPIN about there being no evidence of facial recognition technology at the airport. This was not someone in whom the regime would have an interest. The case of XX (PJAK – sur place activities – Facebook) Iran CG [2022] UKUT 23 showed that the Iranian authorities could not monitor Facebook accounts on a large scale. The appellant would not be at risk as the authorities would not have seen his activities.

17. She submitted that the appellant's witness statement was not true. He had not been planning and executing demonstrations. She asked rhetorically why he would have a friend taking pictures and videos of him. He had not carried out any other activity apart from attending demonstrations. That was not someone genuinely fighting for the cause, but rather he was using demonstrations as an opportunistic measure to further his asylum claim; he was not doing any more

than others at the demonstrations; his activity in the UK was limited and did not show his genuine beliefs. At the pinchpoint of return he could delete his Facebook account as suggested in XX. Merely having claimed asylum would not put him at risk of persecution.

18. Mr Singh referred me to his skeleton argument. He said that the first assessment had to be of the appellant's credibility and if there was even a 10% risk then the appellant could be at risk. One would look at what would happen if he were sent back, and he had not been cross-examined on what he would do if sent back. He would be questioned, and the Secretary of State could not expect him to change or renounce his beliefs. He had been internally consistent; he had not been trying to brag or enhance his case and he had been specific about what he had been doing. If the appellant were compelled to renounce his political activities, there would be a breach of the HJ (Iran) principle.

Discussion and findings

19. Although the appellant must show a well-founded fear of persecution for his actual or perceived political opinion, and the burden of proof is on an appellant, I remind myself that the standard of proof is low, below the balance of probabilities, namely a reasonable degree of likelihood, which can also be expressed as a reasonable chance or a serious possibility.

20. Judge Hena accepted that the appellant had attended 4 demonstrations in the UK at the time of the hearing before her, and I see no reason to doubt that he has attended another 3 as he explained in evidence and the photographs suggest.

21. A full download of the appellant's Facebook information has never been produced despite a request in interview. This means not only that limited weight can be given to those posts, it casts doubt on the credibility of the appellant having consistently operated a Facebook account posting political material and whether there is any significance of his apparently having 5000 Facebook friends as the latest screenshot suggests or any significance in the screenshots showing his account is set to "public". As Judge Hena noted, the appellant had asked other people to write posts for him or help him with posts as he had not been to school and as she noted this caused doubt as to whether he himself held such political views. The posts are not sophisticated in any event, as the respondent commented in the review, being copy and paste content only or reposted photographs or crosses through the Iranian flag or pictures of Iranian leaders.

22. Ms Simbi has rightly pointed out the features telling against the appellant's credibility. Not only has he been found not to be credible in his claim to have been a smuggler, he has not carried out any other political activity beyond the limited activity described above; he is not an organiser or well-known figure in demonstrations as the very general, rather grandiose wording of his witness statement suggests.

23. Nevertheless, I bear in mind as I discussed with the representatives, that political activities can be carried out with mixed motives, and it is important to consider background conditions in Iran. Those of Kurdish ethnicity are systematically discriminated against as can be readily seen from section 7.2 of the respondent's May 2022 CPIN on Kurds and Kurdish political groups in particular paragraph 7.2.3. Even civil and cultural activities may be suppressed as the authorities view every activity through a security lens and such activities

are often interpreted as political (paragraph 7.3.3). Those who conduct activities which the government perceives as against its interests may be arbitrarily subject to arrest even if they have no affiliation with a political party (paragraph 7.4.4). In those circumstances, it can readily be accepted that those of Kurdish ethnicity are unlikely to support the regime. Of course, in most countries the vast majority even those who do not support the regime just continue with their daily lives and are not interested in protesting. It is well known however from news reports of the last couple of years in Iran, and in particular the protests after the death of the young Kurdish woman in police custody in September 2022 (I note some of the posts in the appellant's Facebook screenshots produced to the respondent relate to this) that large numbers of people were prepared to come out on the streets to call for action and to denounce the regime and that those protests were brutally supressed. This is an indication of the depth of feeling against the regime.

24. I take those points from background material together with the appellant's credible explanation in asylum interview as to why he posted political content on Facebook (qn 243), his explanation to me as to why he should be considered to be genuinely against the regime and the fact that when he was questioned on the rather grandiose statements he made in his witness statement he readily conceded that he only did what other demonstrators did. Whilst I appreciate that it is possible to edit Facebook screenshots and change the dates, the appellant is not someone who did not even mention political activity or attending demonstrations before the refusal decision; he spoke about his activities in asylum interview. In addition I consider that the appellant's answer to Ms Simbi asking him why he was asking his friends to photograph/video him so that he could put material on Facebook was perfectly credible; after all one of the functions of social media is for a person to show who they are, their likes and dislikes and share their thoughts and activities.

25. As Judge Hena says, there is doubt about the appellant's political views, but the standard of proof is a low one. Whilst the appellant is evidently not interested in carrying out sophisticated political activity, or being a high-level activist and organiser, and he may well have been pleased to discover that expression of anti-regime sentiments might help his asylum claim, I am satisfied to the low standard applicable bearing in mind what I have said about the particular situation in Iran and the appellant's explanations (as set out in detail above) that the appellant genuinely holds anti-regime beliefs and would wish to continue demonstrating and expressing his beliefs on return to Iran were it not for the persecution he would suffer if he did.

26. Ms Simbi accepted that if the appellant's beliefs were genuine he would be at risk and I consider that to be an appropriate concession for the reasons I explain below.

27. In the case of HB (Kurds) Iran (illegal exit: failed asylum seeker) CG [2018] UKUT 430 the Upper Tribunal explained that the mere fact of being of Kurdish ethnicity and having left Iran illegally does not create a risk of persecution or treatment contrary to Article 3 ECHR. However, it is nevertheless a risk factor which, combined with other factors may create a real risk of persecution or treatment contrary to Article 3 ECHR. Kurds involved in political activity are at risk of arrest, prolonged detention and physical abuse. Even Kurds who express peaceful dissent or speak out about Kurdish rights also face a real risk of persecution or treatment contrary to Article 3 ECHR. The Iranian authorities

demonstrate a hair-trigger approach to those suspected of or perceived to be involved in Kurdish political activity. The threshold for suspicion is low and the reaction of the authorities is reasonably likely to be extreme.

28. Against this background it is known that the appellant having exited illegally and arriving without a passport will be questioned on return. It is apparent from SSH and HR (illegal exit: failed asylum seeker) Iran CG [2015] UKUT 308 that the questioning is also about activities in the UK [23]. PS (Christianity - risk) Iran CG [2020] UKUT 46 is also confirmation that all returning failed asylum seekers are subject to questioning on arrival, including on why they claimed asylum. As I have found that the appellant's attendance at demonstrations in the UK and postings against the regime are an expression of a genuine belief even if his motives are mixed, he cannot be expected to lie and say that his anti-regime beliefs are not genuine, or lie as to the reasons for his claiming asylum. Even if he were to delete his Facebook account, I consider that there is a real risk that at the pinch point of return, telling the truth about his attendance at anti-regime demonstrations, and why he claimed asylum, he would be perceived as an activist or at the very least someone who merits further serious investigation. Bearing in mind the threshold for suspicion is low, I am satisfied to the low standard applicable that the appellant would be at real risk of persecution or treatment contrary to Article 3 ECHR. This of course is even ignoring the HJ (Iran) point that I have found that the appellant would wish to continue his, albeit low-level activities, on return were it not for the risk of persecution.

29. In the circumstances I do not need to consider whether the appellant would be at risk on return if his political beliefs were not genuine. However in that case the appellant could be expected to delete his Facebook account well in advance of return, so there would be no risk from the discovery of such account. I observe that if the appellant did not have a genuine reason for claiming asylum there would be no reason for him to tell the truth to the Iranian authorities about why he claimed asylum; there is no principle which means that it has to be assumed that an appellant would tell the truth about a false asylum claim given that a false asylum claim means an appellant was prepared to lie to the UK authorities; lying to the authorities about a lie would not appear to come under the HJ (Iran) principles as the appellant would not be concealing his political opinion for fear of persecution.

30. However for the reasons I have given as to the genuine nature of the appellant's political beliefs, his asylum claim succeeds.

Notice of Decision

The appeal is allowed.

A-R Landes

Judge of the Upper Tribunal
Immigration and Asylum Chamber

10 October 2024

Annex (error of law decision)

Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: UI-2023-004192
Previous Appeal Number: PA/53884/2022

Heard at Birmingham CJC
On 24 May 2024

Decision and Reasons Promulgated
04.06.24

THE IMMIGRATION ACTS

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY JUDGE OF THE UPPER TRIBUNAL McCARTHY

Between

AHH
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr H Singh
For the Respondent: Mr C Bates

Order regarding anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

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DECISION AND REASONS

1. Both judges have contributed to this decision.

2. The appellant, with permission granted by First-tier Tribunal Judge Austin, appeals against the decision and reasons of First-tier Tribunal Judge Hena, that was issued on 3 September 2023.

3. Prior to the hearing in the Upper Tribunal, the parties reached agreement that Judge Hena failed to make adequate findings about the appellant's risk on return and there was a material legal error in the decision.

4. The specific legal error is that Judge Hena failed to make adequate findings in respect of two matters that were raised in the appellant's skeleton argument that was before the First-tier Tribunal, namely:

(a) whether there is a reasonable degree of likelihood that, were he to reveal the basis of his asylum claim, he will be at risk,

(b) or whether, if he conceals his reasons for claiming asylum out of a fear of persecution, he is entitled to protection.

5. The parties agreed that as the decision needs to be remade only in respect of these issues, the appropriate course is to set aside the decision insofar as is necessary to re-open these aspects, and for the Upper Tribunal to retain the appeal to remake the decision on these matters.

6. We adopt the parties' agreements as they coincide with our provisional views.

Notice of Decision

The decision contains legal error and is set aside insofar as is necessary for the Upper Tribunal to remake the decision.

Directions for the rehearing of the appeal in the Upper Tribunal will be issued separately.

Judge John McCarthy

Deputy Judge of the

Upper Tribunal

Date: 24 May 2024