**IN THE UPPER TRIBUNAL**
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2023-004350**
**First-tier Tribunal Nos: PA/54697/2022 LP/01340/2023**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**
**On the 08 April 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SAINI**

**Between**

**HHR**
**(ANONYMITY ORDER MAINTAINED)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Mr G Brown, Counsel; instructed by Braitch Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**Heard at Field House on 18th March 2024**

**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**

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1. The Appellant appeals against the decision of First-tier Tribunal Judge Khurram dismissing his protection and human rights appeal.

2. The Appellant applied for permission to appeal on three grounds and was granted permission to appeal by Upper Tribunal Judge Owens in the following terms:

> "1. It is at least arguable that the judge has erred at paragraph [24] by concluding that there is no evidence that any of the demonstrations the appellant attended have been monitored by the Iranian authorities contrary to paragraph [65] of BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC). It is arguable that the judge does not adequately explain why the 'hair trigger response' does not apply to the appellant's claim.
>
> 2. It is also arguable that the judge failed to take into account that the respondent was given access to the appellant's Facebook account before the hearing".

3. Before me, Ms Everett confirmed that the appeal was contested and that there was no Rule 24 response from the Respondent.

**Findings**

4. At the conclusion of the hearing I reserved my decision which I now give. I find that the decision demonstrates material errors of law, such that it should be set aside in its entirety.

5. In respect of Ground 2, Ms Everett conceded at the outset that there was an error of law on the face of this ground in that the judge had appeared to accept that the Appellant had attended six demonstrations in the UK in terms of his *sur place* activities, and Ms Everett accepted that there was authority for the argument consistent with *BA*, that if the Appellant was attending and shouting slogans then he may be at risk and therefore given that he attended six demonstrations as the judge accepted there may have been a material omission in failing to consider the risk attendant from those demonstrations and given that there was a grey area in respect of whether or not someone's attendance and participation to the extent described might arouse the attention of the authorities which could change the outcome of the appeal entirely. I agree with Ms Everett's concession and I also find in any event that the judge had failed to consider the risks attendant from the Appellant's *sur place* and in respect of the Facebook activities as argued under Ground 3. With respect to the drafter of the Grounds, the *sur place* demonstrations and the Facebook activities do overlap and stand and fall together. In any event, given the accepted omission that the judge failed to consider the *sur place* demonstrations and given my finding that the Facebook activities were not considered, I find that these omissions may have established the authorities harbouring a different perception of the Appellant on return to Iran which the judge has not considered. As Judge Owens rightly observed in granting permission, the Appellant provided access to his Facebook account before the hearing, which is of significance in light of Ground 3 and the case of *XX (PJAK – sur place activities – Facebook) Iran CG* [2022] UKUT 23 (IAC) at paragraph 96 (which confirms that "Where a decision maker does not have

access to an actual account, purported printouts from such an account may also have very limited evidential value" whereas here the Appellant gave the Respondent access to his Facebook account beforehand) and he also invited the Respondent and Tribunal to view it live on the day of the hearing so it could be viewed without any allegation of manipulation. This, in light of the commentary by the Upper Tribunal in *HB (Kurds) Iran CG* [2018] UKUT 430 (see paragraphs 114 to 116 of that decision), demonstrates that the Appellant's activity on Facebook could be discovered on return when he is screened and interviewed at the airport and the failure to consider this is a material omission resulting in an error of law. For those reasons I find that Grounds 2 and 3 have been established.

6. Turning to Ground 1 finally, and the allegation of a failure to consider the risk on return to the Appellant as a kolbar, in light of my finding in errors of law in respect of Grounds 2 and 3 and in light of the judge finding that the Appellant has performed kolbar activities including transporting alcohol as noted at paragraph 30 of the judge's decision, and in light of the Country Policy Information Note of February 2022 entitled "Smugglers, Iran" which Ms Everett carefully took me to and bearing in what is said under paragraph 3.1 and 2.4 in respect of kolbars and risk of adverse state treatment particularly what is said at paragraph 2.4.1 to 2.4.3 concerning the smuggling of illegal commodities such as alcohol and the fact that thousands of kolbars are detained and given reports of their also being arbitrarily killed or injured by border officials in previous years, there is an element of risk which the judge has failed to consider arising from his finding that the Appellant is a kolbar who has previously smuggled alcohol. Therefore, I find that Ground 1 is also made out on the face of the decision.

7. I therefore find that the First-tier Tribunal has materially erred for the reasons given above.

**Notice of Decision**

8. The Appellant's appeal is allowed.

9. The appeal is to be remitted to the First-tier Tribunal to be heard by any judge other than First-tier Tribunal Judge Khurram.

*P. Saini*

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

2 April 2024