IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000070

First-tier Tribunal No: PA/53871/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 7th of May 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE
UPPER TRIBUNAL JUDGE BLUNDELL

Between

SF
(Anonymity Order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms E Daykin, instructed by Spring & Co Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on 26 April 2024

DECISION AND REASONS

1. The appellant is a citizen of Iran of Kurdish ethnicity born on 19 September 2004. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his asylum and human rights claims.

Background

2. The appellant claims to have entered the UK on 16 December 2021 by boat and claimed asylum on 19 December 2021 after being served with illegal entry papers on 17 December 2021. He claims to have left Iran on 29 October 2021 and to have travelled to the UK through Turkey and other, unknown, countries, with the assistance of an agent.

3. The appellant claims to have worked as a kolbar since the age of around 16 years. He claimed that his friend, S, introduced him to the job, and that he worked in a group of kolbars smuggling items from the Iraq/Iran border into Iran. He claimed that on 21 October 2021 he was carrying goods from Iraq to Iran when he and eight to nine kolbars were stopped by nine to ten armed police officers who told them all to get down on their knees and took videos of them and interrogated them about what they were carrying and where they were from. The appellant claimed that he told the police that he was carrying cigarettes but when they checked he was actually carrying bibles. He claimed that the police took his name, date of birth, parents' details and address and that, whilst they were arranging vehicles to take them away, he and S decided to jump off a five to six metre cliff and managed to escape. The appellant claimed that his maternal uncle told him his life was in danger and arranged for an agent to take him out of the country. He claimed that when he spoke to his uncle after reaching the UK his uncle told him that the police had come to their house searching for him on two occasions and on the second they took his birth certificate.

4. The respondent accepted the appellant's claim to have worked as a kolbar, to be of Kurdish ethnicity and to have left Iran illegally, but did not accept his account of escaping from armed policemen as it was considered to be inconsistent with country information and internally inconsistent. The respondent considered that the appellant's account of the nature of the police visits to his home was inconsistent with the country background information. The respondent did not accept that the appellant was at any risk on return to Iran, either on the basis of simply being a kolbar, or on account of being Kurdish and having left Iran illegally. It was not accepted that he was of any adverse interest to the Iranian authorities.

5. The appellant's appeal was initially listed for hearing in the First-tier Tribunal on 10 August 2023. However the appeal was adjourned two days before the hearing when his representatives made an application on the basis that they had become aware, during a meeting with him that day, of a new matter in the appeal, namely that he had attended demonstrations against the Iranian regime and had posted them on Facebook, and they wished to prepare a supplementary witness statement to support an application to the respondent for consent to be given for the new matter, namely the appellant's *sur place* activities in the UK, to be relied upon. On 13 September 2023 the respondent advised the Tribunal that consent was given for the new matter to be relied upon.

6. The appeal was re-listed for 12 October 2023. The appellant's representatives served a supplementary skeleton argument and a supplementary bundle, containing a supplementary witness statement and information and posts related to his Facebook account.

Hearing before Judge Blackwell on 12 October 2023

7. The appeal came before First-tier Tribunal Judge Blackwell. The appellant was represented by Ms D Revill of counsel and the respondent by Ms Bibi, a Home Office Presenting Officer. Ms Bibi was unaware of consent having already been given by the respondent for the appellant to rely on the new matter, but she confirmed that consent was now given. The appellant gave oral evidence before the judge. He claimed to have attended three demonstrations that year, in June, August and September and to have been posting on Facebook. Both parties made submissions.

8. Ms Bibi stood by the reasons given in the refusal decision to refuse the appellant's claim, submitting that his account of having been caught by the police smuggling

bibles and of having managed to escape from the police, was not a credible one. With regard to the appellant's *sur place* activities, she submitted that those were not genuinely politically motivated but rather an attempt to bolster his claim. She argued that there was no evidence that his attendance at demonstrations had come to the attention of the authorities and that, since he was not of any interest to the authorities, it was not likely that he would be subject to Facebook surveillance and it was not accepted that the Iranian authorities would be monitoring his Facebook, so that he could simply delete his account.

9. Ms Revill, in her submissions, argued that it was never put to the appellant in cross-examination that he did not genuinely have a political opinion that was opposed to the Iranian government and she disagreed with the judge that that had been implicit in Ms Bibi's questions. In response to the judge's enquiry as to whether she was saying that it was not open to him to find against the appellant in that regard, Ms Revill submitted that, if the respondent was going to suggest that the appellant did not genuinely have the political beliefs that he said he did and that he had expressed in the UK, that was something that should have been put to him in cross-examination. Since that was not put to him in cross-examination it was not open to the respondent to belatedly raise in submissions that he was lying about his case in that respect, and accordingly it was not open to the judge to make an adverse finding against the appellant in that regard.

10.The judge then sought to clarify the matter with Ms Bibi as to what had actually been put to the appellant in terms. Ms Bibi explained her view of her questions and Ms Revill, in response, maintained her view. Ms Revill relied upon an authority in support of her submission which, after a short adjournment for her to find the citation, was given as MS (Sri Lanka) [2012] EWCA Civ 1548.

11.Having reflected on the matter Judge Blackwell decided, in the interests of fairness, to re-open the evidence and allow the question to be put to the appellant explicitly, which Ms Bibi did, in response to which the appellant response was "If in Iran I was politically active and, I would have been arrested and killed. They would straightaway take you away and arrest you if you are politically active in Iran. But now that I have freedom I can actually show the whole world that what they do with kolbars in Iran by putting a post on."

Judge Blackwell's Decision, promulgated on 27 October 2023

12.Judge Blackwell did not find as credible or plausible the appellant's account of the incident where he was stopped by the police and found to be carrying bibles. As for the appellant's *sur place* claim, the judge accepted that the appellant attended three demonstrations but noted from the photograph posted on his Facebook account that the demonstration attended was the setting or background and that it was not a picture of him taking part or joining in. He considered the suggestion to be that the appellant's motivation was simply to be seen there for the purposes of his asylum claim and found it unlikely that he would have come to the attention of the Iranian regime through his attendance at demonstrations. As for the appellant's Facebook postings, the judge accepted that he had been posting about political matters but found that he did not have a sufficient profile to have come to the attention of the Iranian authorities already and did not accept the posts to be genuinely motivated. He found that the appellant's activities were solely undertaken to generate a *sur place* asylum claim and that if he was returned to Iran he would delete his Facebook profile because his views were not genuine and had been made simply for his claim and would not cause him difficulty on return. The judge did not expect the appellant would

say anything on return which would put him in danger, because he did not have genuine political beliefs. He found that the appellant would be at no risk on return to Iran and he accordingly dismissed the appeal on all grounds.

Appeal to the Upper Tribunal

13.Permission to appeal against the judge's decision was sought on four grounds: firstly, that the decision was tainted by bias or a real appearance of bias and that it was the view of counsel at the hearing that the judge had already decided he disbelieved the appellant and wanted to strengthen the basis for a finding to that effect; secondly, that the judge had adopted a procedurally unfair approach by failing to give the appellant an opportunity to respond to the suggestion that his claim to genuine political beliefs was undermined by the decision to post on Facebook a posed rather than a candid picture of himself; thirdly, that the judge had erred in law by failing to direct himself appropriately regarding the significance of the appellant's lies (as they were found to be) about events in Iran; fourthly, that the judge had erred by rejecting the appellant's account in part by relying upon supposed plausibility and relying on his own expectations of what the appellant and the Iranian authorities would or would not do.

14.The grounds were accompanied by a statement from Ms Revill setting out her account of the hearing, together with her attendance note of the hearing and her contemporaneous notes. It was also stated that the appellant had applied for the audio recording of the hearing.

15.Permission was refused in the First-tier Tribunal, but was granted by the Upper Tribunal on a renewed application on 22 January 2024, on the following basis:

> "1. It is contended by the appellant's first ground that the hearing before Judge Blackwell was tainted by actual or apparent bias. The ground is supported by a witness statement made by counsel, together with her contemporaneous notes of the hearing. The allegation centres on the judge's rejection of the appellant's claimed political beliefs and the procedural route by which that conclusion was reached.
>
> 2. The allegation is one of a closed judicial mind, rather than bias per se. Given the way in which the events are described in the grounds and the supporting documents, I wonder whether the label of 'bias' is apt; the complaint might instead simply be expressed as one of procedural impropriety or of impermissibly going behind a concession made by a Presenting Officer at a hearing. However the ground of appeal is expressed, I am satisfied that it warrants further consideration by the Upper Tribunal. I am particularly concerned by the fifth and sixth bullet points underneath [4] of the renewed grounds of appeal, since it would appear that the Presenting Officer had taken a deliberate decision (albeit at the eleventh hour, given the belated sur place claim) not to challenge the appellant on the genuineness of his political beliefs. Although the judge engages with the dispute in his decision, that is not a point which he mentions and it warrants further examination, with the benefit of the recording of the FtT hearing.
>
> 3. Grounds two and three overlap to some extent with ground one and permission on those grounds must logically follow. Ground four raises an arguable issue over the judge's failure to engage with the background evidence before reaching a conclusion that aspects of the appellant's account were implausible.
>
> 4. In the circumstances, I grant permission on all the grounds. The recording of the hearing will be sought from the FtT.

> 5. I note that counsel who drafted the grounds appeared before the FtT. I do not consider that she should appear before the UT except as a witness. Unlike in Abdi v ECO [2023] EWCA Civ 1455, there is some reason to question what counsel says (because the judge does not record the deliberate decision of the Presenting Officer not to cross-examine the appellant on his political beliefs) and it might be that questions will be put to her.
>
> 6. Whether it will be necessary for the judge to be asked for his comments or for the Presenting Officer to file a statement is to be considered after receipt of the recording: Elais [2022] UKUT 300 (IAC)..”

16.The audio recording of the hearing before Judge Blackwell was obtained by the Upper Tribunal and both parties attended an appointment on 27 March 2024 to listen to the recording.

17.The respondent filed a rule 24 response on 4 April 2024 responding to the grounds and opposing the appeal. The appellant filed and served a consolidated bundle for the hearing which included a transcript of the hearing before First-tier Tribunal Judge Blackwell which had been produced by an independent agency, The Transcription Agency.

Hearing and Submissions

18.The matter came before ourselves on 26 April 2024. We had both taken the opportunity to listen to the audio recording and had additionally read the transcript of the hearing. Ms Revill was in attendance and was available to be questioned about her statement but, quite properly, Mr Tufan accepted that there was nothing to be gained from that since we had the official transcript of the hearing and he therefore did not require any evidence from her. We are nevertheless grateful to Ms Revill for making herself available.

19.Ms Daykin made submissions before us, relying and expanding upon the grounds. With regard to the first ground, she submitted that there was the appearance of bias by the judge at the hearing. The fact of the appellant’s cross-examination being re-opened was not in itself under challenge, but the relevant issue was how that came about and that it was driven by the judge rather than upon an application by the respondent. She submitted that the judge was clearly aware of the issues relating to Kurdish Iranian cases and the guidance in regard to a returnee being obliged to tell the truth when questioned on arrival in Iran in regard to beliefs genuinely held and he therefore deliberately engineered the process by re-opening cross-examination so as to enable him to make a finding against the appellant on the genuineness of his political beliefs. Although the judge said that it was implicit in the respondent’s questions in cross-examination about the appellant’s *sur place* activities that it was not accepted that his political beliefs were genuine, and that the questions were simply laying the groundwork for the submission which was made in that regard, the informed bystander would not think that that was apparent. The cross-examination had simply been a series of questions establishing the facts whereas it should have been put to the appellant that his political beliefs were not genuine. There was therefore apparent bias in the way the judge conducted the process.

20.With regard to the second ground, Ms Daykin submitted that the judge had erred by failing to put to the appellant why the photograph relied upon showed him with his back to the demonstration and that that was a procedural flaw. As for the third ground, the judge had erred by relying upon the adverse credibility findings made in regard to the appellant’s activities in Iran as suggesting that he was lying about his

sur place activities. Finally, the fourth ground was that the judge had made plausibility findings at [19] to [22] by reference to what he expected that the appellant or the Iranian authorities ought to have done and had therefore relied upon his own expectations without any reference to the background evidence.

21.Mr Tufan submitted, with regard to the first ground, that it was all a matter of interpretation and that, in the heat of the moment Ms Revill had misinterpreted what was being said by the judge. The presenting officer at the hearing, Ms Bibi, had asked sufficient questions to make it clear that it was not accepted that the appellant held genuine political beliefs and there was no need to actually put that specific question to the appellant. The judge's decision to re-open cross-examination was by way of a 'belt and braces' approach because of Ms Revill raising the issue that she did. The judge made it clear that he was following a flexible approach in accordance with the requirements of the procedure rules. As for the appellant's response to the question put to him when cross-examination was re-opened, it was clear that he was talking about what the police did to kolbars rather than any political views he held. As for the photograph of the appellant at the demonstration, there was no need for the appellant specifically to be asked why he was posing for the camera rather than actively demonstrating. With regard to the plausibility challenge, the judge made his findings on the basis of the actual events described by the appellant and was entitled to find the appellant's account not credible overall.

22.In response, Ms Daykin reiterated the points she had previously made. She submitted that the informed observer would not have understood that all parts of the appellant's evidence were in issue and would only have known what was actually said, as recorded in the transcript. She submitted that it was not obvious from what was asked and conceded that the respondent did not accept that the appellant's activities were genuine.

Discussion

23. The test for whether there is a real appearance of bias was set out in the case of Porter v Magill [2001] UKHL 67 at [103]: "*whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased*." The relevant authorities since then were considered by the Upper Tribunal in a Presidential panel in the case of Sivapatham (Appearance of Bias) [2017] UKUT 293, where paragraph (i) of the headnote states that "*the Indications of a closed judicial mind, a pre-determined outcome, engage the appearance of bias principle and are likely to render a hearing unfair*."

24.In this case, it is submitted by the appellant that the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that Judge Blackwell had already decided he wished to find against the appellant on the genuineness of his political beliefs. It is submitted that he deliberately managed the proceedings so as to render it permissible to find that the appellant's political beliefs were not genuine, by unilaterally recalling the appellant and telling the presenting officer to question him further notwithstanding that she did not wish to do so.

25.That is a serious allegation and we do not accept that that is the case. We have carefully listened to the audio recording and cannot see that the judge was acting in the manner in which Ms Revill perceived. We agree with Mr Tufan that, in the heat of the hearing and the discussion, issues became misinterpreted and misunderstood and evolved into a situation whereby the judge was attempting to accommodate Ms

Revill's concerns but his actions were being interpreted by Ms Revill in a way that was clearly not intended. Mr Tufan referred to several examples of such misinterpretation which we consider to be of significance. At [10] of her statement, Ms Revill stated:

> "10. When I made my submissions, I stated that it was not open to the Respondent to argue in submissions that the Appellant did not genuinely hold the political beliefs he was expressing because this had never been put to him in cross-examination or suggested in writing. **The Judge then said to me that it was open to him, the Judge, to disbelieve the Appellant on this point even if the Respondent had not raised it.** 1 replied that it was not, since it was for the Respondent to state which parts of the Appellant's account were disputed. The Judge then said that there was no need for the Respondent to have put the point expressly to the Appellant and it was enough that it had been 'implicitly' raised. 1 said that this was incorrect and that in any event the point had not been implicitly raised."

26.We have highlighted the relevant part of that statement since it was clearly not what the judge said, as the transcript shows. The transcript shows that the judge asked Ms Revill "Are you saying it's not open for me to [make a] finding of that?" (page 79 of the transcript at B) and then "And do you say it's therefore not open for me to make a finding on that?" (page 79, at F). At no point did he say that it was open to him to disbelieve the appellant on that point if the respondent had not raised it. Indeed, at page 80, above section A, the judge said "I'm not giving you a view but …". It is clear from the transcript that the most the judge said was that he considered it implicit from the questions posed by the presenting officer that the respondent was challenging the genuineness of the appellant's political beliefs and that that was a matter which he was therefore entitled to consider when determining the appeal.

27.A second example given by Mr Tufan is Ms Revill's statement at [11] where she stated:

> "I reiterated to the Judge that the Respondent is required to put her case to the Appellant and that it was clear from Ms Bibi 's answer to the Judge that she had deliberately chosen not to do so"

28.The way in which that is expressed by Ms Revill, by her use of the word "deliberately", suggests something akin to a concession on the part of the presenting officer, which was evidently a matter of concern when the grant of permission was made (at [2]). However that is clearly not reflected in the transcript, where Ms Bibi's response is recorded at page 81, section D as:

> "Miss Bibi: So, Judge, I, I obviously firstly asked if he was politically active in Iran, which he, well I said is it correct that you wasn't politically active in Iran and he said yes. And then with regards to his Facebook he mentioned, I, I've mentioned when he started posting politically, well political activities because the, the material show they were mainly of 2023 and his answer was that when he first

> opened it he was quite young, didn't have any idea of how to post things, so it wasn't until 2023 with the help of his friends that told him about demonstrations that he then started using it for political activity. And then at question 8, I said at the beginning he wasn't quite proficient so what motivated him to open a Facebook account, I would say Judge that's me trying to ascertain whether it was, if it was a, a genuine political motivation. I mean, I, I don't know what my learned friend expected me to do at that point and say well was it genuine or not because the obvious answer would be he would say yes. He obviously, to, to my question he, he, he stated that, I mean I just opened it at the start, but then started using it for political things later on. And those were my questions. And I would say, Judge, I mean I didn't exactly put to him whether it was genuine or not because the, the obvious answer would be from him that it is genuine and, and I would say that I've left that for my respective submissions to obviously say that because of he, he wasn't politically active in Iran and because he started posting after the refusal letter it's the Respondent's position that it's not genuine."

29. What is apparent from that is that the presenting officer believed that she had asked all the relevant questions of the appellant to establish her case, not that she had deliberately chosen not to question him about relevant matters.

30. Likewise, Ms Revill's grounds criticise the judge as justifying his approach of re-opening the evidence on the grounds of the limitations to the respondent's resources, suggesting that the judge was motivated by financial considerations rather than a fair approach to the proceedings. Yet what the transcript shows, at page 86 section H, was that the judge was simply observing that, in accordance with the practice set out at [36] of the respondent's review, there would be no written response from the respondent to the appellant's additional *sur place* case. As Mr Tufan submitted, it was a matter of interpretation: what Ms Revill interpreted as an issue of fairness was simply an observation made by the judge of the circumstances in which the appellant's belated *sur place* case was to be, and was, addressed by the respondent.

31. Having distilled down to what actually happened at the hearing, we are of the view that the judge was simply trying to clarify and address Ms Revill's concerns and that there is nothing to suggest that he approached the case with a closed mind or that he had predetermined the outcome of the case. He believed that it was implicit from the nature of the questions put to the appellant by Ms Bibi's cross-examination that the respondent was challenging the genuineness of the appellant's political beliefs. In our view that was an entirely reasonable assumption to make from Ms Bibi's questions, in particular her questions about when he opened his Facebook account, when he started posting political material, what motivated him to open a Facebook account and whether he would close his account if he was returned to Iran.

32. We do not accept that Ms Bibi was required to ask the appellant directly whether his motivation and beliefs were genuine in order to make clear the respondent's case, as Ms Revill and Ms Dayton assert. In so far as Ms Revill relied upon the case of MS (Sri Lanka) v Secretary of State for the Home Department [2012] EWCA Civ 1548 to support her view to the contrary, we consider that the case did not assist her. That case was specific on its facts and in the way in which that the particular appeal had progressed. Furthermore, in that case the respondent had declined the opportunity to cross-examine the appellant, with the consequence, the Court of Appeal found, that he must be taken to have accepted, or at least not disputed the appellant's factual account. In this appellant's case it was abundantly clear that the factual account of events in Iran was disputed and it was, in our view, at the very least implicit from Ms

Bibi's questions that his account of the motivation behind his *sur place* activities was challenged.

33.As for the concerns about the judge re-opening the evidence on his own initiative rather than at the request of one of the parties, we reject the assertion that he was deliberately engineering the process so as to enable him to make a finding against the appellant on the genuineness of his political beliefs. As we have already mentioned, that is a serious allegation to make against a judge and we consider it to be completely unfounded. It is clear from the audio recording and the transcript of the hearing that, rather than attempting to further the respondent's case, as is suggested, the judge was in fact making every effort to accommodate Ms Revill and to ensure that the appellant was provided with a full and fair opportunity to present his case, having heard her concerns. He was merely concerned to ensure that the implicit challenge to the appellant's commitment was made explicit in order to address Ms Revill's concern. The judge could properly have ended the hearing at the conclusion of the submissions and at that point it was entirely open to him to assess for himself the genuineness of the appellant's political beliefs. Ms Revill was wrong to insist that it was not. It was her objection that led to the judge's decision to re-open the evidence. The same can be said for Ms Bibi having to re-phrase her question which, again, was in order to accommodate Ms Revill's concerns, as is apparent from the transcript (page 84 section G). It is suggested that the judge's reference at [11] and [12] to the evidence being re-opened "out of an abundance of caution" and with regard to the overriding objective of fairness and the interests of justice, was an empty gesture and that the converse was in fact the case. We do not agree. In our view the judge was at pains to ensure that Ms Revill's concerns were addressed and that there was a fair process. The assertion that the contrary was the case is, as Mr Tufan submitted, a matter of interpretation in the heat of the discussion.

34.We return, therefore, to the fair-minded and informed observer. There is, quite properly, no suggestion that the absence of a written response to the appellant's *sur place* case by the respondent prior to the hearing was a concession that the case was accepted. If there was, we would firmly reject it, given the belated manner in which the case was raised, and considering that the respondent's review made it clear that there would be no further written reviews. Nothing arises from the fact that consent was given by the respondent for the case to be admitted a month prior to the hearing rather than at the hearing as per Ms Bibi's understanding. The appellant's case is based upon the respondent's presentation at the hearing itself. Ms Daykin submitted that the fair-minded and informed observer would not have understood that the genuineness of the appellant's political beliefs was a matter in issue and that the judge therefore gave the appearance of bias by engineering the process in order to justify making an adverse finding in that regard. We do not agree. In our view a fair-minded and informed observer with the attributes set out in Helow v SSHD [2008] UKHL 62 would have been aware that the appellant's motivations behind his *sur place* activities and the genuineness of his political beliefs were clearly in issue and that the respondent's case against the appellant in that regard was apparent from the presenting officer's questions. As for the decision to re-open the evidence and the proceedings that followed, that was somewhat messy and clumsy and, as we have said, unnecessary in the circumstances. However it was not a matter which the fair-minded and informed observer would have considered to be an indication of a biased approach by the judge. Rather, that it was a matter of the judge trying to accommodate Ms Revill's concerns and ensure a fair process for the appellant. The appellant was not prejudiced by the re-opening of the evidence. On the contrary he was given a further opportunity to expand upon his evidence and to respond to the direct and explicit suggestion that the new matter raised did not reflect genuine

political beliefs. We do not, therefore, accept that there was any bias, actual or perceived, on the part of Judge Blackwell, nor that any unfairness arose from the judge's approach, and we find the first ground not to be made out.

35. The main focus of the submissions before us was on the first ground. As the grant of permission identified, the second and third grounds overlapped with the first ground. The second and third grounds challenge the reasons given by the judge for finding that the appellant's political beliefs were not genuine. The challenge is made with reliance upon the positive findings made by the judge at [28] that it was plausible that a young Kurdish Iranian who had worked as a kolbar would have political views and that, given the appellant's age, it was not expected that there would be a lengthy period during which he would have espoused those views. It is submitted on behalf of the appellant that, in light of those positive findings, it was unfair for the judge to find against him on a matter which was not put to him at the hearing and for which he was not given an opportunity to provide an explanation. That matter was the photograph of him at a demonstration, posted on his Facebook account, which the judge found not to be a genuine reflection of his political beliefs as it did not show him to be actively participating in the demonstration but rather posing for the camera with his back to the demonstration. We reject the suggestion in the grounds that it was incumbent upon the judge himself to raise the matter with the appellant and seek a response. The appellant had produced the evidence as part of his case and it was open to his representative to question him further in order to clarify his role at the demonstration. There was no requirement for the judge to question the appellant about the evidence and neither was it a requirement for the respondent to put a specific question to him in that regard. The photograph was addressed in submissions by the respondent and the judge was perfectly entitled to assess and make findings on the evidence as he did. In any event that was clearly not the sole reason given by the judge for finding that the appellant's *sur place* activities did not reflect genuine political beliefs. Albeit briefly, he gave other reasons which entitled him to conclude as he did. At [25] he had regard to the appellant's limited attendance at demonstrations and the limited role he played, and at [26] to [28] he considered the limited nature and extent of the appellant's posts on Facebook and the limitations of the evidence in that regard, all within the context of the country guidance in XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 23. He also had regard, at [29], to the lack of credibility of the appellant's account of his experiences in Iran.

36.In regard to the latter, the third ground challenges the judge's reliance upon credibility findings on past events when considering the appellant's account of his political beliefs and his activities in the UK and asserts that the judge failed to appreciate, by reference to relevant caselaw, that he could be lying about past events but credible in relation to others. However the judge was not relying upon his previous adverse findings as determinative of the credibility of the appellant's *sur place* case and it is clear that he had other reasons for finding the appellant's account of his political beliefs to be unreliable. He was perfectly entitled to take a holistic approach, as he did, and assess the appellant's credibility and the credibility of the evidence as a whole and to conclude that the appellant was not a reliable witness in relation to any of his evidence.

37.The fourth ground relies upon the case of HK v SSHD [2006] EWCA Civ 1037 in asserting that the judge erred by rejecting the appellant's account on grounds of implausibility and erroneously relied upon his own expectations of what the appellant and the Iranian authorities would or would not do rather than by reference to the country background information. Ms Daykin's submissions on this ground were brief, and rightly so. There is nothing in the judge's findings to indicate that he was

assessing the evidence by his own standards rather than in the context of the appellant's social and cultural background. The judge was merely assessing the appellant's factual account of an incident and was drawing reasonable inferences from that account, which he was perfectly entitled to do. His finding that the appellant's account was implausible did not turn on the extent to which it coincided with the background material; the findings were based on the straightforward implausibility of the appellant's account of his escape, as in MM (DRC – plausibility) Democratic Republic of Congo [2005] UKIAT 00019.

38. In any event, the judge's adverse findings were based upon inconsistencies in the evidence as well as concerns as to plausibility. At [20] the judge noted inconsistencies in the appellant's account about the cargo he was carrying and in particular the weight and nature of the cargo, and at [23] he noted inconsistencies in the appellant's account of how he came to know the contents of the packages he was carrying. The judge made his findings in that regard by reference to the appellant's evidence at his interview and his oral evidence. At [22] the judge drew adverse conclusions from the lack of evidence of police visits to his parents' homes when he had given details of his parents' addresses to the police during the incident. Although the judge did not cite country background information in that regard, we note that his findings reflected the respondent's concerns at [60] of the refusal decision which were based upon the country evidence. The judge clearly considered the appeal through the spectacles provided by the country information (Y v SSHD [2006] EWCA Civ 1223 refers) because he referred to country guidance decisions in which that background material was considered at length. As for the appellant's account of how he escaped from the police, the judge gave reasons at [21] for his findings based upon what we consider to be reasonable inferences in the circumstances, on the evidence before him and the account as a whole. Accordingly we find no merit in the fourth ground and consider that the judge was perfectly entitled to reach the adverse findings that he did.

39. For all these reasons the challenges made in the grounds are not made out. The judge reached a decision which was fully and properly open to him on the evidence before him. There was nothing unfair in his approach to the evidence, and to the proceedings as a whole, and the assertion that he was biased or gave the appearance of bias is not made out. The judge's decision is accordingly upheld.

Notice of Decision

40. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 April 2024