IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002712

First-tier Tribunal No: PA/51605/2023
LP/01153/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 30 January 2025

Before

UPPER TRIBUNAL JUDGE PINDER

Between

R A
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Nathan, Counsel instructed by Averroes Solicitors.
For the Respondent: Ms R Arif, Senior Presenting Officer.

Heard at Birmingham Civil Justice Centre on 6 January 2025

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 re-making of the decision in the Appellant's appeal, following the setting aside of the decision of First Tier Tribunal Judge Young-Harry, who had dismissed the Appellant's protection and human rights appeal on all grounds. The earlier decision of Upper Tribunal Judge Rastogi

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setting aside Judge Young-Harry's decision is appended to this decision as a separate annex.

2. I have maintained the Anonymity Order in favour of the Appellant. I consider that on the specific facts of this appeal the maintenance of the integrity of the United Kingdom's immigration system and the potential risk of serious harm if the Appellant is identified are such that an Anonymity Order is a justified derogation from the principle of open justice.

Background

3. The Appellant is a 28 year old citizen of Iraq whose claim for international protection was refused by the Respondent on 21st December 2022. As referred to above, the Appellant's appeal against that decision was dismissed by Judge Young-Harry. Upper Tribunal Judge Rastogi set aside Judge Young-Harry's decision finding that both grounds of appeal pursued by the Appellant had been made out. Judge Rastogi was satisfied that where expert evidence is produced (here a country expert report was relied upon), particularly if it is not challenged, and if the judge arrives at findings which run counter to that evidence, it is incumbent upon the judge to provide sufficient reasons as to why a different decision is reached. Judge Young-Harry failed to do so, and hence this gave rise to a failure to have regard to material evidence and/or inadequate reasons for departing from the expert's evidence.

4. Judge Rastogi also considered those errors to be material, despite Judge Young-Harry's findings that the Appellant's *sur place* activities did not arise from genuinely held beliefs and that he could delete his Facebook account [§20 of Judge Young-Harry's decision]. This was because the latter considerations could only negate risk in the event that the Appellant had not already come to the attention of the Kurdish authorities and it was that issue which was infected with an error of law. In setting aside the decision, Upper Tribunal Judge Rastogi preserved the finding of Judge Young-Harry that his *sur place* activity was contrived. The Appellant had not been permitted to appeal those findings and they accordingly continue to stand.

The appeal hearing

5. Following the making of a transfer order, this appeal was listed before me for re-making on 6th January 2025. The sole remaining issue to be determined in the Appellant's appeal is whether or not the Appellant's *sur place* activities are reasonably likely to have come to the attention of the authorities in either Iraq or the IKR, so as to place him at risk on return.

6. As a result of this being the sole issue in dispute, both parties agreed that the appeal hearing could proceed on submissions only. The Appellant was in attendance and I heard helpful submissions from each

advocate. At the end of the hearing, I reserved my decision. I do not propose to rehearse the submissions made here, but will consider and address these as part of my analysis set out below.

Analysis and conclusions

7. Mr Nathan was instructed to submit that the Appellant maintained the basis of his original protection claim, pursued in 2019, separate to his *sur place* claim. As Judge Young-Harry recorded and found at [11] of her decision, there has been no basis to justify a departure from the findings of the earlier tribunal when dismissing the Appellant’s protection claim in 2019. The Appellant did not seek to challenge those findings in his appeal to this Tribunal and there remains no basis therefore for re-visiting this any further.

8. As was the case in the error of law stage of this appeal, Mr Nathan’s submissions focused on the opinions of the Appellant’s country expert, Dr Kaveh Ghobhadi, set out in their report dated 2nd September 2022, and the matters reported upon by the UNHCR in the publication *‘International Protection Considerations with Regard to People Fleeing the Republic of Iraq, May 2019’* (‘the UNHCR *Considerations’)*. For ease of reference, I have extracted below the specific passages relied upon by Mr Nathan from the Appellant’s country expert and from the UNHCR *Considerations*.

Dr Gobhadi’s report

9. Dr Ghobhadi recorded at [20] of his report that he had spoken to two (named) sources regarding the risk to those who post social media posts critical of the relevant authorities and who partake in protests and demonstrations abroad. The expert set out the responses he received to the enquiries at [20]-[21], which emphasised the persistence and the continuity of the online activities against the Kurdish Government, which in turn increased the likelihood of coming to the adverse attention of Kurdish authorities. Dr Ghobhadi concluded at [22] as follows:

> “Based on the evidence provided, the Appellant could be placed amongst the third group, i.e., independent activists. It appears that he has transgressed the red lines by criticizing the KDP and the PUK and their leaders in his Facebook posts, as well as participating in protests against the Kurdistan Regional Government. The continuity of the Appellant’s activities for three years would increase the likelihood that he might have come to the adverse attention of Kurdish authorities”.

10. Dr Ghobhadi expanded on the above at [49]-[50] of his report.

> “49. In my opinion, the Home Office CPIN assessment regarding risk to those who criticise the authorities in the KRI, is generally consistent with the external evidence. It is not such that any criticism of Kurdish authorities on social media regardless of the person’s profile would bring them to the adverse attention of the authorities in the KIR. The potential punishment for posting contents critical of Kurdish authorities on the one hand depends on

> the content and severity of criticism and, on the other hand, and more importantly, the profile of the person who has posted them. In other words, the higher the profile of a government critic is, the more serious the fear of reprisal can be expected from Kurdish authorities. I address this more below.
>
> 50. As the above observations demonstrate, over the past few years, Kurdish authorities have intensified crackdown on journalists, online activists and bloggers who post contents critical of the Kurdish government. In my opinion, Kurdish security forces continue the surveillance of all kinds of social media platforms in order to assert control over them, detaining any person they suspect of being engaged in anti-government activities."

11. The expert also confirmed at [51] that he had himself accessed the Appellant's social media posts online. He stated in the same paragraph that it is impossible to state with certainty whether the Appellant's activities on social media have brought him to the adverse attention of Kurdish authorities. As Upper Tribunal Judge Rastogi noted in her decision on the errors of law pursued against Judge Young-Harry's decision, this Tribunal is not considering whether there is certainty in these matters. The standard of proof applicable is the lower standard.

12. Specifically with regards to the authorities' capabilities and/or interest in monitoring those who oppose or who are perceived as opposing the same authorities, the expert set out the following at [17] and [24] of his report:

> "17. In my opinion, it is relatively easy for the Kurdish security forces to monitor the internet as the internet service providers are owned by the high-ranking members of the two major ruling political parties, i.e., the KDP and the PUK.1 That said, the Kurdish government's capability in monitoring online activities and the scale of such surveillance is unknown (although the reports I refer to below reveal ongoing monitoring). (…)
>
> 24. It is unlikely that the Kurdish authorities would find out about the Appellant's online activities against them on being screened if he has not already come to their adverse attention. The returnees are screened by the authorities at the airport in order to check, for example, whether they have pending charges or affiliation with terrorist organisations such as the ISIS. Whereas it is likely that the Appellant would be interrogated by the Kurdish security forces at the airport, there is no evidence indicating that he would be mistreated or tortured to extract a confession merely on the ground of claiming asylum in the UK."

13. Lastly, Dr Ghobadi noted at [53] of his report that in his opinion, it was unlikely that the Appellant would have come to the adverse attention of the Iraqi authorities due to his activities in the UK. He states that "(b)eing Kurdish from the Kurdistan Region of Iraq, the Appellant is not a threat to Iraqi government or Shia militias."

UNHCR Considerations

14. Section 4 of Chapter III of the Considerations addresses matters relating to persons opposing, or perceived to be opposing, the Iraqi Kurdistan Region (‘IKR’) (also referred to as the Kurdistan Regional Government ‘KRG’) or those affiliated with the IKR. Section 3 addresses matters relevant to those opposing/perceived to be opposing or affiliated with the Iraqi Government but in light of the own Appellant’s expert stating that the Appellant is unlikely to have come to the adverse attention of the Iraqi authorities, I do not summarise this section further. Section 4 provides as follows:

> “4) Persons opposing, or perceived to be opposing, the KRG or those Affiliated with the KRG Individuals who criticize or are perceived to criticize the KRG authorities, the dominant ruling parties, or others with political influence in the KR-I, or who allege government abuse or corruption in the KR-I, are reported to have been targeted in some instances by the KRG authorities, influential government and party officials and party-affiliated security forces in the KR-I. Those falling under this profile are reported to include in particular journalists and other media professionals, members of rival or opposition political parties, civil society activists and protestors, the profiles of whom may overlap. Forms of targeting are reported to include intimidation, harassment, physical attacks, arbitrary arrest and politically motivated criminal prosecution.
>
> According to reports, family members of real or perceived KRG critics have, at times, also been subjected to threats and defamation by KRG authorities or unknown actors.
>
> UNHCR considers that individuals opposing or perceived to be opposing the KRG authorities, the dominant ruling parties or others with political influence in the KR-I may be in need of international refugee protection on the basis of their political opinion or imputed political opinion, and/or other relevant grounds, depending on the circumstances of their case.
>
> Family members of persons of this profile may be in need of international refugee protection on the basis of their imputed political opinion, and/or other relevant grounds, depending on the circumstances of their case.”

15. Drawing the above together, Mr Nathan invited me to find that the breadth, consistency and frequency of the Appellant’s posting of materials critical of the IKR authorities on Facebook is reasonably likely to have come to the adverse attention of those same authorities while the Appellant has been in the UK. This is supported by the background reports, also referred to and sourced by the country expert. The expert is also of the opinion that the Appellant is reasonably likely to be perceived as an ‘independent activist’, who has criticised the authorities and transgressed their ‘red lines’. The expert emphasised the likelihoods of monitoring and of adverse attention being drawn increasing in line with the persistence and continuity of the online activities against the Kurdish Government.

16. As a result, Mr Nathan submitted that the Appellant would face a real risk of harm on return, even if it cannot be said that his motivation

for the activities he carries out in the UK is genuine. Mr Nathan reiterated that a perception by the authorities that the Appellant has been critical of them would be sufficient. Neither had there been any dispute from the Respondent of the Appellant's actual postings on Facebook and attendances at demonstrations.

17. Ms Arif in response, and on behalf of the Respondent, submitted that the Respondent had considered Dr Ghobadi's report in detail at paragraph 38 of her decision and that this was not sufficient evidence to demonstrate that the Appellant would be at risk on return. Ms Arif also questioned in submissions why the Appellant would be politically active in the UK when he had not been so in the IKR prior to coming here.

18. I do not consider that the reasons why the Appellant posts on Facebook need to be identified any further than they have already since I did not understand the Respondent to dispute that he in fact posts, is in fact active online and has in fact attended events and demonstrations protesting against the IKR authorities. As has been central in this appeal, the Appellant's motivation for such activity has been found not to be genuine, and thus his political beliefs not to have been genuinely held. That is a finding that remains unchallenged and it is not necessary in my view for me to identify any further why the Appellant has continued with such activity.

19. Ms Arif also submitted that the expert's conclusions are consistent with the information contained in the Respondent's CPIN, which she also acknowledged the expert had considered himself. She summarised the conclusions drawn in the CPIN, which are that low-level activities would not attract adverse attention.

20. The Respondent expressly accepted at paragraph 39 of her decision that Dr Ghobadi has had extensive experience of the matters he reported on, that he is a country expert and that weight is to be given to his report. Concerning the substance of the report, the Respondent observed at paragraph 42 that the expert did not state that the Appellant's online activities *alone* could place him at risk of the Kurdish authorities. The Respondent commented on the assumption that the expert started from at [52] of his report when stating that "assuming that the Appellant has come to the adverse attention of Kurdish authorities". The Respondent submitted that this effectively undermined the expert's conclusions. The Respondent also noted that Dr Ghobadi acknowledged that the external evidence, which he had considered was consistent with the Respondent's CPIN. The Respondent further noted in her decision at paragraph 43, as did Ms Arif before me, that the CPIN disclosed that low level activity would not entail a risk of persecution. The Respondent maintained the position that the Appellant had not shown that he had conducted any "high profile political activity or any political activity that is not low level".

21. There being no dispute on the expertise and experience of the Appellant’s country expert, I attach significant weight to the matters reported on by Dr Ghobadi. The report is detailed and comprehensive and clearly addresses the Appellant’s specific circumstances, with the expert having considered in detail the Appellant’s posts and other evidence of his *sur place* activities in the UK. Dr Ghobadi has also provided detailed references to external sources, where appropriate, and his consideration of the Respondent’s CPIN is of significant assistance to me.

22. I have very carefully considered the Respondent’s written submissions contained in her refusal decision and the oral submissions from Ms Arif, but I do not accept that Dr Ghobani has given his opinion on risk based on an assumption that the Appellant will have been monitored. The passage in Dr Ghobadi’s report at [52] needs to be considered in the context of the report as a whole. As can be seen from the passages extracted above, Dr Ghobani first reports that it is relatively easy for the Kurdish security forces to monitor the internet, for the reasons that he gave at [17]. He acknowledged that the capability and the scale of such surveillance was not known but he also expressly referred to other external sources that revealed on-going monitoring. Dr Ghobadi also provided details of his exchanges with other specialists at [20] of his report, who were of the view that persistence and continuity of online activities against the Kurdish Government would increase the likelihood of coming to the adverse attention of the authorities.

23. Placing emphasis on one of these exchanges at [21] and [22] of the report and on the nature and frequency of the Appellant’s posting, as I have extracted above, Dr Ghobadi concluded at [22] that the Appellant had transgressed the ‘red lines’ by criticising the KDP and the PUK and their leaders in his Facebook posts, as well as by participating in protests against the IKR. Dr Ghobadi commented further that the continuity of the Appellant’s activities for three years would increase the likelihood of coming to the adverse attention of the authorities. At [40] of his report, Dr Ghobadi observed that both the KDP and the PUK would generally tolerate criticism as long as their ‘red lines’ were not crossed. The expert then gave a number of examples of what those ‘red lines’ consisted of and drew distinctions between those held by the PUK and those held by the KDP. The expert then reported that both parties have “cracked down on all forms of dissidence from critical journalism to peaceful protests”.

24. When considering all of the relevant strands from Dr Ghobadi’s report, I am satisfied that there is a reasonable degree of likelihood that the Appellant will have already come to the adverse attention of the Kurdish authorities as a result of his continued and frequent posts on Facebook, over a significant period of at least three years, coupled with his attendance at events and demonstrations critical of the authorities. I attach significant weight to the expert’s conclusions for the reasons given above.

25. I do not accept that those views are grounded in any assumptions and I am satisfied that that passage at [52] is worded in that way because the expert is addressing the risk that the Appellant would face had he come to the attention of the authorities. The expert was very clear that he cannot know for certain whether the Appellant has bene monitored thus far and so those passages need to be read together with the expert's expressed uncertainty. However, as already addressed, certainty is not required.

26. As can be seen from the passages above, the expert has very carefully set out why he thinks that the Kurdish authorities have the capability and the interest in monitoring those who transgress their 'red lines', including on social media and in other forms of protest, and why it is that he considers the Appellant to have transgressed those lines. This includes the expert's opinion that the Kurdish government and relevant authorities are a much more organised and efficient form of central government, which would be in a position to have identified and monitored the Appellant. This aspect of the expert's report was not challenged before me.

27. I have had regard to and placed significant weight also on the relevant passages of the Respondent's CPIN. Whilst I have not cited from the CPIN at any length, I have had careful consideration of its contents and also through the Appellant's expert's consideration of the same. As the expert himself noted, much of the passages of the CPIN are consistent with his own research. The distinction is that the expert considered that the Appellant would be perceived as having had a higher level of involvement as a result of his Facebook content, its frequency and continuity over a significant period of time. The expert categorised the Appellant as an independent activist who is likely to be perceived as a having transgressed the leading parties' 'red lines'. I consider that this is a much more nuanced and accurate understanding of the Appellant's activities compared to the Respondent's assessment. I find that the latter is terse, lacking in reasoning and more importantly, does not address in response the matters raised in this respect by the expert.

28. For the reasons above, I am satisfied that as a result of the nature of the Appellant's sur place activity, he is reasonably likely to have already come to the adverse attention of the Kurdish authorities and would therefore face a real risk of serious harm and/or persecution on the proposed return to Kirkuk (see [65] of the Respondent's decision). This is further supported by the country guidance contained in *SMO & KSP (Civil status documentation; article 15) Iraq CG* [2022] UKUT 00110 (IAC) ('*SMO2*') for persons, who hold the characteristic of 'opposition to or criticism of the Government of Iraq, the Kurdistan Regional Government or local security actors. For the avoidance of doubt, this is despite the previous finding that the Appellant's political *sur place* activities have been contrived since it is the perception of the authorities that is relevant here when assessing risk. The Appellant has continued to maintain that his activities and beliefs are genuine, and not so contrived, but for the

reasons that I have summarised above, that is not an issue that the Appellant has been permitted to re-litigate before me.

29. The Appellant was born in Sulaymaniyah but his family moved to Kirkuk when he was a baby. Judge Clegg in 2019 found that the Appellant’s identity documents remained with the Appellant’s family in Kirkuk and that these could be provided to him to enable the Appellant to be re-documented. Considering the risks that the Appellant would face on a return to Kirkuk, any remaining identity documents of his and any ability of the Appellant’s family to return these to the Appellant does not assist the Appellant since the Respondent proposes to return the Appellant to Kirkuk. Furthermore, the Respondent’s and Judge Clegg’s consideration of any viable internal relocation, namely to Sulaymaniyah or elsewhere in the IKR via Baghdad, cannot stand in light of my findings above either with there being a reasonable likelihood of the Appellant having already attracted the adverse attention of the Kurdish authorities.

Notice of Decision

30. The decision of the First-tier Tribunal involved the making of an error on a point of law.

31. I remake the decision by allowing the appeal on protection grounds.

Sarah Pinder

Judge of the Upper Tribunal
Immigration and Asylum Chamber

29.01.2025