IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005486

First-tier Tribunal No: PA/52505/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 5th of June 2024

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

JA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Richards, Solicitor.
For the Respondent: Mr C Bates, a Senior Home Office Presenting Officer.

Heard at Birmingham Civil Justice Centre on 24 May 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. Both judges have contributed to this decision.
2. The Appellant is a citizen of Iran of Kurdish ethnicity born 26 August 1985.
3. The Appellant states he left Iran in 2014 or 2015, arriving in the UK in 2015, and claimed asylum on 25 September 2015. His claim was rejected, and he was

removed to Italy on 26 November 2015 but returned to France the same year where he remained until 2020. He re-entered the UK by lorry and claimed asylum on 20 April 2020. The Secretary of State refused the application on 21 June 2022. It was the Appellant's appeal against that decision which came before First-tier Tribunal Judge Rakhim ('the Judge') sitting at Manchester on 7 September 2023.

4. Having considered the documentary and oral evidence the Judge sets out findings of fact from [15] of the decision under challenge.
5. The Judge records at [6] the agreed issues requiring determination which were (i) whether the Appellant had a well-founded fear of persecution as a result of an adverse political opinion and (ii) whether the Appellant had a well-founded fear of persecution as a result of his sur place activities.
6. The Judge's findings in relation to the first issue are set out between [18 – 35] of the determination. In that final paragraph the Judge writes:

> 35. I do not accept, even on the lower standard, that the Appellant has a well-founded fear of being persecuted by the Iranian authorities for his political opinion/activities and I do not accept that is the reason he fled from there. I am not satisfied, on the applicable lower standard of proof, that the Appellants evidence is reliable, and the incident that he described with tearoom and being identified by the intelligence service took place as the account was inconsistent.

7. The Judge considers the second issue between [36 – 49], writing in the final paragraph:

> 49. I do not accept, even on the lower standard, that the Appellant has a well-founded fear of being persecuted by the Iranian authorities for his sur place activities. I am not satisfied that the Appellant would be of any significant interest to the authorities given I have concluded his activities were of a low level.

8. The Judge also finds that as the views expressed on Facebook and elsewhere do not represent a genuinely held adverse political opinion the Appellant could be expected to delete his Facebook account and remove any risk on return that may arise from the same [48].
9. Although the Appellant appeared before us today with the benefit of legal representation the Grounds of Appeal appear to have been drafted by the Appellant himself.
10. The Grounds are not in numbered paragraphs but can be summarised as follows:

    i. The Judge needs to consider his sur place activities and his public Facebook account.
    ii. A reference to the decision in Devaseelan [2002] UKIAT 702.
    iii. A claim that new evidence he had provided shows his public Facebook activity has 2600 followers, and that is publicly visible, which will place him at real risk on return to Iran.
    iv. That he faces a risk as a result of his Kurdish ethnicity, especially in light of his status as a failed asylum seeker from the UK.
    v. Anti-government demonstrations have been widely documented and whether his intention was genuine or not was not relevant; by reference to Danian v Secretary of State for the Home Department [1999] EWCA Civ 3000.
    vi. A reference to the CPIN concerning social media in Iran and the CPIN dealing with Kurds and Kurdish politics in Iran and a claim the Judge failed to consider these documents.

vii. An assertion that in light of his sur place activities he could not safely relocate to Iran as he will be at risk throughout the country with no sufficiency of protection as well as a fear of state actors.

11. There is a reference towards the end of the document to the Appellant claiming that he been previously recognised as a refugee. There is no evidence that he has been recognised as a refugee in the UK. Similarly, the reference to Devaseelan is odd as there is no evidence the Appellant has had a previous appeal in the UK. That decision would only be relevant if the issue related to the weight to be given to findings of an earlier judge.
12. Permission to appeal was granted by another judge of the First-tier Tribunal on the basis the Judge may have materially erred in the assessment of the risk from the Facebook posts as he refers to not being "convinced" that these reflect his aims [40] or that he would stand out to the Iranian authorities due to them [45].
13. The Secretary of State opposes the appeal in a Rule 24 reply dated 28 December 2023, the operative part of which is in the following terms:

2. The respondent opposes the appellant's appeal. In summary, the respondent will submit inter alia that Judge Rakhim of the First-tier Tribunal ('FTTJ') directed themselves appropriately.

Grounds – Failure to consider risk on return from sur place activity

3. The grounds challenge the FTTJ's decision on the basis that the appellant's Facebook activity involving 2600 followers and public profile was not properly considered in terms of risk on return. This included the fact that the appellant is Kurdish. The grounds seek to re-argue that the appellant has come to the adverse attention of the Iranian authorities from his sur place political Facebook activity in the UK.
4. The FTTJ clearly considered the appellant's Facebook materials as part of the evidence when assessing risk, as well as attendance at demonstrations [10], [16]. This was assessed in the round with the appellant's claim to be involved with the KDPI [20] – [22], but following the consideration of the Asylum interview responses and background evidence [25] – [26], the FTTJ concluded that the appellant lacked any commitment to any political ideology or the party [27] – [28] and had not come to the adverse attention of the Iranian authorities [29] - [35]. These credibility findings have not been challenged in the grounds or raised as arguable errors of law in the decision granting permission to appeal.
5. These findings were the starting point in assessing the sur place activity of the appellant relating to Facebook posts and attendance at demonstrations. The FTTJ thoroughly goes through in detail the extent and dates of posts and demonstrations, accepting that they relate to the persecution of Kurdish people [38], but that they were low level and contained discrepant evidence on literacy [39].
6. After assessing the evidence, the FTTJ correctly concludes that the appellant was not a high-profile political activist that would have come to the attention of the authorities through sur place activity [41] – [44] [46], identifying that mere attendance at demonstrations does not evidence a genuinely held political belief [40], [46].
7. Those correctly made findings were then considered in line with XX [2022] UKUT 23. That authority is consistent with the FTTJ's findings; that mere attendance at demonstrations will not automatically put a person at risk and it depends on profile and level of involvement as per BA (paras 10, 95 of XX). Additionally, the Facebook posts will only be of material interest to the authorities if the appellant were of significant interest with genuinely held beliefs (para 92 of XX). The FTTJ had clearly followed this approach in their conclusions at [45] – [46] of the decision.
8. The grounds erroneously refer to Devaseelan given that there was no previous determination in this case that acted as a starting point in the factual findings.

9. The grounds amount to disagreements with findings of fact of the FTTJ and their assessment of risk on return with XX.

14. We indicated at the start of the hearing that we are considering the question of whether Judge has erred in law in a manner material to the decision to dismiss the appeal in accordance with the guidance provided by the Court of Appeal in Volpi v Volpi [2022] EWAC Civ 462 @ [2] and Ullah v Secretary of State for the Home Department [2024] EAC Civ 201.

Discussion and analysis

15. We agree with the comment in the Rule 24 reply that a number of the issues it is claimed the Judge failed to deal with were considered as an examination of determination as a whole clearly reveals.
16. Mr Richards in his submissions referred to the Appellant attending a number of demonstrations outside the Iranian embassy which he submitted will have brought him to the adverse attention of the authorities sufficient to create a real risk on return. He referred to the fact that there are CCTV cameras outside the Embassy and it is known that they monitor demonstrations.
17. The fact a person protests outside the Iranian embassy in the UK is not, per se, sufficient to warrant a grant of international protection. The leading country guidance case is BA (Demonstrators in Britain - risk on return) [2011] UKUT 36, the head note of which reads:

> 1 Given the large numbers of those who demonstrate here and the publicity which demonstrators receive, for example on Facebook, combined with the inability of the Iranian Government to monitor all returnees who have been involved in demonstrations here, regard must be had to the level of involvement of the individual here as well as any political activity which the individual might have been involved in Iran before seeking asylum in Britain.
>
> 2 (a) Iranians returning to Iran are screened on arrival. A returnee who meets the profile of an activist may be detained while searches of documentation are made. Students, particularly those who have known political profiles are likely to be questioned as well as those who have exited illegally.
>
> (b) There is not a real risk of persecution for those who have exited Iran illegally or are merely returning from Britain. The conclusions of the Tribunal in the country guidance case of SB (risk on return -illegal exit) Iran CG [2009] UKAIT 00053 are followed and endorsed.
>
> (c) There is no evidence of the use of facial recognition technology at the Imam Khomeini International airport, but there are a number of officials who may be able to recognize up to 200 faces at any one time. The procedures used by security at the airport are haphazard. It is therefore possible that those whom the regime might wish to question would not come to the attention of the regime on arrival. If, however, information is known about their activities abroad, they might well be picked up for questioning and/or transferred to a special court near the airport in Tehran after they have returned home.
>
> 3 It is important to consider the level of political involvement before considering the likelihood of the individual coming to the attention of the authorities and the priority that the Iranian regime would give to tracing him. It is only after considering those factors that the issue of whether or not there is a real risk of his facing persecution on return can be assessed.
>
> 4 The following are relevant factors to be considered when assessing risk on return having regard to sur place activities:

(i) Nature of sur place activity
Theme of demonstrations – what do the demonstrators want (e.g. reform of the regime through to its violent overthrow); how will they be characterised by the regime?
Role in demonstrations and political profile – can the person be described as a leader; mobiliser (e.g. addressing the crowd), organiser (e.g. leading the chanting); or simply a member of the crowd; if the latter is he active or passive (e.g. does he carry a banner); what is his motive, and is this relevant to the profile he will have in the eyes of the regime>
Extent of participation – has the person attended one or two demonstrations or is he a regular participant?
Publicity attracted – has a demonstration attracted media coverage in the United Kingdom or the home country; nature of that publicity (quality of images; outlets where stories appear etc)?
(ii) Identification risk
Surveillance of demonstrators – assuming the regime aims to identify demonstrators against it how does it do so, through, filming them, having agents who mingle in the crowd, reviewing images/recordings of demonstrations etc?
Regime's capacity to identify individuals – does the regime have advanced technology (e.g. for facial recognition); does it allocate human resources to fit names to faces in the crowd?
(iii) Factors triggering inquiry/action on return
Profile – is the person known as a committed opponent or someone with a significant political profile; does he fall within a category which the regime regards as especially objectionable?
Immigration history – how did the person leave the country (illegally; type of visa); where has the person been when abroad; is the timing and method of return more likely to lead to inquiry and/or being detained for more than a short period and ill-treated (overstayer; forced return)?
(iv) Consequences of identification
Is there differentiation between demonstrators depending on the level of their political profile adverse to the regime?
(v) Identification risk on return
Matching identification to person – if a person is identified is that information systematically stored and used; are border posts geared to the task?

18. The Judge clearly considered the evidence with the required degree of anxious scrutiny. The Judge also make specific reference to the CPIN 'Kurds and Kurdish political groups, Iran, May 2022 and the CPIN Iran: Social media, surveillance and sur place activities, in the determination. We find no merit in the ground suggesting material legal error as a result of a failure to consider this background material. The Judge at [40] records aspects of the Appellant's evidence being "vague and lacking in detail" when compared to the background evidence.
19. At [41] the Judge notes the Appellant's claim in his oral evidence to have attended 13 – 16 demonstrations in the UK. It was, however, accepted that media reporters had never interviewed the Appellant and that over 500 people had attended the demonstrations, although the Appellant claimed that the Iranian authorities would easily be able to identify him. Although Mr Richards referred to the number of demonstrations we do not accept the Judge failed to take this point into account.
20. At [42] the Judge analyses the Appellant's role in the demonstrations which was found to be "not significant". The Judge finds the photographs provided showed his role was limited to holding placards and chanting slogans. It is stated none of the images show the Appellant in any form of prominent position for the purposes of identification or that would bring him to the attention of the authorities. It was found he had no role in organising the demonstrations, by his own admission is not a member of the KDP and has never attempted to contact

them. The Judge dismisses the Appellants claims in relation to its assertion he is a high-profile individual.

21. At [43] the Judge finds that it is not likely the Appellant would be of interest to the authorities as there was nothing in the evidence to suggest otherwise. Mr Richards was asked whether he accepted this was a finding within the range of those reasonably open to the Judge on the evidence which he accepted it was.
22. When Mr Richards was asked by reference to BA how it was argued the Appellant would face a real risk as a result of his attendance at demonstrations he was unable to provide anything persuasive to suggest the Judge had not considered the material, had not properly weighed the same in the round together with the other evidence, or had made an irrational or perverse conclusion based on that evidence.
23. The Judge considers Facebook from [44] considering both the evidence provided by the Appellant but also the CPIN 'Iran: Social media, surveillance and sur place activities, May 2022 which to Appellants representative relied upon. The Judge also considered the guidance provided by the Upper Tribunal in XX (PJAX – sur place activities -Facebook) Iran CG [2022] UKUT 23(IAC). The Judge's conclusion that there was insufficient evidence to warrant a finding that the Appellant would face a real risk as a result of his Facebook postings, in light of the fact there was no evidence that he had the type of profile that would have drawn him to the attention of Iranians authorities such as to ignite their interests and give rise to a Facebook search, is a finding within the range of those reasonably open to the Judge on the evidence.
24. The Judge's finding that, in light of the purported political views not representing a genuinely held fundamental belief, the Appellant could delete his Facebook account is also a finding within the range of those available to the Judge. This was a specifically issue considered by the Tribunal in XX.
25. We find doing so in the circumstances as found by the Judge would not infringe the HJ (Iran) principle.
26. The grant of permission to appeal is critical of the language used by the Judge at [40], but as recognised in guidance provided by the Court of Appeal in Volpi v Volpi "*vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract*". There is no evidence the Judge failed to apply the correct burden or standard of proof and it was having done so that the Judge was not convinced there was any merit in the Appellant's claim. Similarly, the challenge to the Judge's finding the Appellant would not stand out to the Iranian authorities has not been shown to be sustainable challenge when the determination is read as a whole.
27. It is not made out the findings made, or decision to dismiss the appeal for the reasons set out in the determination, are outside the range of findings reasonably open to the Judge. It is not made out there is anything rationally objectionable in the Judge dismissing the appeal on all grounds.

Notice of Decision

28. No legal error material to the decision of the Judge to dismiss the appeal is made out. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 May 2024