IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003101

First-tier Tribunal Nos: PA/61594/2023
LP/03278/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 22 October 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

BA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms U Dirie, Counsel; Barnes, Harrild & Dyer Solicitors
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 24th September 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

1. The Appellant, a citizen of Iraq of Kurdish ethnicity, appeals against the decision of First-tier Tribunal Judge Dixon, promulgated on 29th May 2024, dismissing his appeal against the decision to refuse his protection and human rights claims.

2. The Appellant applied for permission to appeal which was granted by First-tier Tribunal Judge Dainty in the following terms:

> 1. The application was made in time.
>
> 2. The grounds aver that the judge was irrational or wrong in the assessment of the Appellant as a witness particularly around questioning pertaining to a gate (grounds 1 and 2). The judge brought their own perceptions to bear on how people in love might act and failed to give sufficient reasons on this point (ground 3). The judge failed to give sufficient reasons for reading the witness statement with a certain interpretation (ground4). Finally it is said that there is a failure to make reasoned findings on the core aspects of the claim – in particular as to the sur place activities.
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> 3. It is arguable that the reasons given (if there are any) for the finding that the sur place activity is not genuine are inadequate and it is likewise arguable that if he Appellant's activities were genuine and low level there should have been consideration about whether he should or would delete his Facebook posts and the consequences of that for risk on return.
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> 4. As to the remainder of the grounds, reasons are given in the decision. The judge looks at all matters in the round. The first instance judge is entitled to make their assessment of the witness, having had the benefit of hearing from them. There is nothing irrational in the assessment of the Appellant as a witness. Grounds 1 – 4 are not arguable. Ground 5 is.

3. As may be seen from the above, Judge Dainty only granted permission on Ground 5 and explicitly stated that Grounds 1 to 4 are not arguable. No further permission to appeal was sought in respect of Grounds 1 to 4 and therefore the only ground before me which the Appellant was entitled to argue is Ground 5.

4. No Rule 24 response was provided by the Respondent but Ms Ahmed indicated at the outset that the appeal was resisted.

Findings

5. At the conclusion of the hearing, I reserved my decision which I now give. I find that the decision contains a material error of law in respect of Ground 5 alone such that it should be set aside in respect of paragraph 15 (and in any other related paragraphs) to the sole extent that the assessment in respect of risk on return arising from the Appellant's *sur place* claim is set aside. I do so for the following reasons.

6. Whilst Ms Dirie attempted to argue that Grounds 1 to 4 were still live she also accepted in the same breath that permission had not been granted on those

paragraphs but nonetheless attempted to persuade me that the irrationality and implausibility of the judge's findings were matters that I could interrogate under Ground 5. I decline her invitation to do so given that the decision in *Ferrer (limited appeal grounds; Alvi) Philippines* [2012] UKUT 304 (IAC) made clear that in considering whether to grant permission to appeal or not, according to headnotes 1 to 3, a Tribunal Judge is required to consider which grounds had the strongest prospect of success and the likely ambit of the proceedings which can then form the backdrop for the Upper Tribunal's subsequent case management directions. In particular, headnote 2 makes plain that where a judge intends to grant permission only in respect of certain of the applicant's grounds, the judge should make this abundantly plain. It is clear to me from the content of Judge Dainty's decision excerpted above, especially its final paragraph, which states, in terms, that Grounds 1 to 4 are not arguable but Ground 5 is. Aside from this, the decision itself is headed "Permission to Appeal is partially granted". Therefore, it is plain to me that there is no basis upon which I can interfere with or read across any inflection of the previous grounds into Ground 5 given the specifically worded nature of Judge Dainty's decision. Albeit Ms Dirie attempted to persuade me that the points were "*Robinson* obvious", the appeal does not come before me in order for me to decide whether permission to appeal should be granted or not, that stage having already been completed. I note for the sake of completeness, that Ms Dirie did not seek to make a late application for permission to appeal before me (albeit such an application would have been significantly late, given that permission to appeal on Grounds 1 to 4 was refused several months prior). In any event, even if there may be a *Robinson* obvious point which Judge Dainty has failed to consider, it is not a matter which I am jurisdictionally enabled, or entitled to consider, with the above factual matrix in mind: see headnote 1 of Durueke (PTA: AZ applied, proper approach) Nigeria [2019] UKUT 197 (IAC) and headnote 3 of AZ (error of law: jurisdiction; PTA practice) [2018] UKUT 245 (IAC).

7. Turning to the fairly simple point that Ground 5 makes, which is largely self-contained for the most part (albeit it prays in aid that findings in relation to the Appellant being low level were not open to the First-tier Tribunal Judge to make under Grounds 1 to 4), I find that the assessment made by First-tier Tribunal Judge Dixon at paragraph 15 is insufficient, not least because it does not consider and apply the five points raised in the case of *BA (Demonstrators in Britain – risk on return) Iran CG* [2011] UKUT 36 (IAC) which mentions at headnote 4 the five relevant factors to be considered when assessing risk on return in relation to *sur place* activities, as is the case here in relation to not only the Appellant's Facebook posts but also his attendance at demonstrations. Those five factors that should have been applied are as follows:

(i) nature of *sur place* activity,

(ii) identification risk,

(iii) factors triggering inquiry/action on return,

(iv) consequences of identification, and

(v) identification risk on return.

It is plain from the cursory nature of paragraph 15 that those factors have not been considered comprehensively, or specifically; and even if the judge found that the Appellant's support was low level, I am not persuaded that the error is

not immaterial, given that the judge has not referred to evidence going either way from the Country Policy and Information Note referred to in the Grounds of Appeal entitled "Iraq: Opposition to the government in the Kurdistan Region of Iraq (KRI) Version 3.0, published July 2023". These factors, as well as whether or not the Appellant could be expected to delete his Facebook account (which I note from the decision in *XX (PJAK, sur place activities, Facebook) Iran (CG)* [2022] UKUT 23 (IAC) upon which conclusive guidance was not reached according to [119] of that country guidance case), is a matter which also has not been canvassed with the Appellant and has not been the subject of judicial fact-finding. Therefore, although a discrete point, there is a material error in relation to the assessment of the Appellant's *sur place* activities which requires further fact-finding and assessment in respect of the risk on return these activities may pose.

8. In light of my findings on the judge's assessment of the *sur place* activities and risk on return arising from those activities, I find that the decision suffers from material error of law in the respect identified; and I hereby set aside paragraph 15 alone (and any other paragraphs which pertain to the Appellant's *sur place* activities); but explicitly preserve the remainder of the First-tier Tribunal's decision, it not being subject to challenge before me.

Directions

9. Albeit the appeal does not require a *de novo* hearing and part of the decision is preserved, I am nonetheless persuaded that the matter should be remitted to the First-tier Tribunal for completion of the assessment of this protection claim on the above discrete issue, given that further material may be forthcoming from the Appellant and further evidence will need to be heard in respect of his *sur place* activities and as the matter is not one which could be as readily completed at the Upper Tribunal and the Appellant has not had a fair hearing on this issue.

10. Standard directions are to be issued.

11. The appeal is to be remitted to IAC Birmingham.

12. Either party is at liberty to apply for, and/or seek variation of these directions in respect of the case management before the First-tier Tribunal.

P. Saini

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

17 October 2024