



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03399/2020**

THE IMMIGRATION ACTS

**Heard at : Manchester Civil Justice Centre Decision & Reasons Promulgated
On the 22 February 2022 On the 21 March 2022**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

Zarkan Ayoub Mohamadi

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Greer, instructed by IAS (Manchester)
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision refusing his asylum and human rights claim.
2. The appellant is a citizen of Iran of Kurdish ethnicity, born on 12 November 1997. He arrived in the UK on 5 January 2020 in a lorry from France, having left Iran in around October 2019 and travelled through various countries, and claimed asylum on 7 January 2020. His claim was refused on 18 May 2020 and he appealed against that decision. His appeal was heard in the First-tier

Tribunal on 26 March 2021 and was dismissed in a decision promulgated on 22 April 2021.

3. The appellant claimed to have worked as a smuggler (kolbar) from the age of 15 years, smuggling goods such as cigarettes and alcohol from Iraq to Iran for about eight years. Whilst doing that he met Aso, a peshmerga in the Kurdish Democratic Party, who asked him to help him deliver KDPI letters to a man named Kaywan. He did that approximately 15 times without experiencing any problems. However two days before he left the UK, Kaywan did not show up to the appointment to pick up the letters, so the appellant kept them at his home which was then raided by the Revolutionary Guards. He went to his uncle's house and his uncle sent a child to find out what was happening to his house and reported back that his parents had not been arrested. He feared being arrested or killed by the Iranian intelligence service if he returned to Iran. The appellant claimed further to fear return to Iran on the basis of his sur place activities in the UK which involved posting materials against the Iranian government on Facebook.

4. The respondent, in refusing the appellant's claim, accepted that he was Kurdish but otherwise rejected his claim to have smuggled goods, to have been a supporter of the KDPI and to be wanted by the Iranian authorities and rejected his claim to be politically active in the UK. The respondent considered that the appellant would be at no risk on return to Iran and that his removal would not breach his human rights.

5. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Davies. Judge Davies found the appellant's account of smuggling goods such as cigarettes and alcohol across the Iran/ Iraq border to be consistent with the country background evidence and accepted the account. However he did not accept the appellant's claim to have smuggled political material for the KDPI, finding it to be inconsistent and contrary to the country evidence and considering it to be lacking in credibility and plausibility. The judge accepted that the appellant had left Iran illegally but did not consider that he would be at any risk on return on that basis alone. As for the appellant's sur place activities, the judge noted that the appellant had attended only one demonstration at which he did not play any prominent role but had simply turned up and left. With regard to the appellant's Facebook postings, the judge considered that that was purely opportunistic and that he could delete his Facebook account and would not be at risk on that basis. The judge concluded that the appellant would not be of any adverse interest to the Iranian authorities and that he would be at no risk on return. He accordingly dismissed the appeal on all grounds.

6. Permission was sought on behalf of the appellant to appeal the decision to the Upper Tribunal on two grounds. Firstly, that the judge had erred in his assessment of the appellant's activities for the KDPI and his Kurdish rights beliefs; and secondly, that the judge had erred in his assessment and conclusions on risk on return.

7. Permission to appeal was granted in the First-tier Tribunal, primarily in relation to the judge's findings on the appellant's Facebook postings and his conclusion that the appellant could simply delete his account.

8. The matter came before me and both parties made submissions. I shall address the submissions in the discussion below and therefore do not propose to summarise them at this point.

Discussion and conclusions

9. With regard to the first ground, Mr Greer's submission was that Judge Davies had made findings on the plausibility of the appellant's account which could not reasonably be inferred from the background country evidence and which were made without support from, or reference to, any specific part of the background evidence. He submitted that, whilst the judge found it lacking in plausibility that the appellant would be smuggling political materials, owing to his age and lack of previous involvement with the Kurdish group, the appellant was in fact an ideal person to do such activities as he was less likely to be an informant for the authorities and would be able to fly below the radar of the authorities. Mr Tan's response to that submission was that the judge was entitled to make the adverse findings that he did as they were made with reference to relevant parts of the background evidence as well as being based upon inconsistencies in the appellant's own account.

10. I am entirely in agreement with Mr Tan, that the judge's adverse findings about the appellant's activities for the KDPI were not simply based upon unsupported plausibility concerns, but on the contrary were made with specific reference to the background evidence as well as on the basis of inconsistencies in the appellant's account. At [31] to [33] the judge summarised the information from the country background evidence about the status of the KDPI, the secretive and politically sensitive nature of its activities and the approach of the Iranian authorities to those found to be linked to the organisation. At [34] the judge specifically stated that he was assessing the appellant's account of having been asked to smuggle politically sensitive materials for the KDPI in the context of that objective evidence and he explained why the appellant's account was at odds with the information within those reports. Contrary to Mr Greer's suggestion, there was no requirement upon the judge to make specific references within the country reports, but it was sufficient for him to relate the appellant's circumstances to the context of that background evidence, as he did.

11. In addition, the judge identified various inconsistencies in the appellant's evidence from which he was perfectly entitled to draw adverse conclusions. As Mr Tan properly submitted, none of those adverse findings were challenged in the grounds. At [36] the judge observed that the appellant's account differed between his interview and his appeal statement as to his relationship with Aso and how well he knew him when he was approached to carry the KDPI materials. At [37] the judge noted the appellant's lack of knowledge about the KDPI and at [38] he pointed out inconsistencies in the appellant's account of the contents of the materials he was carrying. At [41] and [42] the judge

observed that the appellant's account of there being no consequences of his actions for his family was inconsistent with the background materials and, further, at [41], that he had provided inconsistent and contradictory evidence about contact with his family. Further observations about the appellant's account were made by the judge at [43] to [45] and [48].

12. As Mr Tan properly submitted, a reading of the judge's findings from [31] to [49] provides a complete and comprehensive account as to why he rejected the credibility of the appellant's claim to have smuggled political materials for the KDPI. There is no merit in the assertion in the grounds that those findings were based upon a misinterpretation or misunderstanding of the objective evidence. The judge clearly had a full and proper understanding of the country evidence and provided cogent reasons for concluding that the appellant's account did not accord with that evidence. The judge was fully entitled to reject the appellant's account for the reasons properly given.

13. Likewise there is no merit in the second ground, which asserts that there was sufficient basis for the judge, irrespective of his findings referred to above, to conclude that the appellant would be at risk on return to Iran. It was Mr Greer's submission that the appellant's engagement in, and sympathy for, Kurdish rights was sufficient to conclude that his Facebook postings represented genuinely held beliefs which he ought not to be expected to delete and which, if questioned about, would lead to him being at risk in accordance with the guidance in HJ (Iran) & Anor v Secretary of State for the Home Department [2009] EWCA Civ 172. However I agree with Mr Tan that the judge properly applied his findings on the appellant's profile to the country guidance and was entitled to conclude that the appellant did not fall within any of the risk categories. The judge, having given full consideration to the relevant caselaw and guidance, and having appreciated that the threshold for suspicion by the Iranian authorities was low and that the reaction of the authorities was likely to be extreme, provided cogent reasons for concluding that the appellant's profile was nevertheless not such as to give rise to any adverse interest in him. The judge noted that the appellant had attended only one demonstration in the UK where his involvement was negligible and concluded, for reasons properly given, that his Facebook account did not represent genuinely held beliefs and that the postings were opportunistic, and that the account could simply be deleted. That was a conclusion he was perfectly entitled to reach and, as Mr Tan submitted, is consistent with the more recent case of XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 23 which post-dated the hearing before the judge but which nevertheless reflects the position at that time.

14. For all of these reasons I find no merit in the grounds. Judge Davies' decision is one which contains a full assessment of the appellant's circumstances and profile and a cogently reasoned assessment of risk in the context of the country background evidence and country guidance. The decision is one which was fully and properly open to him on the evidence before him. I do not find any errors of law in his decision requiring it to be set aside and I accordingly uphold his decision.

DECISION

15. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Dated: 24 February 2022