



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-006547**  
**First-tier Tribunal No:**  
**PA/50769/2021 (IA/01730/2021)**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 13 August 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**ROA**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Brown, Counsel  
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

**Heard at Manchester Civil Justice Centre on 8 August 2023**

**DECISION AND REASONS**

1. The Appellant is a national of Iran, born on 1 January 1991 who applied for asylum on 30 January 2020.
2. The Respondent refused his application in a decision sent out on 29 January 2021 because he had not demonstrated he would face a risk of persecution.
3. The case was listed before Judge of the First-tier Tribunal Garratt (hereinafter referred to as the FTTJ) on 23 December 2021 and in a decision promulgated on or around 4 January 2022 his appeal was dismissed.

4. Permission to appeal was sought by the Appellant's representatives on 17 January 2022 and on 1 July 2022 Judge of the First-tier Tribunal Beach gave permission to appeal on all grounds and stated:

"The adverse findings of credibility made by the First-tier Tribunal Judge are not solely based on the discrepancy between the screening interview and the appellant's later account. He also makes adverse credibility findings with regard to that later account.

However, the First-tier Tribunal Judge errs in stating that the respondent applied the provisions of Section 8. Whilst the respondent stated Section 8 was engaged, she also stated that the appellant had given a reasonable explanation for not claiming asylum in Italy.

It is arguable that this error played a part in the adverse finding of credibility made by the First-tier Tribunal Judge.

It is also arguable that the First-tier Tribunal Judge has not made an assessment of whether the Appellant's activities on social media and in the UK would come to light on his return to Iran as part of the re-entry process and whether this would lead to a risk on return for the appellant."

5. Mr Brown adopted his colleague's grounds of appeal and submitted the FTTJ had erred by failing to apply binding country guidance, going behind agreed facts (section 8 point), alternatively conducting a deficient section 8 assessment and relying on a disputed and unverified record of interview.
6. Mr Brown argued the FTTJ erred by failing to follow HB (Kurds) Iran CG [2018] UKUT 004302 (IAC). Whilst the FTTJ considered the effect of illegal activity and sur place activity considered at paragraphs [41] and [42] he erred because he did not consider whether his activities would come to light as per ground 6 of the grounds of appeal. The FTTJ failed to say why as a Kurd he would not become involved politically as he did. With regard to section 8 of the 2004 Act Mr Brown submitted the FTTJ clearly erred and the Tribunal would have to consider whether that error was material to his findings. Finally, Mr Brown submitted the FTTJ erred by placing reliance on the Appellant's screening interview when its accuracy was in dispute.
7. No Rule 24 response had been filed but Mr McVeety submitted there was no error in law. At para [42] of his decision the FTTJ made findings including a finding the Appellant was not a genuine activist. Much of what the Appellant claimed about the risk to him had been addressed by the Upper Tribunal in XX (PJAK-sur place activities-Facebook) (Iran) CG [2022] UKUT 23. The Appellant claimed he was illiterate but still claimed to be running a Facebook account. The fact the FTTJ found he had lied about his motives meant that when questioned he would not be at risk. The Appellant was not on the Iranian Authorities' radar and was therefore not at risk. Mr McVeety accepted the FTTJ erred when he said section 8 applied but argued the error was not material as he only made that finding after he had considered the totality of the claim. As regards the screening interview Mr McVeety submitted that the FTTJ was entitled to consider all the

evidence and could place reliance on it as long as reasons are given as the Appellant is expected to tell the truth and his answers in that interview can be compared to later answers.

8. Mr Brown maintained the real issue was whether the Judge correctly followed the guidance in paragraph [120] of HB. If the Judge had made the findings and then said the authorities wouldn't react adversely towards him then that would be fine but he did not do this. The FTTJ did not say why as a Kurd he would not hold these views and should have addressed the fact that as a Kurd he would face a risk from the authorities.
9. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (512008 /269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

### **DISCUSSION AND FINDINGS**

10. Having heard oral submissions, I reserved my decision and for the reasons herein after given I find there is no error in law.
11. Permission to appeal had been given for the reasons given in paragraph [4] above, but in assessing whether the FTTJ erred it is important to look at the totality of the evidence and then how the FTTJ approached that evidence.
12. Dealing with the specific reasons given for permission being given, firstly, the FTTJ considered the Appellant's sur place activities from paragraph [41] onwards. Mr Brown argued that the FTTJ erred because he failed to consider the risk as a returning Kurd, but in assessing the position it is necessary to look at the FTTJ's whole decision rather than individual paragraphs.
13. At paragraph [32] the FTTJ found the Appellant had not told the truth about why he left Iran and gave detailed reasons in the subsequent paragraphs. The FTTJ went on to find he was not satisfied he had left Iran illegally at paragraph [40] of his decision, but then went on to consider the effect HB would have on his position given he was an Iranian Kurd. He concluded that leaving Iran legally or illegally would not place him at risk of persecution or serious harm.
14. The FTTJ then considered his sur place activities from paragraph [41] onwards. He concluded that despite attending demonstrations he would not have come to the attention of the authorities especially as he was not a member of any UK based Kurdish organisation. The FTTJ pointed out that membership could suggest a person was actively involved in opposition to the Iranian regime. The FTTJ clearly found his sur place activities were an attempt to embellish his protection appeal and were not genuinely held views. Importantly, the FTTJ found he was not at risk of persecution and serious harm simply as a returning asylum seeker who is a Kurd.

15. The Tribunal at paragraph [120] of HB reiterates a person is not expected to lie about his activities but the fact he has not been found to be a genuine supporter and was found to have used Facebook and attendance at demonstrations to embellish a protection appeal. Given he could delete his Facebook account and there was no evidence he would be identified as attending any demonstrations I find the FTTJ was entitled to make the findings he did and those findings are not at odds with what the Tribunal said in HB.
16. I further find the FTTJ properly applied what the Upper Tribunal said in BA (demonstrators in Britain-risk on return) Iran CG [2011] UKUT 00036 and then went on to consider the Appellant's own case in detail at paragraph [42] and concluded "the Appellant was not a person who, if returned to Iran, will actively pursue anti-regime activity. He will not be at risk of persecution and serious harm as a returning asylum seeker who is a Kurd." For these reasons I find no basis for an error in law on the first ground advanced before me as the FTTJ did consider the risk per se as a returning Kurd.
17. Permission was also given over the FTTJ's treatment of section 8(4) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. I note the Respondent in her refusal letter stated on pages 8 of 16 (page 141 of the UT bundle) that the reason given for not claiming in a safe European country was a reasonable explanation and that section 8(4) of the 2004 Act does not apply. At paragraph [39] of his decision the FTTJ wrongly stated "I accept that the respondent was right to apply the provisions of Section 8 of the 2004 Act to the circumstances of the appellant's journey from Iran. That is because the appellant clearly passed through Italy yet it is evident that although he has said he was at real risk of suffering serious harm if returned to Iran, did not claim asylum at the first available country of refuge." Mr McVeety accepted this was an error but submitted the error was not material.
18. The FTTJ made numerous adverse findings before making the erroneous section 8 finding and I have to consider whether this section 8 error materially affected the FTTJ's earlier reasoning.
19. I am satisfied that paragraph [39] of his decision makes clear the Appellant left for economic reasons rather than for the reason he had claimed and it was only after those findings that the erroneous section 8 finding was made. That finding stands on its own and did not form any part of the FTTJ's earlier assessment about the pre-flight claim. It was an additional finding but did not amount to an error in law.
20. Finally, the FTTJ gave detailed reasons for his adverse findings. He explained in detail why he took into account the screening interview and those findings were open to him. I find no error in law on this issue either.

### **Notice of Decision**

There is no error in law. The First-tier Tribunal's decision shall stand and the appeal is dismissed.

Appeal Number: UI-2022-006547

Deputy Judge of the Upper Tribunal Alis  
Immigration and Asylum Chamber

**8 August 2023**