



IN THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000892

First-tier Tribunal No: PA/52350/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 19<sup>th</sup> of March 2024

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

**B A**

(anonymity order made)

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Ms Dingwall, of Latta & Co, Solicitors

For the Respondent: Mr Mullen, Senior Home Office Presenting Officer

Heard at Edinburgh on 7 March 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 his name or address, likely to lead members of the public to identify him. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant is a national of Iran and an ethnic Kurd. He sought asylum based on political activity in Iran and in the UK. The SSHD refused his claim. FtT Judge Prudham dismissed his appeal by a decision promulgated on 9 February 2023.
2. On 26 April 2023, UT Judge Reeds granted permission to appeal to the UT.

3. By a decision dated 28 September and issued on 19 October 2023, which should be read herewith, UT Judge Norton-Taylor at [13] set aside the decision of the FtT “only in relation to the question of the appellant’s *sur place* activities”; at [14-15], retained the case in the UT, and explained the scope of the re-making of the decision; and, finally, gave directions.
4. A transfer order has been made to enable decision-making to be completed by a differently constituted tribunal. Hence, the matter comes before me.
5. The appellant has filed further materials, including his supplementary statement dated 9 November 2023, photographs documenting his attendance at 9 demonstrations from 8 September 2020 to 29 October 2023, and a skeleton argument.
6. There is nothing further on file from the respondent.
7. The refusal letter at [81] does not accept that the appellant’s “intentions” for his political activity are “sincerely held”. At [82], it holds that he is “not a known and committed opponent to the regime with a significant political profile” , and it would be “reasonable” for him to close his Facebook account.
8. Those paragraphs represent the respondent’s position on the remaining issue in the case.
9. In his supplementary statement the appellant describes his part in various demonstrations over the killing of Zhini Amini and other abuses against Kurds, in Glasgow and outside the Iranian Embassy in London. He says that he knows the Iranian authorities monitor those events; he has seen persons inside the Embassy holding up their phones at the windows; and his father has been questioned in Iran about his involvement.
10. In further oral evidence-in-chief, the appellant said that he attended a further demonstration in London, on 21 January 2024.
11. In cross-examination for the respondent, the appellant had little knowledge of the organisation of demonstrations, beyond what he picked up from his friends and from Facebook. He did not have direct contact with the principal organisers. It was put to him that at a protest about a woman being killed in the custody of the authorities, it was odd that all the demonstrators in the photographs were men. He merely replied that all the protests were against the treatment of Kurds in Iran.
12. There was no re-examination.
13. Mr Mullen submitted that the evidence showed the appellant to be an opportunistic hanger-on, not a committed activist. Although it was accepted that the Iranian authorities conduct surveillance of their

opponents in the UK, that was not at such a level that everyone who had been on a demonstration was at risk on return. There was no real likelihood in this case.

14. In her skeleton argument and oral submissions, Ms Dingwall began by relying upon the features of the case accepted in the refusal letter - Kurdish ethnicity, illegal exit from Iran, and some political activity in the UK. That activity has continued since the respondent's decision and since the hearing in the FtT. The background evidence shows that the Iranian authorities record such events and try to identify participants. Their interest may be further triggered by any attempt to obtain removal documentation. That is a pinch point of interest even before return. If questioned on arrival in Iran, which was likely, even low-level activity involved a risk, given the low threshold for suspicion and the attitude of the authorities to support for Kurdish rights - *HB (Kurds) Iran CG [2018] UKUT 00430*, headnotes 7 - 10.
15. Mr Mullen had nothing to add by way of reply.
16. I indicated that the appeal would be allowed.
17. It is not difficult to see why this case did not immediately result in recognition on the information before the respondent.
18. There is a performative element in the evidence, designed to document activity before the eyes of the Iranian authorities. There is no surprise in the submission that it is more opportunistic than committed.
19. On the other hand, the appellant may well be disenchanted with the Iranian regime, and concerned to promote his immigration status in the UK. Those motives may co-exist.
20. I decline to conclude, having heard the appellant's evidence, that his activity has been entirely bogus.
21. In any event, a lack of sincerity and commitment, in the language of the refusal letter, would not be decisive.
22. Ms Dingwall did not found upon the appellant's Facebook presence. That element adds little.
23. The appellant does not qualify for protection merely by being a returnee of Kurdish ethnicity who exited illegally without a passport, but those are risk factors which heighten scrutiny. I find that his regular attendance and relative visibility at demonstrations creeps over the threshold at which the authorities might identify him as a critic, before departure, or when questioned on arrival.
24. Once that point is reached, account is to be taken of the "hair-trigger" approach of the authorities to those suspected of or perceived to be

involved in Kurdish political activities or support for Kurdish rights; that is to say, that the threshold for suspicion is low and the reaction of the authorities reasonably likely to be extreme – *HB*, headnote 10.

25. Accordingly, the appellant, to the lower standard of proof, has now made his case.
26. The decision of the FtT has been set aside. That decision is re-made by allowing the appeal, as originally brought to the FtT, on asylum and on human rights (article 3) grounds.

Hugh Macleman

Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
11 March 2024