



**Upper Tribunal
(Immigration and Asylum Chamber)**

**Appeal Number: PA/01330/2021
(UI-2022-002408)**

THE IMMIGRATION ACTS

**Heard at Bradford IAC
On the 19 October 2022**

**Decision & Reasons Promulgated
On the 28 November 2022**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

**A A M
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T. Gulamhussein, instructed on behalf of the appellant
For the Respondent: Mr M. Diwnycz, Senior Home Office Presenting Officer

Anonymity :

Rule 14: The Tribunal Procedure(Upper Tribunal) Rules 2008:

Anonymity is granted because the facts of the appeal involve a protection claim. and Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

1. The appellant appeals with permission against the decision of the First-tier Tribunal Judge (hereinafter referred to as the "FtTJ") who dismissed the appellant's protection appeal in a decision promulgated on the 15 March 2022.
2. Permission to appeal that decision was sought on behalf of the appellant and permission was granted by FtTJ Haria on 27 April 2022.

The background:

3. The appellant is a citizen of Iraq. The basis of his claim is set out in the decision letter in the respondent's bundle and summarised in the decision of the FtTJ.
4. The Appellant is a national of Iraq and is of Kurdish ethnicity from the KRI where he grew up with his parents and siblings. The appellant married in 2006 and members of his family and his wife continue to live in the KRI.
5. The appellant did not engage in any political activity whilst in the KRI.
6. In July 2017, the appellant was involved in a car accident and the subsequent events formed the basis of his fear of ill-treatment if he remained in Iraq. He left the KRI in 2017 and he arrived in the United Kingdom on 19 November 2018 and claimed asylum. The claim was refused and the appeal before FtTJ was dismissed in a decision promulgated on 15 November 2019 (Judge Henderson).
7. On 30 July 2020, the appellant created a public Facebook account in his own name providing his date of birth and description of himself as a civil activist from X living in X in the UK. The appellant created the account because he wanted to communicate with others about protesting against the Iraqi authorities. The FtTJ recorded that he had posted on the site approximately 160 occasions between July 2020 in January 2022. Such posts comprised of a variety of original comments, re-posted comments of others and included photographs of, and comments about, the appellant's attendance at a demonstration.
8. On 11 August 2020, the appellant was interviewed by a Kurdish news channel known as NRT where he expressed his views on corruption in the KRI and set out his own personal story. This was shown live on television however the appellant could not find copies of the interview. The interview coincided with process taking place in the KRI and the appellant had been told by people from the KRI that they saw him on TV.
9. On 9 November 2020, the appellant made further submissions which were accepted by the respondent as a fresh claim.

10. The respondent refused his application on 20 August 2021.
11. The appeal came before the FTT on 7 March 2022. The FtTJ set out the submissions made on behalf of the respondent at paragraph 26. The starting point were the factual findings made by Judge Henderson applying the principles in Devaseelan. It was submitted that the appellant's claim of being at risk due to his sur place activity on Facebook was not plausible and that he had adduced no evidence to show that his activity was monitored by the authorities. The appellant's family in the KRI had not been subject to any adverse attention from the authorities. It was submitted that the evidence of the appellant's claim of being involved in a demonstration in the UK was inconsistent as to the date of such event. Furthermore, his claim about giving a televised interview on NRTV was not supported by documentation and that his claim of political activity was implausible in the light of his lack of political activity whilst in the KRI. The appellant had opportunistically engaged in such activities in order to bolster a weak appeal.
12. The submissions made on behalf of the appellant were summarised at paragraph 27 and reliance on the skeleton argument. It is accepted that the starting point was the determination of the previous judge who had found the appellant's account of events was consistent and the appellant was a credible witness.
13. It was said that the background materials including the respondent's CPIN dated June 2021 showed that individuals who have a higher profile greater than a mere opponent or low-level participant in protests against the KRG are more likely to be at risk of mistreatment.
14. The appellant's claimed participation in a television interview for NRT was not effectively challenged in cross examination and the background material shows that the NRT was a recognised broadcaster whose offices had been raided and closed after covering anti-government protests.
15. It was accepted that the appellant's activities on Facebook should be assessed following the guidance of the UT in XX (PJAK-sur place activities - Facebook) Iran CG [2022] UKUT 00023. In light of that guidance it was submitted that it was likely that the appellant's participation in an interview broadcast by NRT had come to the attention of the authorities and, as a result, the appellant faced a real risk on return.
16. In his decision the FtTJ set out his findings of fact and analysis of the evidence between paragraphs 32 -55. The FtTJ found that there was no evidence to depart from the findings made by Judge Henderson on the question of risk arising from events referred to in that decision which was settled (see paragraph 35). Upon his analysis relating to sur place activity, the FtTJ found that his account of Facebook activity was supported by the documents and that he had attended a demonstration (although the date of the demonstration was not found to be reliable see paragraph 46). The FtTJ considered that applying the decision in XX(PJAK) the timely closure of

an account neutralised the risk of having a critical Facebook account and that his online activity had not been specifically monitored and timely closure of the account would not give rise to real risk of coming to the attention of the authorities (paragraph 49), that there was no evidence to show that the authorities routinely monitored attendance at anti-government protests (paragraph 50) and those with a higher profile or more likely be at risk mistreatment and that whilst the appellant was involved in an interview with NRT, it was not reasonably likely that the appellant as an interviewee faced a real risk of serious harm (paragraph 53). The FtT concluded that the appellant would not face a real risk of serious harm and return to the IKR. He dismissed the appeal.

17. Permission to appeal that decision was sought on behalf of the appellant and permission was granted on 27 April 2022 by FtTJ Haria.

The hearing before the Upper Tribunal:

18. The appellant is represented by Mr Gulamhussein, and the respondent is represented by Mr Diwnycz, Senior Presenting Officer.
19. The evidence from the FtT was held by the CE File. In addition Mr Gulamhussein referred to evidence that was not in the bundle which consisted of the relevant CPIN ; Iraq: opposition to the government in the KRI (June 2021 version 2.0). He also handed in a copy of a Facebook document entitled "what audiences can choose from when I share on Facebook." Both pieces of material were also emailed to the correspondence section of the tribunal. However Mr Gulamhussein stated that the face book document was not relevant to the issues raised in his oral submissions and the grounds but completed the evidence that was before the FTT.
20. Mr Gulamhussein relied upon the written grounds and provided oral submissions as summarised below. He submitted that there were 2 grounds of challenge to the decision of the FtTJ.
21. The first ground or issue relied upon was that the FtTJ failed to take into account evidence in the CPIN. The 2nd ground was that the FtTJ failed to take into account the expanded test of other acts of persecution relevant to the grant of refugee status.
22. Mr Gulamhussein submitted that the FtTJ cited trite law (Sivakumaran [1988] AC 958) at paragraph 14. At paragraph [53] the FtTJ erred in law by finding that the appellant would not be at risk due to his sur place activities. The FtTJ found that there were "no recorded reports of journalists having been seriously ill treated" . However the FtTJ only considered whether the appellant, as an interviewee, faces a real risk of serious harm but finds again the evidence does not show that the journalists themselves have been seriously ill treated.

23. It is submitted that this is the only test the FtTJ applied and failed to consider whether the evidence which he was directed to showed the appellant was at risk of facing acts of persecution within the non-exhaustive definition at Regulation 5(2) of the Refugee or Person In Need of International Protection (Qualification) Regulations SI 2006/2525.
24. The FtTJ merely considered whether the appellant would suffer serious ill treatment or serious harm and therefore effectively only confines risk to an analysis of risk under Article 2/3. The FtTJ did not consider the risk to the appellant from acts of persecution in order to properly assess the appellant's claim for refugee status.
25. Mr Gulamhussein submitted that the FtTJ failed to take into account the risk of arbitrary detention and arrest due to his conduct.
26. Furthermore he submitted that the FtTJ failed to take into account all the background material evidence he was directed to (both in written submissions and oral evidence) of the treatment of interviewees on NRT by the authorities on return.
27. In his oral submissions Mr Gulamhussein referred to paragraph 11.1. 4 of the CPIN: Iraq: opposition to the government in the KRI (June 2021 version 2.0) and the circumstances of Mr Barwari which the FtTJ did not take into account. This was evidence of ill treatment of an activist interviewed on NRT. This was set out in the skeleton argument (see paragraph 2 on page 3) where the Judge was directed to evidence where it was confirmed that an activist was arrested the day after they appeared on NRT TV.
28. Mr Gulamhussein also relied upon paragraph 11.1.6 of the same CPIN where it was stated that there was an article published by NRT TV on 9 April 2021 which stated that Mr Barwari was still being detained and according to his lawyers his health was in danger. There was no information as to whether the trial had taken place. He submitted that Mr Barwari was an interviewee who had been arrested and was still being detained. Mr Gulamhussein submitted that the detention was in breach of article 3. Furthermore the FtTJ found the appellant's sur place activity to be credible at [44] which was consistent with the decision of FtTJ Henderson.
29. Mr Gulamhussein submitted that the FtTJ was required to assess whether the appellant had a genuine political opinion on return and that it would be reasonably likely that he would continue in holding that opinion in the future and he could not take steps to modify his behaviour and therefore would be at risk of harm.
30. Mr Gulamhussein submitted that there was evidence of journalists being seriously ill treated and journalists targeted or discriminated against because they were anti-government this was sufficient to constitute acts of persecution.

31. He submitted that if the FtTJ had considered whether the Appellant had a reasonable likelihood of facing persecution and if the FtTJ had taken into account the increased evidence of risk faced by activists who appear on NRT then the Appellant would have been found to have a reasonable likelihood of risk on return.
32. Mr Gulamhussein submitted that even acts that do not fall within Article 3, such as arbitrary arrest (Article 5) were not considered by the FtTJ. Thus he submitted that even if there was no risk of serious harm (article 3) as a result of the interview, there were other acts of persecution outside of that which the FtTJ did not consider or take into account.
33. Mr Diwnycz on behalf of the respondent confirmed that there was no rule 24 response. He submitted that the FtTJ found a serious inconsistency of the date of the activities (see paragraphs 40 - 42) and that there was no expert evidence in the form of an official translation of the relevant script. The judge was entitled to take that point to form the basis of credibility and risk.
34. As to paragraph 53, the FtTJ considered the interview with NRT TV but that it did not show that the appellant had any sufficient profile. Mr Diwnycz referred to the CPIN relied upon by Mr Gulamhussein at section 11. He submitted that the focus of the submissions were on Mr Barwari who was a teacher in Dohuk who was the protest organiser and had a "higher profile" than the appellant. There was no similarity.
35. As to the interview, the appellant was an interviewee could provide no record of the interview to show it existed therefore it might not be broadcast and contravene the appellant's low-level profile. He submitted it could be seen why the Kurdish authorities have treated Mr Barwari in the way that was set out but for the reasons given by the FtTJ he was entitled to take the view that whilst the appellant was opposed to the KRI, he would not be of any interest to them or be at risk on return.
36. Mr Diwnycz referred to section 11.2 and the restrictions on media freedom which ties in with the decision of the FtTJ. He submitted that the evidence showed that the TV station still functioned, and the website still functioned.
37. There was no error of law made by the FtTJ who had looked at all the evidence in the round.
38. Mr Gulamhussein provided submissions in reply to those of Mr Diwnycz. He submitted that in terms of whether it was open to the FtTJ to make findings of fact, there was no evidence that the FtTJ directed himself to the circumstances of Mr Barwari. He submitted that a distinction has been made between the appellant and this individual as a protester and that this may be why he would be at higher risk. However the FtTJ had not really taken that into account, if so he would have said that there was evidence of an interview with a person who was not a journalist. He is

described as an organiser and there is no evidence of the FtTJ discussing organisers in his decision therefore be FtTJ had not reached a reasoned conclusion. Mr Gulamhussein submitted that it was necessary for the FtTJ to consider this evidence and he was directed to it. On the evidence there was a real risk to the appellant because of the circumstances.

39. Mr Gulamhussein referred to the CPIN at paragraph 2.4.8. He submitted that this evidence was non exhaustive and that there are interviewees who have been badly treated and therefore the finding at paragraph 53 was not safe.
40. Further submitted that the submissions made on behalf of the respondent did not engage with the argument concerning acts of persecution. Mr Gulamhussein submitted that the FtTJ was required to consider acts of persecution and there was evidence in the CPIN as to other acts of persecution for example, Article 9, Article 10 and article 5 of unlawful detention and that if you were an anti-government protester you would have no protection against this. He submitted there are different types of acts of persecution and that if the appellant had to conceal his opinion he should not be expected to and there be a real risk that he would wish to protest and if he did this they would be a likelihood of detention. The judge was required to determine if he was at risk as a result of other types of harm.
41. In summary, Mr Gulamhussein submitted that the FtTJ failed to assess risk for the appellant based on the conduct that he may wish to engage upon on return.

Discussion:

42. The grounds of challenge have been considered in the light of the decision of the FtTJ and the evidence. It is submitted on behalf of the appellant that the FtTJ failed to take into account evidence in the CPIN of the treatment of interviewees on NRT in reaching his conclusions on risk on return.
43. In particular, Mr Gulamhussein points to paragraph 11.1.4 and 11.1.6 of the CPIN and the references made to the circumstances of Mr Barwari where there was evidence of him being interviewed on NRT TV and that he was arrested the day after he appeared on the news programme and that he remained in detention.
44. When assessing the grounds, it is necessary to consider the decision of the FtTJ. At paragraphs 27 - 30, the FtTJ set out the submissions made on behalf of the appellant. It is not suggested that the summary provided by the FtTJ is incorrect or not in accordance with the skeleton argument ("ASA") which is in the UT bundle. The ASA set out under the heading "will the appellant be at risk the Convention reason of his political opinion?" and refers to paragraph 2.4.8 of the CPIN, and sub paragraphs (1) and (2) of the ASA refer to the evidence in the CPIN relating to NRT TV.

45. Paragraph 28 of the FtTJ decision expressly refers to the relevant CPIN which formed the submissions in the ASA and paragraph 29 reflected the submissions made which related to risk arising from NRT TV.
46. Contrary to the submissions made, the FtTJ plainly engaged with the evidence in the CPIN. This is demonstrated between paragraphs 23 – 25 where the FtTJ provided a summary or overview of the background evidence where reference was expressly made to the protests in the KRI in 2020 (see paragraphs 23 and 24) and the circumstances of the TV station known as NRT (see paragraph 25). That summary was consistent with the contents of the CPIN at paragraphs 2.4.2 which referred to the protests and demonstrations that took place throughout 2020 in the KRI for a variety of reasons including salaries of civil servants such as teachers, and paragraph 2.4.3 – 2.4.5. Paragraph 2.4.6 referred to the TV station NRT.
47. When considering risk on return the FtTJ found that on the background material provided there was no evidence that the appellant’s online activity had been specifically monitored (para 49). As to his attendance at one demonstration, whilst the FtTJ did not find he had given a reliable date, he accepted the appellant was present at the demonstration but that the background evidence did not show that the authorities in the KRI had any apparatus for routinely monitoring attendance at anti-government protests in the UK therefore the judge did not find that his attendance at the demonstration would give rise to any risk of coming to the attention of the authorities on return (see paragraph 15).
48. The FtTJ addressed the appellant’s claim that he had a “higher profile” than that set out at 2.4.8 (as reflected in the ASA and the submissions made at the hearing) at paragraph 51. It is clear on any reading of paragraph 51 that this paragraph reflected the contents of the CPIN at paragraph 2.4.8.
49. When addressing that issue, the FtTJ set out his findings between paragraphs 52 – 53. In those factual findings he plainly engaged with the background evidence in the CPIN relating to the appellant’s argument that he held “higher profile” because he was interviewed by NRT TV. The FtTJ accepted that he had been involved in such an interview but found that that was not a sufficient basis of finding that he was of a sufficiently high profile such that he would be the subject of adverse attention by the authorities. At paragraph 52, the FtTJ referred to the background material suggesting that those with a “higher profile, in particular journalists” would be more likely at risk of mistreatment. The reference made by the FtTJ is consistent with the material in the section entitled “treatment of opponents in the KRI set out at section 11.
50. The background material at section 11 gives a summary of the events leading to the protests and that government employees such as teachers who had not received salaries since February and the group of teachers had submitted a request for a protest. Reference is made at 11.1.7 that dozens of civil society activists, journalists and teachers were arrested to

prevent them from demanding their legitimate rights. It is in this context reference is made to the circumstances of Mr Barwari who featured in the submissions made by Mr Gulamhussein.

51. It is submitted that the FtTJ did not take account of the circumstances of Mr Barwari who was an interviewee on NRT like the appellant, nor what had happened to him. However the appellant's profile as found by the FtTJ at paragraph 52 and 53 was not "high-profile". Mr Barwari was already well known to the authorities in the KRI having been described in the background material as a "teacher and activist." His profile, prior to appearing on NRT was that he had been a teacher for 27 years and was described as "an activist defending teachers rights most recently in relation to the delayed payment of wages in the KRI" (at 11.1.2), and reference is made to the protests organised in the KRI and that he had been arrested in May 2020 and released on bail (at 11.1.3). Whilst he was arrested after he had appeared on NRT to discuss the decision to cut public sector salaries for August (11.1.4) Mr Barwari had a well-known profile prior to that appearance.
52. The FtTJ referred to the background material at paragraph 52 and the reference to that material supported the finding that those with a higher profile are more likely to be at risk and that was consistent with the background evidence cited above and the position of Mr Barwari. The appellant's profile would not be seen as analogous to that of Mr Barwari. Others referred to in the background material are described as "activists."
53. It is therefore not been demonstrated that the FtTJ failed to consider the background evidence concerning the position of those who appeared on NRT as interviewees and the FTT gave reasons at paragraph 53 as to why the appellant's own TV appearance would not reasonably likely be known by the authorities in the KRI given the lack of evidence concerning his appearance on that program; whether it was widely seen or circulated and the appellant could not find evidence relating to the interview on the Internet. There is therefore no material error of law on that basis.
54. However, the second submission made by Mr Gulamhussein does have merit. He submits that the FtTJ confined his assessment to the appellant as an interviewee. Thus on the basis that the appellant would not be known by the authorities. He submitted that the FtTJ only considered risk on that basis and did not assess any risk based on any genuine political opinions held or whether it would be reasonably likely that he would continue to hold those opinions and therefore give rise to a real risk of persecutory treatment or serious harm.
55. The FtTJ set out 3 scenarios of risk at paragraph 47 all of which refer to whether the appellant's activities were likely to be known by the authorities, such as whether they engaged in surveillance of demonstrations or online activity from the UK. Whilst Mr Gulamhussein submitted that the FtTJ found the appellant to be credible in his evidence (as seen by paragraph 37, 38) as to the Facebook posts the FtTJ found at

paragraph 48 that in accordance with the decision in XX (PKAJ) the “timely closure of account would neutralise the risk consequential on having held a critical Facebook account”. Thus the FtT’s finding as to whether he was a genuine oppositionist was inconsistent as the FtT appears to find that the appellant could close down his account. There was no assessment of whether the appellant held any genuine political opinion as submitted on behalf of the respondent or if so, what would be the appellant’s likely behaviour on return to the KRI and assessment of risk on that basis.

56. The submissions made by Mr Gulamhussein concerning risk of persecution not being confined to article 3 but article 5 (unlawful detention) can only be on the basis of the claim made in relation to the appellant’s conduct in the KRI and not on any stand-alone basis. This was identified by Judge Haria when he granted permission. Whether there is a breach of any other article of the ECHR it still required there to be “real risk” to be identified. However I accept that clear findings were required on these issues and that the assessment of risk must be made based on those factual findings and by reference to the type of persecutory treatment. I therefore conclude that there has not been a complete assessment of risk on return undertaken in relation to the appellant’s factual claim.
57. As to the disposal of the appeal, the claim is dependent on factual findings being made as identified above and an assessment of risk in accordance with those findings and by reference to the background evidence. That assessment will have to be conducted afresh and I have reached the conclusion that the correct forum for such a hearing is the First-tier Tribunal. There were findings both in favour and adverse to the appellant and it is not possible to separate out which findings can be preserved, beyond the acceptance that the appellant’s account of Facebook activity is supported by his documents (paragraph 38) and that he gave an interview in the UK on NRT TV. Beyond that I do not preserve any other findings as I conclude to do so would most likely not assist a fair overall assessment of the evidence as a whole (applying decision in AB (preserved FtT findings; Wisniewski principles) Iraq [2020] UKUT 00268).
58. In light of the practice statement, I am satisfied that the appeal falls within paragraph 7.2 (b) of the practice statement, and I therefore remit the appeal to the First-tier Tribunal for that hearing to take place. It will be for the tribunal to undertake a holistic assessment of risk in the light of the evidence as a whole.

Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law; the decision is set aside and shall be remitted to the FtT for a hearing.

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Upper Tribunal Judge Reeds
Dated : 15 November 2022