



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005359

First-tier Tribunal No: PA/50600/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 11 May 2023

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

AHM

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Schwenk of Counsel, instructed by Freedom Solicitors

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

Heard at Field House by remote video means on 28 March 2023

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 the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Teams. There were no technical difficulties for the hearing itself and the papers were all available electronically.
2. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Gumsley promulgated on 10 August 2022, in which the Appellant's appeal against the decision to refuse his protection and human

rights claims dated 17 January 2022 was dismissed.

3. The Appellant is a national of Iraq, born on 14 February 1989, who first entered the United Kingdom and claimed asylum on 2 August 2016 on the basis that he was at risk from his wife's family and because he had abandoned his religion. That application was refused by the Respondent on 15 May 2019 and the Appellant's appeal against that refusal was dismissed by First-tier Tribunal Judge Jones in a decision promulgated on 29 November 2019. The Appellant's claim was not found to be credible on the basis of inconsistencies; the Appellant was not involved with the Peshmerga and was still in contact with family in Iraq. The Appellant made further submissions on 14 December 2000 on the basis of his *sur place* political activity, that he was a member of the Peshmerga and he had fought against ISIS in Iraq.
4. The Respondent accepted the further submissions as a fresh protection and human rights claim, but rejected the substance of the claim. In particular, the Facebook material was given little weight as there were limited print outs and translations and the photographs of a demonstration showed only that the Appellant was a member of the crowd. The Respondent did not accept that the Appellant had any significant political profile and had no political affiliation. He was not at any risk on return to Iraq and could relocate to the IKR and obtain documentation through his family whom he was in contact with. There was no basis for a grant of leave on humanitarian protection grounds. The Appellant had no family life in the United Kingdom and he did not meet the requirements of the Immigration Rules for a grant of leave on private life grounds. There were no exceptional or compassionate circumstances to warrant a grant of leave to remain outside of the Immigration Rules.
5. Judge Gumsley dismissed the appeal in a decision promulgated on 10 August 2022 on all grounds. Before the First-tier Tribunal, the Appellant did not seek to adduce any new evidence to re-open the findings made previously by Judge Jones and relied entirely on *sur place* activities and that he had no identification or travel documentation upon which to return to or live in Iraq. The First-tier Tribunal found that the Appellant had established that he had made Facebook posts which were critical of the PUK and PDK in the IKR, and to a lesser extent the extant regime in Iraq, he had spoken to NRT in similar terms and had attended some demonstrations from January 2000. However, the First-tier Tribunal found that the Appellant's activities were no more than an improperly motivated attempt to create a fabricated asylum claim. The activity only started one month after the Appellant's previous appeal had been dismissed and there was no evidence of any prior interest or use of social media. The Facebook comments were from the same people and did not express anything meaningful and the photographs of demonstrations were found to be overly staged. Overall, the Appellant had no genuine political opinion and no profile such that he would be of interest to or come to the attention of the authorities in Iraq. In particular, the Appellant was only in the crowd at a demonstration, there was no evidence of any widespread viewing of the TV channel who interviewed the Appellant and as it was not genuine, the Appellant can and would delete his Facebook account prior to return. As to documentation, the Appellant was found to remain in contact with his family who could assist with redocumenation if he no longer has his CSID, his claims to have had it taken by an agent not being accepted.

The appeal

6. The Appellant appeals on two grounds as follows. First, that the First-tier Tribunal materially erred in law in its assessment of the Appellant's *sur place* activity, in particular by drawing a distinction between social media in Iraq and outside of Iraq which was unsupported by any evidence; by failing to consider and assess a person's 'social graph' in accordance with XX (P/IAK - sur place activities - Facebook) Iran CG [2022] UKUT 00023 (IAC); and by failing to recognise that the NRT is an opposition media in Kurdistan of which there was evidence before the First-tier Tribunal of its monitoring and treatment by the authorities. Secondly, that the First-tier Tribunal erred in law in holding against the Appellant that he had not previously made any detailed statement as to his CSID in circumstances where he had not previously been asked for this information and by not putting to the Appellant the issue of his passport being at home, having his Peshmerga card (now with the Home Office or the police) but his CSID card having been taken by an agent.
7. At the outset of the hearing, on behalf of the Respondent, Mr Lindsay accepted that there was evidence before the First-tier Tribunal of NRT's reach, including in the Respondent's own CPIN such that there is an error in paragraph 37 of the First-tier Tribunal's decision. The remainder of the grounds were disputed.
8. On behalf of the Appellant, Mr Schwenk made submissions on the remainder of the grounds. In relation to the first part of ground one, it was submitted that the First-tier Tribunal had made a false distinction between social media inside and outside of Iraq and it is unclear how, in the context of a world internet, how monitoring could practically be limited to activity inside Iraq. Mr Schwenk referred me to a number of pieces of the background evidence before the First-tier Tribunal that he said was evidence of the Iraqi authorities monitoring social media, which included a statement from the Media Centre of the Supreme Judicial Council referring to a committee set up to monitor *"everything that constitutes a crim in accordance with the Penal Code and the Iraqi constitution, which emphasized the preservation of the family and its religious, moral and national values ..."* and a copy of the Judicial Order it relates to; a report from the Gulf Centre for Human Rights 'Who will be left to defend Human Rights? Persecution of online express in the Gulf and neighbouring countries' which referred to monitoring by the authorities particularly of human rights defenders (including journalists) who used online platforms to support public protests and the parts of the Penal Code which may be relevant. Mr Schwenk accepted that there was nothing to indicate the laws referred to had any extra- territorial effect outside of Iraq; however the issue before the First-tier Tribunal was whether the Appellant had already come to the attention of the authorities.
9. In relation to the case of XX, Mr Schwenk relied upon paragraph 95 which confirmed the continued application of paragraphs 3 and 4 of the headnote in BA that requires when assessing risk on return due to *sur place* activities, the following needed to be taken into account: the level of political involvement and the nature of any *sur place* activity, including the theme of demonstrations; the role of an individual in demonstrations and their political profile; the extent of participation; and the publicity attracted. Further, that social media activity can not be considered in isolation and it will be relevant where a person fits into a 'social graph'. In this appeal, the First-tier

Tribunal gave short shrift to the Appellant's involvement in demonstrations and although the Appellant did not claim any particular role or organisation of these, his claim was that his participation was sufficient to place him at risk. It was not submitted that there were any particular factors not considered by the First-tier Tribunal in this analysis, the appeal on this point was on the basis that it had not engaged with them properly.

10. The second ground of appeal is that the First-tier Tribunal did not deal with the issue of re- documentation sufficiently. In particular, the relevance of a CSID card was not so important when the Appellant initially arrived in 2016 and was interviewed and it would not be expected that he would have been asked about this. The two points taken by the First-tier Tribunal that the Appellant claimed the agent took his CSID but not his Peshmerga card and that the Appellant had left his passport in Iraq were points not raised with the Appellant. In any event, it was submitted that it remained unclear where within the IKR the Appellant would be returned and no guarantee that he would be able to access his CSID or obtain an INID within a reasonable timeframe.
11. On behalf of the Respondent, Mr Lindsay relied on the rule 24 response. In relation to the Facebook evidence, it was submitted that there is a distinction between social media activity by an Iraqi national within Iraq (or the IKR) and someone undertaking activity outside the country. The First-tier Tribunal's decision in paragraph 36 only finding that there is no evidence of monitoring of Iraqi's activity outside of Iraq; which was open to it on the evidence.
12. The case of XX has some wider application, in paragraphs 5-6 and 7-9 of the headnote, but that does not assist the Appellant in this appeal. There is no evidence that Facebook is hacked or scraped automatically by the authorities in Iraq and there is no challenge to the findings that the Appellant has no genuine political beliefs, nor that he could and would delete his Facebook account prior to returning to Iraq. In paragraph 36, the First-tier Tribunal deals with the risk of monitoring of known political activists and journalists that is in the background country evidence, but the Appellant has not identified any evidence or established any risk monitoring of individuals outside of Iraq. The documents relied upon by the Appellant make reference to the Penal Code which would suggest, as accepted by Mr Schwenk, domestic application only in Iraq (and there was no expert evidence on foreign law in this appeal). Otherwise, the guidance in XX and its consideration of BA (Demonstrators in Britain - risk on return) [2011] UKUT 36, deals directly with the situation in Iran, not Iraq.
13. In relation to documentation, Mr Lindsay noted that the findings were made in light of the other adverse credibility findings (from the previous First-tier Tribunal and current one). It was an accurate statement in the decision to say that the Appellant had not previously mentioned the claim that an agent took his CSID and in any event, there was no evidential support for the Appellant's claim to be undocumented and the First-tier Tribunal were entitled to disbelieve the Appellant's evidence on this.
14. As to the NRT point, as above it was accepted that there was evidence before the First-tier Tribunal about the NRT, including references to it being opposed to governance in the KRG in 2021 and the offices being raided and closed. However, the Respondent did not accept that the error on this specific point was material to the outcome of the appeal. This was because there were serious difficulties with the transcript of the interview before the First-tier Tribunal, which

does not include any evidence that the interview was ever broadcast or that it is available online (for example there is no url, no date of transmission) and the source of the translation, from the internet or an existing transcript, is unclear. The evidential value of a facebook page (which is what appears to be source for the translation) needs to be considered in accordance with paragraphs 7 and 8 of the headnote in XX given that they are easy to manipulate and this Appellant already has adverse credibility findings against him, he has not shown that the NRT print-outs can be relied upon. These are matters relevant to the weight to be attached to the evidence, either to show that it is not material or if the decision is to be re-made on this point.

15. Mr Schwenk confirmed that the only evidence of the interview was at page 484 of the First-tier Tribunal bundle, followed by a letter from the translator. He accepted that there was some degree of ambiguity about the source document but suspected that it was a translation of what was heard on the video but even if from a transcript, the translation is clear. Mr Schwenk submitted that there needed to be a further hearing on this point to allow the Appellant to be cross-examined given it was his case that this interview was broadcast. It was however accepted that there was no further evidence and no application to submit any under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Findings and reasons

16. There are three elements to the first ground of appeal which I take in turn. First, whether the First-tier Tribunal erred in law in making a distinction between social media inside and outside of Iraq. It is necessary to consider in more detail what the First-tier Tribunal found on this point, set out in paragraph 36 as follows:

“36. I am satisfied that there is external evidence of the authorities in both Iraq and the IKR targeting political opponents, activists, journalists, human rights activities and similar people. There is some evidence (albeit relatively limited) of monitoring of Facebook and the like in Iraq and the IKR, and laws enacted which appear to criminalise criticism of the ruling regimes. However, and although the Appellant asserts it to be the case, I am not persuaded on the evidence provided that the Iraqi or IKR governments are generally monitoring social media outside the country. Indeed I am not satisfied on the evidence available, that the IKR or Iraqi governments have any particular interest in, or ability to, monitor Facebook out of the country or that they have the sophisticated intelligence systems to allow them to do so. Even if they did, I consider the material on the internet is so vast, the number of members of Facebook so great, and the population of Iraq and the IKR so large, that it is unrealistic to assume that they could or would trawl (whether through digital applications, specialist software or otherwise) through all this content, even with key words or specific search terms. Whilst I consider it possible that searches would take place against terms relating to known political activists, journalists and the like, I am not satisfied that the Appellant could be considered in this category, even with his cynical efforts to present as such. He had no profile in Iraq, has no profile in the UK, and within the context of the vastness of the internet has a limited following. In the case of the Appellant I am not satisfied that there is a real risk his pages would be of interest to, or even seen by, the authorities in Iraq or the IKR.”

17. Although it could have been expressed slightly better (or perhaps there is just

the word 'use' missing after social media at the end of the third sentence), I find the First-tier Tribunal did not make any distinction between social media inside or outside of Iraq (which would, as suggested by the Appellant be practically very difficult) but instead drew a distinction between the use of social media by a person inside or outside of Iraq, in practice, the monitoring of known individuals inside of Iraq, for which, as acknowledged at the beginning of the paragraph, there was some evidence before the First-tier Tribunal; and monitoring of a person's use of social media if that person is outside of Iraq. The material Mr Schwenk referred me to was only as to the monitoring of persons inside Iraq for the purposes of possible breaches of the Penal Code in Iraq. As found by the First-tier Tribunal in the paragraph above, there was no evidence to suggest monitoring of an Iraqi's social media when that person is outside of Iraq; nor that the authorities have the intelligence systems to enable this. There is no error of law in that finding, there simply was no such evidence before the First-tier Tribunal.

18. Further, the Appellant has made no challenge to the findings in the latter part of paragraph 36 that even if there is such monitoring of individuals, this Appellant would not be within the category of known political activists, journalists or the like and as such would not be at risk in any event. Even if there was an error based on a geographical distinction (which I do not find there was), it could not have been material to the outcome for the reasons given in any event in paragraph 36.
19. The second part of the first ground of appeal is that the First-tier Tribunal materially erred in law in failing to undertake the assessment of a person's social graph in accordance with XX. However, when asked to identify what had not been taken into account, Mr Schwenk could not identify any particular evidence or part of the Appellant's claim and instead submitted that the issue was that those matters were not properly engaged with, without further particularisation or example. Contrary to the suggestion in the grounds of appeal, the First-tier Tribunal has covered every aspect of the Appellant's claim in a detailed and thorough way, assessing and making findings on his participation in different activities, his network and connections through facebook (even making a finding on whether comments by others were meaningful or not), considering the Appellant's role in activities and motivation. There is nothing that was left out of consideration and cogent reasons are given for the overall finding that the Appellant had no political profile in Iraq or now and no genuine political beliefs. This part of the first ground of appeal amounts only to disagreement with the findings and does not identify any even arguable error of law.
20. The final part of the first ground of appeal is as to the First-tier Tribunal's assessment of the Appellant's TV interview, which was accepted as having been given, with comments adverse to the authorities, but not of any any widespread showing in Iraq. The specific findings are contained within paragraph 37 as follows:

"37. ... As to the 'television' interview, the Appellant gave evidence that in fact this was an internet channel and there is no evidence, save for the Appellant's own account, of its widespread showing in Iraq or the IKR. ..."
21. The parties have read this statement as if to mean that there was no evidence of NRT being an internet channel or that it NRT had any widespread showing in Iraq or the IKR; which would, as accepted by both, be contrary to the

background country evidence which shows the NRT to be an opposition media in the KRG and whose offices and personnel have previously been targeted by the authorities. There is however an alternative reading of the finding above, which I find more likely, in that the lack of evidence of widespread showing referred to is solely about this specific interview involving the Appellant; which would be an accurate statement open to the First-tier Tribunal on the evidence before it.

22. In any event, even on the reading of this finding of the parties, if the First-tier Tribunal did err in its factual understanding of the NRT, I find that it would have made no material difference to the outcome of the appeal and/or if re-making the decision, little weight would be attached to the evidence such that it would not, even cumulatively with the other findings of the Appellant's *sur place* activity, mean that the Appellant would be at real risk of having already come to the attention of the authorities or would do so on return to Iraq. It matters not which way one looks at the matter, the result is the same. At the hearing I invited submissions from the parties on this point in case it is the only error found with a view to re-making the decision if necessary. Although Mr Schwenk submitted that there should be a re-hearing on this point alone with the Appellant being given the opportunity of submitting further, as yet unidentified and unprepared evidence on it (there being no rule 15(2A) application before me), this is not a point upon which anything other than submissions is required. At its highest, it was a factual mistake by the First-tier Tribunal as to the nature of the NRT as shown in the background country evidence, and upon which it had the Appellant's evidence as to the interview itself.
23. The evidence relied upon by the Appellant in relation to the TV interview is very limited. It amounts to two pages in his bundle of evidence, one of which is a letter from the translator and the other what is said to be a translation from Kurdish to English. Neither document properly identifies the source material of the translation (it appears to be from a screenshot of a facebook page, but that is not specified and it is not clear if the translation is of the written part of the Facebook post or from the video itself, or even if the translator had access to the video as well as a screenshot) and there are significant issues on the face of the document which calls into question the reliability of the translation, including that the duration of the video translated is different to that shown in a screenshot and the translation includes a section titled 'Interpreter explanation', which self evidently is not a formal translation of any part of the text or speech and would not reasonably be expected on any formal or reliable translation. An interpreter is never required to offer any explanation of a document, it should be a word for word translation of material before them. More importantly, the evidence appears at its highest to be from the Appellant's own Facebook account and suffers from the kind of frailties identified in paragraphs 7 and 8 in the headnote of XX, such that it has very limited evidential value. Further, there is nothing to suggest in any of the evidence before the First-tier Tribunal that this interview was filmed by NRT (as opposed to a member of the crowd) or broadcast by NRT via an internet or TV channel at all; or if it was, how widespread such a broadcast was, for example, was the whole clip shown, in what context, on how many occasions and is it still available online beyond the Appellant's Facebook account (on which there is no challenge to the First-tier Tribunal's finding that the Appellant can and will delete the account). The Appellant has not established that this interview was broadcast by NRT at all. At its highest, the

limited evidence of the NRT interview, even accepting the NRT is an opposition broadcaster in the KRG, takes the Appellant's claim no further than the already detailed findings of the First-tier Tribunal.

24. For these reasons, there are no material errors of law in the First-tier Tribunal's decision on any of the parts of ground one. I also find no material error of law on the second ground for the following reasons. The Appellant has not expressly framed this as a procedural fairness ground and again, there is nothing to suggest any further evidence could or would have been given on the documentation point to the First-tier Tribunal (as above, there was no rule 15(2A) application). The points highlighted in the grounds as held against the Appellant are a somewhat minor part of the reasoning of the First-tier Tribunal when considered in the context of the decision. The issue of documentation is dealt with in paragraphs 41 to 45 of the decision, in the context of significant adverse credibility findings both from the Appellant's earlier appeal in 2019 and in terms of the claimed *sur place* activities. The burden was on the Appellant to establish to the lower standard that he does not have his CSID, or the means to obtain it, or an INID within a reasonable time on return to Iraq. The cogent findings of the First-tier Tribunal are simply that he has failed to do so – with detailed reasons as to the Appellant's credibility about contact with his family; with assessment of the new claim that the agent took his CSID (which although may have been less relevant when the Appellant arrived in 2016, it would certainly have been relevant to his appeal in 2019, during which it was expressly confirmed on behalf of the Appellant that there were no submissions concerning the Appellant's inability to get a CSID – an implied acceptance that he had one or access to one) and in the context of an overall finding that this Appellant is one who has *“deliberately lied and omitted significant elements of truth from the start of his first claim and continued to do so, in order to try and respond and tailor his account to what have been perfectly understandable matters of concern identified in the various refusal decisions, at the hearing and to fit emerging caselaw.”* There was no error in the First-tier Tribunal stating the Appellant's claim that an agent took his CSID card was new, as a matter of fact, it was, and there had not previously been any reliance by the Appellant of not having documentation or being able to access it. In the context, the concerns about plausibility of the Appellant's claim as to the location of various different forms of ID were open to the First-tier Tribunal to make without specifically putting these points to him. In any event, this minor point could not be material given the overall findings, particularly in paragraphs 44 and 45 of the decision.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Appeal Number: UI-2022-

11th April 2023