IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003690
First-tier Tribunal No:
LP/00158/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 02 February 2023

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

MZ
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr K Scott, Solicitor from Pickup & Scott Solicitors
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 11 November 2022

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. I make this order because the appellant seeks international protection and so is entitled to privacy.

DECISION AND REASONS

1. Mr Scott wished to rely on “amended grounds”. A copy of the amended grounds was made available to Ms Ahmed but for some reason it did not come to her attention before the hearing. It is dated 6 July 2022 and, confusingly is not marked “Amended Grounds” but “Grounds of Appeal to the Upper Tribunal”.

2. The First-tier Tribunal Judge who granted permission to appeal was critical of the grounds relied upon and the (amended) grounds should be seen more in the nature of a tidying up exercise than a complete redraft of the case. Ms Ahmed was quickly able to assimilate the points and was not embarrassed by anything arising so late in the day. Sensibly and helpfully she agreed to the appellant relying on those grounds.

3. I found this case difficult.

4. The appellant is a citizen of Iran of Kurdish ethnicity. He appeals the decision of the First-tier Tribunal dismissing his appeal against the decision of the respondent refusing him international protection.

5. The First-tier Tribunal Judge has taken considerable care over the decision and has made findings adverse to the appellant which, although criticised in the grounds, are, I find, unimpeachable.

6. Thus, it was established that the appellant was not truthful when he claimed to have done work for the KDPI at the suggestion and under the general supervision of his brother. The appellant was found to have made a few postings on Facebook which could easily be removed if they had not already been removed and, as the judge found, the appellant was not committed to any Kurdish cause, so the appellant would not be in any way frustrated by having to shut down his Facebook account if in fact he had not already done that.

7. The judge also found that the appellant had attended a small number of demonstrations, possibly as many as four but no more, in the United Kingdom. He had not been able to do that during the period of COVID isolation and so the late start in attending demonstrations was not inherently suspicious but the judge found it was not indicative of any genuine political commitment and certainly not indicative of any degree of involvement or organisational or other leadership role.

8. Although the grounds challenge the adverse credibility findings the grounds on these points really are no more than disagreements. The judge has explained carefully why the appellant’s story was found unsatisfactory and has given lawful reasons. It lacked detail and it lacked consistency. These points are permissible and when the determination is read as a whole, the judge’s reasons were clear and lawful.

9. Submissions from both parties were appropriately short. Ms Ahmed drew attention to a Rule 24 notice by her colleague Mr David Clarke which was before me. The leading cases make plain that the mere fact that a person is a Kurdish Iranian returned as a failed asylum seeker will not create a risk of persecution.

10. The country guidance case is also made plain that even conduct that from UK standards could be regarded as a low-level activity or being involved in charitable works, could be enough to create persecution but the judge has found that the appellant was not involved in such things and that those findings are sound.

11. I agree with the contention in the Rule 24 notice that the judge was entitled to find that the appellant had not come to the attention of the authorities in Iran and therefore would not be at any kind of risk in the event of his return because

of things that he had done in Iran. He was not thought to have done things in Iran.

12. The Rule 24 notice also, rightly, cautioned me against confusing disagreement with an error of law. However, paragraph 6 of the Rule 24 notice is more troubling. This states:

> "Furthermore, the challenge to the sur place findings are wholly without merit. It is not the case that the FTIJ found no risk because the sur place claim was a sham. It will be argued that the FTIJ found no risk on return because the authorities were unaware of the A's sur place activities as they were minimal and there was no evidence that the demonstrations had received any media coverage (@80). Equally, A's facebook account was also not demonstrated to be public and it could in any event be deleted before return. In this regard the FTIJ had due regard to the evidence and case law and did not make findings that were not open to him on the evidence."

13. With respect to Mr Clarke, and Ms Ahmed who adapted this, the assertion is right. The problem is that it is does not go far enough. My concern is what is reasonably likely to happen when the appellant is returned. He will be returned on a special travel document, presumably a laissez passer because it is his case that he has no travel documents now and so will have to introduce himself to the Iranian authorities. That, of itself, does not create a risk of persecution but it does create an almost certainty that he will be noticed on return. Elementary probing will show that he comes from the United Kingdom and that he is Kurdish. These are things that are likely to make the Iranian authorities interested.

14. It must be the case that he is likely to be interrogated. Certainly they will have no profile on him. Indeed, it is likely when he claims a passport that the authorities will do a quick search amongst their records and find nothing. However, if they chose to ask him if he has attended demonstrations in the United Kingdom, he must be assumed to answer truthfully that he has. It may be that his attendance was insincere. I do not suppose for a moment it is suggested that the appellant *likes* the Iranian regime. If he did he would not be in the United Kingdom. However, disliking the regime is not the same as being a political opponent. Attending a demonstration critical of the regime is, I find, exactly the kind of conduct that might trigger ill-treatment.

15. The respondent relies expressly on **XX (PJAK – sur place activities – Facebook) Iran CG [2022] UKUT 00023 (IAC)**. This decision affirms the judicial headnote for that:

> "The mere fact of being a returnee of Kurdish ethnicity with or without a valid passport, and even if combined with illegal exit, does not create a risk of persecution or Article 3 ill-treatment."

16. The judicial headnote continues to emphasise that Kurdish ethnicity is a risk factor which combined with others may create a real risk of persecution.

17. The Tribunal then identified other possible risk factors which relate to things the appellant had done in Iran. The thrust of them is that not very much is necessary and at paragraph 10 the Tribunal said:

> "The Iranian authorities demonstrate what could be described as a 'hair-trigger' approach to those suspected of or perceived to be involved in Kurdish political activities or support for Kurdish rights. By 'hair-trigger' it means that the threshold for suspicion is low and the reaction of the authorities is reasonably likely to be extreme."

18. The judge was aware of **XX** and considered it at paragraphs 86 and 87. The judge found, I find entirely appropriately, that there was no evidence that the appellant had been identified and that some were taking part in sur place activities in the United Kingdom. The judge made important findings at paragraphs 92 and 93. These state:

> "92. The appellant's antiregime conduct in the UK, [h]is limited attendance at a few demonstrations and his posting of a few copied notes on Facebook. I am satisfied that he is not a person with genuine antiregime beliefs. I conclude that the appellant is not a person who has or has had a significant political profile. I do not consider that he is a person who is visible to the Iranian authorities.
>
> 93. I conclude that the appellant has attended demonstrations and posted the few posts he has produced on Facebook in order to bolster his asylum claim."

19. The judge then found there was no reason why he could not close down his Facebook account. As indicated above there is no principled reason to be wanting to keep it. The judge then makes plain at paragraph 101 that it is accepted,

> "As set out in **SSH**, even low level activity, if discovered, involves the risk of persecution or Article 3 ill-treatment and the Iranian authorities demonstrate a 'hair-trigger' approach to those suspected or perceived to be involved in Kurdish political activities or support for Kurdish rights."

20. Reference to **SSH** is a reference to **SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC)**.

21. The judge was satisfied at paragraph 102 that even if he was questioned the appellant would have nothing to say. He was not knowledgeable about political matters and had not done much in the United Kingdom.

22. I find I cannot follow that argument. The appellant has identified himself with opponents to the regime by demonstrating in the United Kingdom. The authorities will not know about that but they are going to talk to him. He must be assumed to answer truthfully and he has shown himself to be a very incompetent liar. I do not see how he can hide from the Iranian authorities that he has been involved in political activities in the United Kingdom. Neither do I see in the light of reported decisions that there can be any confidence that that very modest degree of insincere involvement will not expose him to a risk of serious ill-treatment

23. It is easy to forget that people are not protected from persecution because of what they believe but because of what people perceive they believe. In many cases the perception is right but it is the perception that creates the risk not the belief. I find that the appellant has made out his case and the judge should have allowed the appeal.

24. I set aside the decision of the First-tier Tribunal and I substitute a decision allowing the appeal on asylum grounds.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

1 February 2023