



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001903
First-tier Tribunal No:
PA/04576/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 06 April 2023

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

OE

(ANONYMITY ORDER IN FORCE)

Respondent

Representation:

For the Appellant: Mr S Walker, Senior Home Office Presenting Officer

For the Respondent: Ms K Tobin, Counsel instructed by AZ Law Solicitors

Heard at Field House on 18 January 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the respondent (also “the claimant”) is granted anonymity. I make this order because the claimant seeks international protection and so is entitled to privacy.

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 claimant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter “the claimant”, against a decision of the Secretary of State refusing him international protection. The claimant is a citizen of Iraq born in the year 2000.

2. In order to make sense of the arguments I need to consider with some care the First-tier Tribunal's Decision and Reasons.
3. The Secretary of State's decision was made on 12 October 2020.
4. The immigration history shows that the claimant arrived in the United Kingdom and claimed asylum in October 2016 and the application was refused in July 2017. However, the claimant was an unaccompanied asylum seeking child and he was given special leave relating to that status. That leave expired in November 2017. The claimant appealed the decision to refuse him international protection and the appeal was dismissed but that decision was set aside by the Upper Tribunal and the appeal was dismissed again on 25 March 2019.
5. The claimant made representations for a fresh asylum claim on grounds of *sur place* activity on 26 March 2020 and application was refused on 12 October 2020. It is First-tier Tribunal's decision to allow that appeal that is the subject of the appeal before me.
6. In summary, it is the claimant's case that he is a national of Iraq from Qaladiza in Iraqi Kurdistan.
7. He says that he took part in demonstrations in Iraq on 9 and 10 October 2015 against the KDP. His friend, who I identify as "MR", was shot and killed when the KDP offices were burned down.
8. The claimant's parents were killed in an accident when he was 5 years old and in 2015 the claimant was then living with his sister and brother-in-law. After he took part in the demonstration his brother and sister-in-law arranged for him to leave Iraq and travel to the United Kingdom.
9. He gave details of his journey through Turkey. Shortly before he arrived in Turkey he said that a cousin "B" was arrested on 12 October 2015 at his home in Jarawi and detained for four days. B was questioned about the demonstration even though B had not attended. It was the claimant's case that the authorities had confused him for his cousin and had arrested the wrong person.
10. The claimant provided video footage clips of his attendance at the demonstration.
11. The claimant provided copies of a CSID card and a death certificate of his friend MR who was killed at the demonstration on 9 October 2015. These were a new piece of evidence. He had not provided them previously because he thought the evidence that he had provided was sufficient.
12. In April 2021 he reconnected with his cousin B on Facebook Messenger and learnt that his sister and her family had moved to Iran but had not left a contact number. He was looking for his sister and her husband on social media but could not find them. He believes they did not want contact with them because they were frightened that association with him would put their lives at risk.
13. The claimant said that he had been attending regular protests and demonstrations against the Iraqi government outside the Iraqi Embassy in London and in front of the KRG Representation office since about August 2019. The claimant said he was not a member of a political party but does not agree with how the Iraqi government is behaving particularly in killing innocent

civilians. He was angry that his friend was killed and remained angry. He said he had posted photographs of his attendance at these demonstrations on his social media account and sometimes shares other people's posts. He had also attended protests in front of the Iranian, Turkish and US Embassies in London and had burnt portraits of KDP and PUK leaders at a demonstration. He said that he had exposed their crimes and written insulting things about them on social media and his posts had been "liked" and shared hundreds of times. He said the protests had been filmed and broadcast widely. He was interviewed in front of a camera by someone from the NRT TV channel which he said operated in the KRG. He said after that people left abusive and threatening comments on his posts when he criticises the government. His Facebook account is described as "public" and he has about 5,000 friends who see his posts. He said he shared the video footage of the KDP building being burnt down in 2015 and that was seen by over 1,000 people.

14. He said that he feared his activity will lead to his arrest in the event of his return to Iraq.
15. He said he does not have any Iraqi documents and does not know his Family Book information and so would not be able to apply for a new ID card.
16. In his oral evidence he said he was not in contact with his cousin when his case was last the subject of an appeal. Contact began in April or May 2021 through Facebook. He was unsure of the work that B did but thought he could be an interpreter.
17. He said that page 64 of the bundle showed the claimant in front of the Iraqi Embassy in London. He did not know who organised that event but he was there to support Iraqi demonstrators and to protest against the Iraqi authorities for what they were doing to the country. He had been to between fifteen and twenty demonstrations. He said he often holds a placard and shouts slogans and talks to demonstrators through a loudspeaker. He has given interviews with NRC TV on two or three occasions when he expressed his solidarity with Iraqi protestors. He said that NRC TV is the only independent channel based in Kurdistan and he was confident the interviews would have been broadcast in Kurdistan. He repeated his claim to have been told that his sister and husband had left Iraq and that he had no Iraqi documents. He said his cousin was "illegal" in Kurdistan and the authorities were looking for him.
18. In cross-examination he said that he joined Facebook not long after arriving in the United Kingdom and began posting on political issues. He had had an account before the present account but that stopped working after a year. He did not understand why he could no longer log on but he could not.
19. He started demonstrating in 2019. He had been living in Birmingham and was unaware of demonstrations until he met up with a group of Kurdish people in a restaurant who were returning from attending a demonstration. He did not want to put his cousin's life in danger so he had not been in touch with him earlier. He said his cousin found out through his neighbours that the claimant's sister and husband had moved to Iran.
20. The judge summarised the Secretary of State's reasons for refusing the application. These included that in a previous appeal the claimant was not believed when he said he would be known to the authorities in the KRI and the

claimant had not produced any new evidence regarding the claim that he was at risk at the hands of the KRI authorities.

21. It was accepted he had attended a few demonstrations over a period of a few months but not that that kind of *sur place* activity would put the claimant at risk of persecution on return to Iraq. This assertion is referenced to the decision in **BA** described as country guidance. This must be a reference to **BA (Returns to Baghdad Iraq CG) [2017] UKUT 18 (IAC)** promulgated on 23 January 2017. I also note that at paragraph 425 of **SMO, KSP and IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC)** the Tribunal said that "... the guidance in BA (Iraq) can no longer stand".
22. Nevertheless, it was the Secretary of State's case that following **BA** the *sur place* activity did not create a risk for the claimant.
23. The Secretary of State believed that the claimant did have a CSID.
24. Before the First-tier Tribunal the Secretary of State argued that the *sur place* activity was for "case building" rather than reflecting genuine political views and that there was no evidence showing that the interview with the NRT TV channel was ever broadcast.
25. There were several people who could help him obtain identity documents.
26. He was represented before the First-tier Tribunal by Ms E Harris of Counsel who had prepared a written skeleton argument. The core of her case was that the new evidence from the claimant's cousin goes directly to the issue of the authorities' knowledge and interest in the claimant following the demonstrations in 2015. The evidence that his cousin identified the claimant to the authorities must be considered with the new evidence on *sur place* activity. The Iraqi regime is oppressive and intolerant of dissent and criticism. The claimant said his sister no longer lived in Iraq so could not support him there. The claimant would be returned to Baghdad and would have difficulty getting to the IKR.
27. The judge directed herself appropriately on refugee law and then analysed the evidence and reached conclusions.
28. The judge looked at the decision of First-tier Tribunal Parkes on 25 May 2019 dismissing the remitted appeal and, appropriately, set out to use findings there as her starting point in her fact-finding. Judge Parkes had accepted that the claimant had some involvement in demonstrations in 2015 when there was an attack on the KDP offices but the claimant was neither instigator, nor leader but a follower.
29. The judge did not believe that the claimant had not had contact with his sister or brother-in-law since arriving in the United Kingdom. The judge found that the claimant could contact his family in the IKR. Judge Parkes found that the claimant either had the relevant identification documentation or access to it and could return to the IKR without attracting attention.
30. Judge Parkes did not believe that the claimant was wanted for his role in the October 2015 demonstration and did not believe that the claimant was known to the authorities and so was not at risk of being identified. He then looked at the new evidence. There was evidence that the claimant's friend was killed on the first day of the demonstrations in October 2015 and that his cousin had

confirmed the claimant's identity to the authorities when he was in detention. This evidence had not been disclosed in new evidence as part of a fresh claim considered in March 2020 which related solely to *sur place* activity.

31. The judge noted the documents relating to the claimant's friend MR are documents that would have been available at the time of the last appeal hearing. It was the claimant's case that he thought he had prepared enough evidence but it had been accepted that the claimant was involved in demonstrations in October 2015 so the documentary evidence confirming that, the judge found, added little or nothing.
32. The judge noted it was the new evidence purporting to relate to the cousin that is relied upon to show the claimant would have come to the adverse attention of the authorities because of his involvement at the demonstrations. It is the claimant's case that his cousin B was arrested two days after the demonstration and held for four days during which time he was interrogated and identified the claimant to the authorities. The claimant has obtained confirmation of this from his cousin who he contacted by Facebook in April 2021. The judge noted that there is some translation of the chat texts between them but no translation of other messages.
33. The judge noted that the cousin had produced a handwritten letter stating that he identified the claimant in photographs shown by the Kurdish authorities when he was arrested. The claimant said that his cousin told him that he had told the authorities that he did know one person in the photograph and that was his cousin, then a child, and now the claimant.
34. The cousin produced documents showing that he is now a trainee lawyer.
35. The judge was unable to find that evidence purporting to show the cousin being interviewed by KNN did in fact relate to the cousin. This is not a finding disbelieving the evidence but simply saying it was not sufficiently clear to support the conclusion urged.
36. The judge noted the claimant's case that he had disclosed the evidence late because he thought he had done enough and did not want to put his cousin at risk. The judge was not impressed with this answer. The judge said that she found it "difficult to accept as plausible when his asylum claim was refused in July 2017 and two subsequent appeals were dismissed in March 2018 and again in March 2019".
37. The judge did not accept that the claimant had been using Facebook since his arrival in the UK in 2015 but was not able to reconnect with his cousin until April 2021. The judge found that the evidence could have been used at the last appeal hearing. The judge also noted inconsistencies in the evidence relating to the cousin. The judge attached "no weight" to the evidence of the cousin.
38. The judge then addressed her mind to *sur place* activities. The judge noted that the claimant had submitted evidence of Facebook activity starting in November 2019 and lasting until October 2021 which, according to the translations provided, was critical of the Kurdish government. He said that he had attended fifteen to twenty demonstrations against the Kurdish and Iraqi governments since 2019. He was asked to explain why he was posting on Facebook from 2017 but not attending protests until 2019. He said that he had not been advised it was relevant to his claim. The judge found that explanation implausible.

Nevertheless, the judge reminded herself, correctly, that insincere or opportunistic protesting could still create a risk.

39. The judge looked at the country guidance in **SMO, KSP & IM (Article 15(c): identity documents)** (CG) [2019] UKUT 00400 and recognised there could be enhanced risks because there were credible reports of journalists being critical of the KRG and encountering difficulties as a result.
40. The judge looked at the CPIN: Opposition to the government in KRI dated June 2021 and noted evidence of widespread campaign of arrests. She also noted a report from Freedom House included in the CPIN referring to political speech in the Kurdistan region prompting arbitrary arrest and detention or other reprisals. Kurdish authorities were arresting protestors and organisers and bloggers particularly for criticising Covid-19 lockdown measures and also corruption and not declaring salaries.
41. The same CPIN made reference to it being an offence under the Law of Misuse of Communications Devices, for purposes of threat, slander, insult, or spreading fabricated news that provokes terror and causes conversations, and so on. The full words are quoted at paragraph 32 of the Decision and Reasons. However, it was also noted that the evidence is that a person will *not* be at real risk of serious harm simply by being an opponent or having played a low level part in protests against the KRG. There is no evidence that ill-treatment was systematic and “in general” a person will not be at risk of serious harm on the basis of political activity within the KRI but each case had to be decided on its own merits.
42. It was the Secretary of State’s view that *sur place* activity does not place the claimant at any kind of risk on return but it was the claimant’s case that the Facebook public account shows him sharing photographs and videos of his attendance at demonstrations and burning photographs of Kurdish leaders and stamping on them. The judge noted at the same time a list of examples of the photographs showing the appellant at demonstrations in the UK and making reference to the kinds of criticisms posted by the claimant. There is evidence that the claimant was recorded on Facebook of talking to a journalist with a microphone at a demonstration in November 2019 and there is indeed something that purports to be a transcript of the interview given to NRT TV in August 2021. It was Ms Harris’s argument that with 5,000 friends the claimant had the same level of reach as a small local newspaper and should be seen as someone within the category identified in **SMO** as being potentially at risk.
43. At paragraph 35 the judge found that there was “no doubt” that the KRI is an oppressive regime that responds adversely to criticism.
44. The judge found no positive evidence that the Iraqi government undertakes surveillance of demonstrators in the UK but regarded it as a “strong possibility” that such regimes photograph or use informers in these situations. This is supported with a reference to **YB (Eritrea) [2008] EWCA Civ 360**. The judge also noted there was an Al Monitor news article submitted by the claimant showing that the Kurdish government created fake Facebook accounts to manipulate public debate and this it was said showed that they were actively monitoring social media.
45. The judge found it beyond argument that the claimant’s *sur place* activities had been published on his Facebook account and seen by 5,000 followers. Similarly, the claimant had given interviews to the NRT Television on two or three

occasions. The judge found the transcript of the video persuasive. In it the claimant was critical of named leaders. The judge noted the CPIN referred to Kurdish authorities closing two offices of NRT for a month as punishment for covering protests and for broadcasts critical of the ruling party.

46. The judge said at paragraph 37 that she had taken account of the view at paragraph 2.4.8 of the CPIN but after careful deliberation and reminding herself of the lower standard of proof, the judge found it reasonably likely that the activities of the claimant had put him in a category of a person with a higher profile and that his highly critical posts in Facebook were a highly significant factor placing him in a higher profile. The judge found it “reasonably likely that the [claimant] has come to the adverse attention of the authorities for his *sur place* activities and he would be at risk on return”.
47. The judge then looked at the ability to return to the Independent Kurdish Region. The judge explained she was not impressed with the supporting evidence from the claimant’s cousin and the judge found that the claimant did have an aunt, being his cousin’s mother, and sister and brother-in-law in Zarawe where they lived with his cousin and they were family members who were contactable.
48. However, the previous decision found that the claimant had either the relevant identification document or access to it and could return to the IKR through the normal channels. The Secretary of State considered that even if the documentation is not available it can be obtained by proxy through family members. After acknowledging that the case was difficult to decide the judge did not agree with the Secretary of State given that she had found that the claimant was someone known to the authorities for protesting and that the claimant may not have access to the necessary documentation through family members.
49. The judge found it significant that it was established that removal at that time was only possible to Baghdad International Airport because the IKR authorities only accept voluntary returnees and so there was a question of safety on travel. The judge found that there was a risk of Article 3 ill-treatment in the event of return to Baghdad without the necessary documents. The judge allowed the appeal on asylum and human rights grounds.
50. I consider now how this was criticised in the Secretary of State’s grounds of appeal.
51. The first complaint is that the First-tier Tribunal Judge failed to provide “adequate reasons” when considering the claimant’s evidence on his social media profile. He had been disbelieved previously by First-tier Tribunal Judge Parkes and the judge here acknowledged the claimant had been “somewhat opportunistic”.
52. It was the Secretary of State’s case that the First-tier Tribunal Judge had materially failed to consider the limits of the claimant’s Facebook evidence and asserted that “**XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 23 (IAC) (20 January 2022)** provides extensive guidance on *sur place* activities, with specific reference to Facebook”.
53. According to the grounds at paragraph 7 it is said that social media evidence is often limited to production of printed photographs, without full disclosure in electronic format. Production of a small part of a Facebook account, for example, photocopied material, may be of very limited evidential value in a protection claim, when fuller evidence from the “Download Your Information” function would

be available but had not been disclosed. It said that it was unclear from the determination whether the claimant provided a full timeline of his social media activities or a small part of it within the evidence.

54. The Secretary of State's case is that omission of such information is material as it directly impacts on the weight to be given to the claimant's evidence in the case.
55. Further, the judge failed to consider whether the Facebook account could be closed before entry so the claimant, who was not thought to have acted sincerely, could be expected to close down his incriminating information. Fundamentally it is said the judge did not deal with the Facebook evidence properly.
56. The judge is also criticised for her consideration of the *sur place* activities. The judge acknowledged that there was no positive evidence that the government undertakes surveillance of demonstrations in the United Kingdom. According to the Secretary of State, the finding that the activities were "reasonably likely to place him in a category of a person with a higher profile" was not reasoned adequately.
57. The Secretary of State relied on the CPIN: Opposition to the government in KRI, June 2021 which said that the evidence is that a person will not be at real risk of serious harm or persecution simply by being an opponent, or having played a low level part in protests against the KRI but again each case must be considered on its own facts.
58. Further the judge has treated the claimant as if were a journalist. It has never been the claimant's case that he was a journalist. Had the judge applied the CPIN properly he could not have succeeded. The findings that the family would not help were dependent on there being a risk and it was the Secretary of State's case that that conclusion ought not to have been reached.
59. I have reminded myself that the special status given to country guidance decisions arises from a Practice Direction of the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal. The most recent version is dated 18 December 2018. At paragraph 12.2 it states:

"A reported determination of the Tribunal, the AIT or the IAT bearing the letters 'CG' shall be treated as an authoritative finding on the country guidance issue identified in the determination, based upon the evidence before the members of the Tribunal, the AIT or the IAT that determine the appeal. As a result, unless it has been expressly superseded or replaced by any later 'CG' determination, or is inconsistent with other authority that is binding on the Tribunal, such a country guidance case is authoritative in any subsequent appeal, so far as that appeal:

 - (a) relates to the country guidance issue in question; and
 - (b) depends upon the same or similar evidence."
60. Ms Harris had prepared a Rule 24 response dated 6 June 2022 which I now outline. This was expressly relied upon by Ms Tobin.
61. In response to ground 1 asserting that social media evidence is not necessarily indicative of a Facebook account, she said it had never been the Secretary of State's case that the evidence relied upon had been manipulated or was not a

true reflection of the content of the Facebook account. No point was taken in the refusal letter, nor in cross-examination. The guidance in **XX (Iran)** indicates how Facebook material “may be of very limited evidential value” but that is all. When no point had been taken until the grounds of appeal the point was taken too late and it is not an error of law not to deal with points not raised at the time.

62. The Rule 24 notice asserts that as well as printouts direct links to the account had been provided. The Rule 24 notice also sought to distinguish the information. It is not a question of just using social media. The claimant had attended demonstrations and there were 5,000 followers who at least might have seen them. There was no proper challenge to his claim to have given interviews to the NRT TV channel.
63. The notice then asserts the primary issue for the judge was to consider the claimant’s perceived profile and if that created a risk. The decision in **XX (Iran)** did not illuminate the risk in Iraq.
64. It was the claimant’s case that the findings were entirely open to the judge.
65. The contention that the claimant could close his account on Facebook is irrelevant to the contention that it is reasonably likely that the claimant had come to the adverse attention of the authorities. It is his case that he has already come to their attention.
66. In response to ground 3 it is said that the judge was entitled to conclude that the claimant should be treated as a journalist. The reference in the guidance to “journalist” is simply illustrative and not intended to be an exclusive list. What matters is this man has following running to about 5,000 people.
67. It does not matter if the fear of the authorities was objectively justified. What matters is that there was fear and that is why the family would not help.
68. Ms Tobin confirmed that she intended to rely on Ms Harris’s Rule 24 notice and Mr Walker addressed me.
69. Appropriately he did little more than outline the grounds of appeal which are detailed.
70. I wish to make one point clear. The XX relates to conditions in Iran and there must be the lurking fear that the judge had confused the countries. That is just not right. Country guidance normally applies to the country identified in the title. That is its nature but I have set out the terms of the Practice Direction and the country guidance issue is not necessarily country specific. In my judgment the scope of country guidance extends beyond a particular country to an issue such as the operation of Facebook. There is every reason why it should. The point of country guidance decisions is to give an authoritative analysis from a senior Tribunal on evidence commonly called on a particular point and there is no reason why an authoritative view on how Facebook operates is any less country guidance than an authoritative view about what happens in a particular country. For the avoidance of doubt no one has applied the parts of **XX (Iran)** that relate to conditions in Iran to the facts of this case.
71. Nevertheless, I find Ms Harris’s arguments, echoed appropriately by Ms Tobin, persuasive. If it had been the Secretary of State’s case that the Facebook evidence was presented in a misleading or unreliable way there may have been

much merit in the ground but it was not the case and I agree that it is not the job of the judge to take points and raise points that have not concerned the parties.

72. Further, on a proper analysis this is not a case that turns on simply making postings on Facebook. What particularly interested the judge was the size of the following. This is wholly permissible.
73. The suggestion that there were people monitoring the demonstrations is speculative. The essence of decision making in refugee cases is speculation. The appellant has to prove that something is reasonably likely to happen when it is very much in his interests to ensure that it never does happen. However, the judge did not just pluck the idea from the air. She referred to **YB (Eritrea) [2008] EWCA Civ 360** to support her view that there is a “strong possibility” of demonstrations being subject to surveillance. The issue there was whether the Tribunal was entitled to reject concerns based on surveillance in the absence of evidence that there was surveillance. Sedley LJ gave judgment of the court but Wilson LJ and Tuckey LJ were in agreement. I set out below paragraph 18 of the judgment because it is pertinent. The learned Lord Justice said:

“As has been seen (§7 above), the tribunal, while accepting that the appellant’s political activity in this country was genuine, were not prepared to accept in the absence of positive evidence that the Eritrean authorities had ‘the means and the inclination’ to monitor such activities as a demonstration outside their embassy, or that they would be able to identify the appellant from photographs of the demonstration. In my judgment, and without disrespect to what is a specialist tribunal, this is a finding which risks losing contact with reality. Where, as here, the tribunal has objective evidence which ‘paints a bleak picture of the suppression of political opponents’ by a named government, it requires little or no evidence or speculation to arrive at a strong possibility – and perhaps more – that its foreign legations not only film or photograph their nationals who demonstrate in public against the regime but have informers among expatriate oppositionist organisations who can name the people who are filmed or photographed. Similarly it does not require affirmative evidence to establish a probability that the intelligence services of such states monitor the internet for information about oppositionist groups. The real question in most cases will be what follows for the individual claimant”.

74. There can be no error in the judge’s speculation on this point. The short point is that the judge has accepted that the claimant has been involved in *sur place* activities and that the claimant has a following in Iraq and that the government of Iraq is intolerant of criticism.
75. The judge was entitled to reach the conclusions she did for the reasons that she did.
76. I make it plain that this decision is of no authoritative value beyond the case it was intended to determine. It is not a ruling on *sur place* activities generally in the case of a citizen of Iraq. I simply say that the judge gave adequate reasons for the decision that she did. If the Secretary of State wishes to take points about Facebook evidence being monitored, doctored or wholly untypical of blogging as a whole she should make these points at an early stage so that the claimant can answer them.

77. I am not satisfied there is an error of law and I dismiss the Secretary of State's appeal.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber
10 February 2023