IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-000348

First-tier Tribunal No:
PA/52413/2020
IA/02149/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 24 July 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

BA
(Anonymity Direction made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Evans, instructed by Broudie Jackson Canter Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 11 July 2023

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his asylum and human rights claim.

2. The appellant is a national of Iraq of Kurdish ethnicity born on 7 May 1995 in Halabja. He arrived in the UK on an inflatable boat on 7 April 2020, having left Iraq illegally in October or November 2019 and travelled to Turkey, Greece and France. He claimed asylum on 7 April 2020.

3. The appellant claimed that he was at risk from the Kurdish political parties, the KDP and the PUK, because he criticised them. He claimed that he organised a demonstration against the KDP and the PUK in 2015, protesting against the injustice towards, and the poverty of, blind and disabled people including peshmerga fighters who were denied access to payments. He claimed that he was arrested, detained and tortured by the PUK as a result of his activities. He was released after five days on the condition that he would not take any further action against the Talabani and Barzani clans. He was not involved in any political activity until October 2019, at which time he organised a meeting at a local café for a group of young people and gave a speech with the aim of planning a mass protest and an uprising because he was fed up with the government. After his speech at the café he was informed by his uncle's wife's brother that the anti-terror unit was looking for him and he decided to leave Iraq with the assistance of an agent.

4. The respondent refused the appellant's claim in a decision dated 5 November 2020, accepting his nationality and ethnicity but rejecting his claim to be at risk on return to Iraq. The respondent considered the appellant's account to be both internally inconsistent and inconsistent with the background country information. The respondent noted the appellant's claim to have posted on Facebook but considered that his posts were not visible to the public. The respondent did not accept that the appellant had experienced any problems with the Kurdish political parties but concluded that even if he had been involved as claimed, he would not be at risk on return as he did not fit into any of the categories of those at risk. The respondent considered that the appellant would be able to obtain a replacement CSID document to enable him to return to the IKR. It was considered that he was not entitled to humanitarian protection and that his removal to Iraq would not breach his human rights.

5. The appellant appealed against that decision. His appeal was heard by First-tier Tribunal Judge Alis on 10 November 2021. The appellant gave oral evidence at the hearing. He gave evidence about his interest in the Gorran Party, his attendance at his first demonstration on 17 February 2011 and his continued attendance at protests, his Facebook posts, his political poetry writing from 2013, and his organisation of a demonstration himself in 2015 where the protestors marched to the KDP office and the Islamic Union Party base and threw stones at both places and then to the PUK and Islamic Group base. His evidence was that he was arrested from his home by PUK officials on the night of the demonstration and was tortured and interrogated about his involvement with the Gorran Party and was then released after signing an undertaking stipulating that he had not taken part in the demonstration and would not criticise the government in future. His mobile phone, which had been taken from him, was returned to him but his Facebook account, on which he had advertised the demonstration, had been deleted. The appellant gave evidence that he suffered from kidney stones and mental health problems but eventually returned to work and refrained from political activities until October 2019 when he organised a meeting over Facebook and met with young people in a café and discussed corruption in Kurdistan and spoke about the need to start an uprising. The appellant gave evidence that he heard from his uncle's wife's brother, who worked for the PUK intelligence, that they were looking to arrest him and kill him and so he fled, discovering the following day that his home had been raided by the security officials and his father taken away and beaten.

6. Judge Alis accepted that demonstrations took place as the appellant claimed and that the appellant was detained and mistreated in 2015, but he rejected the appellant's claim to have been an organiser of the demonstration in 2015 and to have organised a meeting in 2019. The judge considered that the appellant was of no interest to the authorities after being released in 2015 and did not accept that his home had been raided and his CSID seized. The judge noted that the appellant had

posted on Facebook since coming to the UK and had appeared in someone's Tik Tok video reading a protest poem but did not accept that any of his posts gave him a profile which would have put him at risk. The judge concluded that the appellant was at no risk on return and that he could access his CSID document. He dismissed the appellant's appeal on all grounds.

7. Permission was sought on behalf of the appellant to appeal against that decision to the Upper Tribunal, on the following three grounds. Firstly, that the judge had erred by basing his findings on personal assumptions as to how the authorities in Iraq would act. Secondly, that the judge had failed to give weight to the appellant's sur place activities and social media profile in the UK. Thirdly, that the judge had failed to give adequate reasons for finding that the appellant was not at risk, in light of the accepted findings.

8. Permission was refused in the First-tier Tribunal but was subsequently granted in the Upper Tribunal on a renewed application.

9. The matter came before me. Both parties made submissions. I shall address those submissions in the discussion below.

Discussion

10. Ms Evans' submission, with regard to the first ground, was that the judge made findings which were based on his own assumptions and not on the evidence before him, in two respects. The first was when he found at [119] that the appellant would have been treated more harshly than he was when detained in 2015 if he had been considered to have been an organiser. Ms Evans submitted that, to find that the appellant was not a leader or organiser of the demonstration in 2015 because he was not treated harshly enough, was bordering on perverse, given that the judge had accepted that the appellant was beaten, tortured, burned and threatened with death. The second was when the judge found at [104] and [105] that if the authorities had believed that the appellant was an organiser of the demonstration they would have included in the undertaking he had to sign that he was not to organise further demonstrations.

11. With regard to the first point, I have to agree with Mr McVeety that the judge's reference to the likelihood of the appellant being treated *more harshly* if he was considered to be an organiser of the demonstration, was clearly not intended to refer to the level of ill-treatment/ torture suffered by the appellant but rather to the nature and length of his detention. The judge's observation in that regard has to be looked at in the context of his findings as a whole, from [106]. At [106] the judge considered the country evidence relating to the treatment of protestors and noted that the evidence suggested that those with higher profiles remained in detention and were placed before a court. Clearly it was in that context that the fact that the appellant had been released when he was and in the circumstances claimed led the judge to conclude that he was not considered to be of a higher profile. The judge's finding was therefore one which was made on the basis of the country evidence and there was nothing irrational or perverse about it.

12. As for the second point, the grounds assert that the judge failed to consider the appellant's explanation for the absence of reference in the undertaking to him agreeing not to organise demonstrations, namely that he had continued to deny that he was involved in organising the demonstration authorities. However, as Mr McVeety submitted, the authorities would have known that the appellant was an organiser from his Facebook account which he used to organise the demonstration and which they then deleted, had his account been true. That was the point that the judge was

making at [102] and [103] and from which he was perfectly entitled to draw the adverse conclusions that he did. I therefore reject the suggestion in the first ground that the judge was making assumptions which were not supported by the evidence. On the contrary the judge was fully and properly entitled to conclude that the appellant's own evidence undermined the credibility of his claim to have held the profile claimed and was entitled to make the adverse findings that he did.

13. With regard to the second ground, Ms Evans submitted that the judge's findings on the appellant's social media activity were not reasonable and that he had erred in his approach to the Facebook and Tik Tok video evidence. She submitted that the judge was wrong to find at [122] that the account warning on Facebook indicated that only he could see certain entries, when it was the warnings themselves and not the actual posts which were only visible to the appellant and the actual Facebook posts were visible to the public. Further, the Tik Tok video had been viewed 250,000 times and shared over 5000 times, which had not been considered properly by the judge. However, as Mr McVeety submitted, the judge gave careful consideration to the Facebook postings and the Tik Tok video, noting that the appellant was not named in the latter and finding that none of the posts gave him a profile which would have led him to be of interest to the authorities so as to put him at risk on return. The judge made his finding with reference to the country evidence and was perfectly entitled to conclude as he did. As McVeety submitted, there is now more recent country guidance in XX (PJAK, sur place activities, Facebook) Iran (CG) [2022] UKUT 23 and that serves only to weaken the appellant's case further, given in particular the judge's properly made findings as to the appellant's limited and low level activity and the lack of adverse interest in him at the time of, and following, his release from detention in 2015.

14. The assertion in the third ground is that the judge erred in finding the appellant to be at no risk on return to Iraq given the facts which had been accepted, namely the appellant's known involvement in political activities and his detention and ill-treatment in 2015, and considering his social media postings. The grounds assert that the appellant could not be considered as a person of a low profile, but the judge provided proper reasons for concluding that he was, as discussed above. As Mr McVeety submitted, the judge's finding that the appellant would not be of adverse interest to the authorities in the IKR was made with full regard to the country evidence and was consistent with that country evidence, considering the low level of the appellant's activities, his low profile and the lack of any recent adverse interest in him. Clearly the judge had regard to all relevant factors in relation to risk on return and he was fully and properly entitled to conclude as he did.

15. For all these reasons, I do not find any merit in the grounds and reject the suggestion that the judge erred in law in reaching the conclusions that he did. The judge's decision was based upon a full and careful consideration of all the evidence in the context of the background country information and was supported by clear and cogent reasoning. The decision reached was entirely open to the judge on the evidence before him and I accordingly uphold that decision.

Notice of Decision

16. The making of the decision of the First-tier Tribunal did not involve an error on a point of law requiring it to be set aside. The decision to dismiss the appeals stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber
19 July 2023