IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000690
First-tier Tribunal No: PA/54013/2022
IA/09756/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued
On the 19 July 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

BNA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. F. Ahmad, Hanson Law
For the Respondent: Mr. E. Terrell, Senior Home Office Presenting Officer

Heard at Field House on 6 July 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 is an appeal by the Appellant against a decision of First-tier Tribunal Judge Maka, (the "Judge"), dated 7 February 2023, in which he dismissed the

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Appellant's appeal against the Respondent's decision to refuse a grant of asylum. BNA is a national of Iran who claimed asylum based on his political opinion.

2. Given that this is an asylum appeal, I continue the anonymity order made in the First-tier Tribunal.

3. Permission to appeal was granted by Upper Tribunal Judge Bruce on 7 June 2023 as follows:

> "Grounds 1-3 all address the same issue, how the First-tier Tribunal approached the alleged risk arising from the Appellant's sur place political activities: in light of the country guidance, they are all arguable. Ground 4 has less merit but I do not restrict the grant of permission."

The hearing

4. The Appellant attended the hearing. I heard submissions from Mr. Ahmad and Mr. Terrell which were translated for the Appellant by the interpreter. The language used was Kurdish (Sorani). I reserved my decision.

Error of law

Ground 1

5. The first three grounds address the Judge's treatment of the evidence relating to the Appellant's sur place activities. Having found the Appellant's account of events in Iran not to be credible, from [46] to [49] the Judge considers the Appellant's sur place activities.

> 46. I have carefully considered the sur place activities of the Appellant. I note many of the Facebook posts were written by others. I agree they were done for the sole purpose of establishing a claim for asylum. This Appellant had no social media profile in Iran and his delivery of parcels, which I have not accepted, only started a week before he left, which I find, convenient.
>
> 47. The Appellant himself has stated some of his Facebook posts have been deleted. I do not accept this is by the authorities. I find he can also delete his own account. He is illiterate and much of what has been put, he has merely re-posted. I find, after applying, XX (Pjak – sur place activities – Facebook) Iran CG [2022] UKUT 00023 (IAC), this Appellant has never been of any material or significant interest to the authorities in Iran. I find the Iranian authorities would not be interested in him, and he is not a person of interest to them. I find it is not unreasonable for him to delete his account. I note the Appellant has provided printed photographs, which XX makes clear are of limited value without full disclosure in electronic format and without the wealth of wider information readily available. I have been given his front page, which apparently states he has 2.6k followers. I do not know what his settings are and when his timeline was created. The photographs are not particularly clear. I find, however, he is not an individual who is of any interest to the authorities. There is nothing in his profile, past and present, which would make him somebody the authorities are interested in.
>
> 48. I accept the Appellant has attended some demonstrations. The focus of his photographs is obviously on himself. Again, I find, this is to enhance his own claim for asylum. It appears there are many others in the demonstrations. I do not know how many and have no details on these protests being widely reported. The Appellant has circled some persons taking pictures and with a video camera from the Embassy and elsewhere. I am satisfied, these person could either be journalists

> and other reporters. Equally, the fact there are persons in the Embassy itself watching does not mean it is the Appellant who they are interested in. The Appellant does not say the numbers demonstrating. It is unrealistic to assume the Iranian authorities have the interest or resources or a desire to find everybody at such demonstrations. I am satisfied the focus would be on the leaders. The Appellant is not one of them. It is not suggested to me all demonstrators in the UK are at risk. I find the Appellant is simply a member of the crowd. I find he is passive. That he has a picture of the Iranian leader with his shoes on it, I find, is a provocative action deliberately staged, for his asylum claim. There is nothing before me showing any of the demonstrations have been reported elsewhere or media coverage has been widespread. Given the internal problems in the regime at present coupled with internal dissent and the effect of international sanctions, I find, the Iranian authorities would not be interested in this Appellant. There is nothing to show facial technology software being used and whilst I accept individuals can be at risk following BA, I find, this Appellant, whose motive is only to establish a claim to remain here, is not. I do not accept there is anything in his profile that will lead him to being targeted on return.
>
> 49. I find the Appellant can delete his profile. I do not accept his past activities will be found. He can close his account. I do not accept he was monitored in the past or that the authorities are interested in monitoring him. I do not accept his name was given by his friend because I have not accepted his account of distributing parcels. I find, I have been given a fictitious account by the Appellant to enable him to remain in the UK."

6. I find that [46] contains all of the reasoning for why the Judge finds that the Appellant's sur place activities were done for the sole purpose of establishing a claim for asylum. He states that he "agrees" that "they" were done for the sole purpose of establishing a claim for asylum. It is unclear with what he agrees, and whether this refers to the totality of the Appellant's sur place activities, or just his Facebook posts. Further, given that it was the Appellant's case that others had written his posts as he was illiterate, I find that the fact that they were written by others could not be a sufficient basis for finding that the activities were contrived. In relation to the lack of social media profile in Iran, the Appellant was not asked why he did not have a social media profile there. Given his illiteracy and the attitude of the Iranian authorities towards those who are critical of the regime, it is not surprising that did not have one but he was not asked this. At Q157 of his asylum interview when asked why he had now become interested in politics the Appellant said that it was because he was not free in Iran but he was free now. He said that he was posting online being as he was free.

7. In relation to the comment at [46] that it was "convenient" that the delivery of parcels only started a week before he left, the Judge had not accepted that the Appellant had delivered the parcels so it is not clear what the Judge means by this, or its relevance. While it was open to the Judge to consider the Appellant's case holistically, the fact that he rejected the account of events in Iran does not mean that the sur place claim must fail.

8. I find that this paragraph contains insufficient reasoning for the finding that the Appellant's sur place political activities were contrived. I find that this is a material error of law.

Ground 2

9. This ground asserts that the Judge failed to take into account material evidence when finding that the Appellant's sur place activities would not have brought him

to the adverse attention of the authorities. The Judge finds that the Appellant has 2.6k followers but gives no more consideration to the content of his Facebook page. He fails to consider the extent of his Facebook activity, the fact that the profile is in his own name with a photograph, or that the Appellant is a member of a number of online groups which are pro-Kurdish / anti-Iranian regime. The Appellant's Facebook evidence is found at section C of his bundle which runs to 400 pages. This includes his Facebook history, a list of his Facebook friends, his Facebook groups and his privacy settings together with an explanation of their meaning. I find therefore that the Judge is wrong when he states that he does not know what his settings are or when his timeline was created given this evidence. The evidence also included photographs of the Appellant attending demonstrations which had been posted online. In her decision the Respondent accepted that the Appellant had been politically active as he had attended anti-Iranian protests and due to his posting on Facebook in the United Kingdom (page R12).

10. The Judge's finding that the Iranian authorities would not be interested in the Appellant refers to none of this material and is made without reference to the Respondent's acceptance that the Appellant had been politically active. The finding that there is nothing in the Appellant's profile past and present which would make him someone the authorities were interested in is made without reference to the wealth of evidence. Clearly it was incumbent on the Judge to follow the case of XX (PJAK – sur place activities – Facebook) Iran CG [2022] UKUT 00023 (IAC), but he has stated that he has applied this case without first considering what the evidence of the Appellant's Facebook activity was, and by making errors regarding this evidence, for example in relation to the Facebook settings.

11. In relation to the Judge's consideration of the evidence of the Appellant attending political demonstrations, the Judge finds that he was simply a member of the crowd. This runs counter to the Respondent's apparent acceptance in her decision that the Appellant had provided a detailed and consistent account of his role stating what he did including his role informing others of the demonstrations. The evidence provided by the Appellant pointed to his role in relation to demonstrations but the Judge has given no consideration to this evidence. I find that the Judge has failed to consider the evidence before him when considering the Appellant's attendance at political demonstrations. Although he has referred to the case of XX and has stated that he is applying it, he has done this before considering properly all of the evidence before him. I find that this is an error of law.

12. The finding that the Appellant's Facebook page could be deleted, which would remove the risk, does not take into account that even if he deleted his own Facebook page he would not be able to delete the evidence of being tagged by others. The evidence of Dr. Clayton in XX pointed to the ability to find data after an account has been deleted. The evidence from Facebook Ireland was that it might take up to 90 days to fully delete the account. While the Judge has found at [49] that the Appellant can delete his profile, he has not considered this in the context of the Appellant having to apply for a travel document and the "pinch point" when the authorities are made aware of him. The finding that the Appellant can delete his profile is made without proper consideration of the evidence in XX.

Ground 3

13. Ground 3 asserts that the Judge took an erroneous approach to the risk arising from the Appellant's sur place activities. It was accepted that the appellant was Kurdish. The Country Guidance case of HB (Kurds) Iran CG [2018] UKUT 430 (IAC) recognises that Kurds who are involved in Kurdish political groups or activity are at risk of arrest. That case was decided in 2018. The Judge makes reference to the current problems in Iran at [48] but gives no reason and cites no background evidence to justify his finding that the authorities would not be interested in the Appellant "given the internal problems in the regime at present coupled with internal dissent and the effect of international sanctions". It was submitted that the opposite is true, and that there was no evidence before the Judge to conclude that the country situation in Iran would reduce the likelihood of the authorities being interested in the Appellant. It was accepted by Mr. Terrell that this was an "interesting" finding, but he submitted that it did not defeat the Judge's findings that the Appellant was unlikely to come to the interest of the authorities.

14. I find that the Judge has failed to give proper consideration to the Appellant's situation as a Kurd. His finding at [48] is without foundation. The finding at [47] that there was nothing in the Appellant's profile which would make him someone the authorities were interested in runs contrary to the case law of HB. I find that the Judge has failed to properly consider the risk to the Appellant. I find that this is a material error of law.

Ground 4

15. Ground 4 asserts that the judge took an erroneous approach to credibility and failed to exercise due caution when assessing the plausibility of the Appellant's account. The grounds cite the finding regarding the Appellant's explanation as to why he did not question his uncle about the contents of the parcels. The Appellant explained that this would have been disrespectful towards an elder but the Judge found that this explanation only made matters worse. He states at [42]:

> "There are other aspects of this claim that genuinely concern me and which I do not find plausible. Having never delivered anything for his uncle, even as a young child, I do not accept the Appellant would not ask his uncle, what it was he was being asked to deliver. The answers the Appellant gave in his statements and interview, I find, only makes matters worse, adding to the implausibility. He said he looked up to his uncle as his father. Whatever his uncle said he would have listened to him. In his further statement (page 12), he refers to not being disrespectful and it being rude to ask a father figure, once asked, about something to do. I have not been shown anything objectively, which supports this. I find, it misses the point. It is not about disrespect or questioning authority. It is mere curiosity. As a youngster, there may have been something in the parcels that may have appealed to the Appellant himself such as a gadget or item of clothing. It is one thing to deliver once, without question, as a favour and another to be asked on a number of occasions. I do not accept the account given."

16. I have carefully considered whether it is implausible to find that the Appellant would not have questioned his uncle. The Judge found at [40] that the Appellant was part of a "closely knit cultural family unit as exists in Kurdish families". He also found at [40] that it was not plausible that the Appellant's uncle would reasonably place the Appellant's life at such risk "given the family dynamics". There are no findings as to what these family dynamics are other than that the family was close knit. He finds that family authorisation or consent would have

been needed for the Appellant to carry the parcels "noting his minor age at the time". He also finds that the Appellant's uncle would have needed to "get the nod from the Appellant's family" before the Appellant was allowed to take on the risky task of carrying the parcels. There is no basis for these findings. There is further no basis for the finding that the Appellant would have questioned his uncle because he was "a youngster" at [42]. The Judge has made findings about the family dynamics both within the Appellant's immediate family and the wider family including his uncle which are without basis. It is not clear how these fit with the finding that it was a close knit family.

17. I find that many of the Judge's findings in relation to whether or not the Appellant would have delivered the parcels rest on the finding that it was not plausible that the Appellant's uncle would have asked him to do this, or that his uncle would have obtained consent from his family. There are no reasons given for why this is implausible. It was submitted by Mr. Terrell that the Judge was entitled to be unimpressed with the Appellant for not asking questions of his uncle, but I find that there is no basis given for rejecting this evidence apart from the fact that he was a "youngster" who would have been curious. The Judge has discounted the Appellant's evidence that he would not have questioned his uncle out of respect for the authority of his elders. I find that the reasoning for this is insufficient, and is based on a finding about his family dynamic which is not made out. There appears to be an acceptance that there may be a different cultural context given the close knit nature of Kurdish family units, but this different cultural context is not considered when the Appellant gave evidence of not questioning his elders. I find that this is an error of law, and given that this relates to the core of the Appellant's account, I find that this error is material.

18. I have found that all four grounds are made out. Given that the findings in relation to the Appellant's account of events in Iran cannot stand, as well as the findings in relation to his sur place activity, taking into account the case of Begum [2023] UKUT 46 (IAC), and giving careful consideration to the exceptions in 7(2)(a) and 7(2)(b), I consider that the extent of the fact-finding necessary means that it is appropriate to remit this appeal to be reheard in the First-tier Tribunal.

Notice of Decision

19. The decision of the First-tier Tribunal involves the making of material errors of law.

20. I set the decision aside. No findings are preserved.

21. The appeal is remitted to the First-tier Tribunal to be reheard.

22. The appeal is not to be listed before Judge Maka.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
16 July 2023