



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-002655

First-tier Tribunal No:
PA/53883/2021
IA/11156/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 01 October 2024

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

Secretary of State for the Home Department

Appellant

and

SS

(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms S Rushforth, Senior Home Office Presenting Officer

For the Respondent: Mr Josph instructed by Seren Legal Practice Solicitors

Heard at Cardiff Civil Justice Centre on 23 August 2024

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. The application for permission to appeal in this matter was made by the Secretary of State but forthwith I shall refer to the parties as they were described in the FtT that is SS as the appellant and the Secretary of State as the respondent.
2. The appellant is a citizen of Iran of Kurdish ethnicity who left Iran illegally on 10th October 2019 and he claimed asylum in the UK on 15th April 2020. In July 2021 he was refused asylum. He appealed. The Secretary of State's grounds challenge the decision of FtT Judge Trevaskis (the judge) who allowed the appellant's appeal.
3. The grounds contend that:

the judge did not give a clear finding as to whether he believed the appellant's core account or not which materially involved whether or not his father worked for the Ettela'at and bearing in mind he was Kurdish this was implausible. The judge failed to resolve a key aspect of the appellant's claim.

instead of making findings on the appellant's account the Tribunal relied on his ethnicity and illegal exit to allow the appeal whilst also finding his internet activity would be known to the authorities at [61] to [65]. There was no finding as to whether his Facebook profile was public or even whether he had received abuse or threats as a result of his postings.

the Tribunal's findings were inadequately reasoned against the background evidence which confirmed that the Iran authorities to be lacking rather than competent in monitoring i.e. there was no facial recognition technology and only making 18 requests on 29 accounts between 2017 and 2021 [40]-[49] which was low considering the numerous asylum claims involving Facebook postings.

the respondent asserted that the appellant had not established that there was a case against him and thus the failure to make a finding on his father's alleged link to the authorities had led to the decision being inadequately reasoned overall.

Conclusions

4. There were two limbs to this claim. First the political activity and risk to the appellant on his activities in Iran and secondly the risk from his sur place in the UK.
5. Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) held that reasons need not be extensive if the decision as a whole makes sense,

having regard to the material accepted by the judge. Volpi v Volpi [2022] EWCA Civ 464 confirms at 2(i) that '*An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong*'. I am not so satisfied for the reasons given below.

6. This was a judge who as noted at [56], considered all the evidence in the round and had the benefit of hearing oral evidence during cross examination.
7. The Rule 24 notice pointed out that the challenge to the lack of finding on the father was an assertion by the Respondent that the Appellant's father's employment with Ettela'at was implausible. That it was said, misrepresented the respondent's position before the FtT which was simply an assertion as to credibility and this plausibility point was not taken by the respondent as could be seen from the record of the respondent's submissions at [38].
8. In relation to the more general point on credibility argued in ground one, and as to whether the FtT believed the Appellant's core account, the judge had quite clearly undertaken a comprehensive assessment of the evidence and had made clear findings that he accepted the Appellant's basic account: see [51]- [68]. Specifically at [53] the judge found, "I am satisfied that such inconsistencies as have been identified by the respondent do not damage the core of the appellant's claims, but rather go to minor matters of detail." That was adequately reasoned.
9. The judge found that the inconsistencies in the appellant's account as to his age when his father caught him with his stepmother did not undermine his account overall. The appellant, as the judge recorded in the respondent's submissions at [40] did not claim to be politically active in Iran and the judge acknowledged this at [62].
10. In relation to the point that the judge does not make a clear finding regarding the father, I accept that the judge does not make a specific finding but when considering the second limb to the claim, which I address below, I do not find that this is material.
11. In relation to the second limb, the judge noted at [58] that the respondent accepted that the appellant was Kurdish Iranian, spoke Kurdish and the judge confirmed at [60], and was evidently aware, that mere Kurdish ethnicity coupled with illegal exit was insufficient to establish a risk of persecution. The judge nevertheless properly directed himself at [61] that 'The country guidance makes clear that Kurdish ethnicity is a risk factor and is something which is likely to cause the Iran authorities to adopt 'a hair trigger approach' to the assessment of the threat posed by the appellant.'

12. The judge cited XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 23 (IAC) and as stated in XX at headnote 4 and referred to by the judge as follows:

4) A returnee from the UK to Iran who requires a laissez-passer or an emergency travel document (ETD) needs to complete an application form and submit it to the Iranian embassy in London. They are required to provide their address and telephone number, but not an email address or details of a social media account. While social media details are not asked for, the point of applying for an ETD is likely to be the first potential "pinch point" referred to in AB and Others (internet activity - state of evidence) Iran [2015] UKUT 257 (IAC). It is not realistic to assume that internet searches will not be carried out until a person's arrival in Iran. Those applicants for ETDs provide an obvious pool of people, in respect of whom basic searches (such as open internet searches) are likely to be carried out.

13. Merely because an email address or details of a social media account are not asked for in the application form for the ETD does not, as acknowledged in AB which was referenced in XX, mean that the appellant will not be asked about his activity when being questioned.

14. XX considered the various factors as follows at [92]

'The likelihood of Facebook material being available to the Iranian authorities is, in our view, affected by whether the person is or has been at any material time a person of significant interest, because if so, they are, in general, reasonably likely to have been the subject of targeted Facebook surveillance. We refer to the level of political involvement of an individual, as in BA and HB; and the nature of "real-world" sur place activity, which would prompt such surveillance. By way of summary, relevant factors include: the theme of any demonstrations attended, for example, Kurdish political activism; the person's role in demonstrations and political profile; the extent of their participation (including regularity of attendance); the publicity which a demonstration attracts; the likelihood of surveillance of particular demonstrations; and whether the person is a committed opponent. In the case of such a person, this would mean that any additional risks that have arisen by creating a Facebook account containing critical material of, or otherwise inimical to, the Iranian authorities would not be mitigated by the closure of that account, as there is a real risk that the person would already have been the subject of targeted on-line surveillance, which is likely to have made the material known.'

15. This identifies that those of 'significant interest' may well be targeted for surveillance and AB considered that the real question was whether that person had come to the authorities attention. Thus the question of the pinch point is relevant.

16. The judge cited the Country Policy and Information Note Iran: Illegal exit Version 5.0 February 2019 and it was not suggested that this

recitation was incorrect. The judge was clear and acknowledged that section 2.4.6 confirmed that SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 308 was 'not authority for the proposition in relation to the risk on return for refused Kurdish asylum-seekers on account of their Kurdish ethnicity alone'.

17. SSH and HR in 2016 had, at [34], this to say on returns

'For example, the Operational Guidance Note refers at 3.12.14 to the government disproportionately targeting minority groups, including Kurds, for arbitrary arrest, prolonged detention and physical abuse. No examples however have been provided of ill-treatment of returnees with no relevant adverse interest factors other than their Kurdish ethnicity, and we conclude that the evidence does not show risk of ill-treatment to such returnees, though we accept that it might be an exacerbating factor for a returnee otherwise of interest.'

18. The CPIN identified, however, and as recorded by the judge, the 'hair trigger' response to those perceived as having a political profile. The CPIN recorded that since 2016 the Iranian authorities had become increasingly suspicious of, and sensitive to Kurdish political activity and that 'Those of Kurdish ethnicity are thus regarded with even greater suspicion than hitherto and are reasonably likely to be subjected to heightened scrutiny on return to Iran'. The judge acknowledged that Kurdish ethnicity combined with illegal exit did not create a risk of persecution per se but for such individuals, this profile may increase the likelihood on questioning on return and there was at the very least a real risk of such questioning exposing political activity either in Iran or after departure. As identified in BA, although it is important to consider the level of political involvement before the likelihood of coming to the attention of the authorities, factors triggering inquiry/action on return include not only profile but an immigration history such as how the person left the country (illegal type of visa, where has the person been when abroad and the method of return i.e. overstayer/ forced return.

19. In AB the Tribunal at [455] specifically rejected the notion that a high degree of activity was necessary to attract persecution stating that

'It is probably the case that the more active persons are the more likely they are to be persecuted but the reverse just does not apply. We find that the authorities do not chase everyone who just might be an opponent but if that opponent comes to their attention for some reason, then that person might be in quite serious trouble for conduct which to the ideas of western liberal society seems of little consequence.'

20. Although the tribunal stated in AB that spending a long time in the UK did not necessarily attract the Iranian regime's attention at [457] it stated

'There is clear evidence that some people are asked about their internet activity and particularly for their Facebook password. We can think of no reason whatsoever to doubt this evidence. It is absolutely clear that blogging and activities on Facebook are very common amongst Iranian citizens and it is very clear that the Iranian authorities are exceedingly twitchy about them. We cannot see why a person who would attract the authorities sufficiently to be interrogated and asked to give account of his conduct outside of Iran would not be asked what he had done on the internet. Such a person could not be expected to lie, partly because that is how the law is developed and partly because, as is illustrated in one of the examples given above, it is often quite easy to check up and expose such a person. We find that the act of returning someone creates a "pinch point" so that returnees are brought into direct contact with the authorities in Iran who have both the time and inclination to interrogate them. We think it likely that they will be asked about their internet activity and likely if they have any internet activity for that to be exposed and if it is less than flattering of the government to lead to a real risk of persecution.'

21. In BA (demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC) the Tribunal recognised that a returnee could expect to be screened on arrival and an activist could be the subject of further enquiry and real risk depending on all the circumstances.
22. The judge accepted that the appellant had engaged in sur place activities (against the Iranian regime) in the UK and online activity. The judge also found the appellant would need to apply for an ETD. Thus even if his Facebook was not monitored (owing to lack of competence) or targeted or intercepted it was the risk of questioning on his application for an ETD either in the UK or in Iran which placed the appellant at risk.
23. At [467] the Tribunal in AB repeated the point on the pinch point and referred to the content of questioning that might ensue. The Upper Tribunal found that 'the mere fact of being in the United Kingdom for a prolonged period does not lead to persecution. However it may lead to scrutiny and there is clear evidence that some people are asked about their internet activity and particularly for their Facebook password. The act of returning someone creates a "pinch point" so that a person is brought into direct contact with the authorities in Iran who have both the time and inclination to interrogate them. We think it likely that they will be asked about their internet activity and likely if they have any internet activity for that to be exposed and if it is less than flattering of the government to lead to at the very least a real risk of persecution.'
24. SSH and HR at [23] did not gainsay the fact that a returnee either in the UK or in Iran would be subject to questioning but rather that the questioning itself did not automatically involve a risk per se. At [9] the UT specifically stated 'It is clear from Dr Kakhki's evidence that a

person who returns to Iran on a *laissez passer* will be questioned. We accept that this is likely to be the case.'

25. On the strength of AB and SSH and HR it is reasonable to conclude questions would be asked about *sur place* activities, and that someone who had in fact been participating in them would say so and even if doing so insincerely and saying that that was the case the authorities would be sceptical. The judge clearly accepted that there would be an investigation on the appellant's return and that he did have a Facebook presence which was critical of the regime (indeed the appellant had attended demonstrations). In this particular case the judge accepted the appellant was credible. Clearly the judge considered there would be a risk, on the lower standard of proof, that the posts and Facebook activity, albeit not monitored would surface *on questioning* by the Iranian authorities. Whether the appellant received threats or not was immaterial.
26. Moreover and notably at [67] the judge clearly accepted that separate from the Facebook activity, it was likely 'that the demonstrations themselves may well have been monitored by government observers and so the presence of the appellant may be known to the authorities by other means'. That may have been a generous conclusion but that finding was not challenged as perverse or irrational.
27. The grounds raised the issue in relation to the findings on Facebook, whether the Facebook profile was public or not. The Rule 24 notice filed by the appellant pointed out that this was never in issue. It was also submitted that the Facebook findings were inadequate but in the light of the relevant findings of the judge, as I have identified, I find there was no material error of law.
28. I consider [64] to be inelegantly phrased. The judge had already made clear that the mere fact of the appellant leaving Iran illegally and his Kurdish ethnicity did not place him at risk. Mr Joseph submitted that this paragraph should be ignored. I find that the judge was attempting to explain why the appellant would be of interest and questioned about/ on his return. Thus, on this basis, whether the appellant's father was a member of Ettela'at was not material to the risk the appellant would encounter on return if questioned of which there was a risk because of the various factors identified. The judge followed on from [64] with [65] and which found that the appellant was 'likely to be subject to investigation on return'. Paragraph [65] follows on logically from [64] and it was not that the judge was finding the appellant would be at risk solely on the basis of his ethnicity and illegal exit but because of what would be disclosed on his return. The judge made a specific finding at [66] that 'the level of political activity which the appellant has undertaken is sufficient to attract the attention of the Iranian authorities'. That was an adequate finding bearing in mind that each

case is fact sensitive and it was the judge who considered the evidence in the round.

29. Although the findings were sparse and the overall finding may have been generous, it was on the facts of this appeal, open to the judge, having reviewed all the material to consider what was sufficient to attract the attention of the Iranian authorities.
30. Apart from the finding as to the father's own activities in Ettela'at, the judge accepted the appellant's general account. The judge accepted that the appellant had been engaged in political activity against the Iranian regime in the UK whether on a low level or otherwise and also posted on Facebook. The judge found on the specific facts of this appeal that the appellant would face questioning at the pinch point, would not be expected to lie, RT (Zimbabwe) v Secretary of State [2012] [26], at the pinch point, and would be asked about his activity in the UK.
31. The judge could have given further reasoning but in my view his reasoning was adequate. The findings were not extensive but in line with Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) such that reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge. That is the case here.

Notice of decision

32. I find no material error of law and the decision of the First-tier Tribunal will stand. SS's appeal remains allowed.

Helen Rimington

Judge of the Upper Tribunal
Immigration and Asylum Chamber

26th September 2024