



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-003930

First-tier Tribunal No: PA/51273/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 20<sup>th</sup> of December 2024

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LEWIS**

**Between**

**DMN**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms A Sepuldeva of Counsel instructed by Hanson Law (by CVP)

For the Respondent: Ms S Nwachuku, Senior Home Office Presenting Officer (by CVP)

**Heard at Field House on 4 September 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**

**Introduction**

1. This is an appeal against a decision of First Tier Tribunal Judge Alis dated 2 August 2023 dismissing the Appellant's appeal against a decision of the Respondent dated 10 February 2023 refusing a protection claim.
2. The Appellant is a citizen of Iraq of Kurdish ethnicity. His personal details, and the background to his appeal, are set out in the documents on file and are known to the parties. In keeping with the anonymity direction that has previously been made in these proceedings (and is hereby continued), I do not rehearse the personal details and full background here.
3. Suffice for the moment to observe that the instant appeal is a second appeal. The Appellant, having entered the UK clandestinely claimed asylum on 24 April 2018. The claim was refused on 3 December 2019 and an appeal dismissed on 4 September 2020 with the Appellant becoming 'appeal rights exhausted' on 21 September 2020. On 25 July 2022 the Appellant lodged further submissions; although these were refused a right of appeal was granted – the exercise of which is the foundation of these proceedings.
4. The Appellant's previous claim for asylum was based on a claim to be gay. He was found not to be credible in respect of his claimed sexuality. The further submissions, and the appeal before the First-tier Tribunal, essentially amounted to a *sur place* claim advanced on the basis of involvement in diaspora politics.
5. The appeal was dismissed on all grounds for reasons set out in the Decision of Judge Alis dated 2 August 2023.
6. Permission to appeal was granted by First-tier Tribunal Judge Buchanan. Although the Appellant had raised 4 grounds of challenge in the application for permission to appeal, the grant of permission to appeal was limited to Ground 2. In respect of Ground 2, in material part the grant of permission to appeal states:

*"6. GOA(2): Mention is made by the FTTJ that the appellant's interest in the Kurdish cause only surfaced after he lost his last appeal. That conclusion is not challenged on appeal. Contrary to the submission, the FTTJ does not apply any certain timeframe or time period. No material error of law is identified. At #8, the appellant contends that the FTTJ failed to consider objective evidence that protesters are at risk when reaching his conclusion at #50 of the Decision. Specific mention is made of sources, including US State Department Report but no citation is given for the page where risk is mentioned within the 1175 pages of the Hearing Bundle.*

*7. GOA(2) continued: At #50, the FTTJ concludes that there is little evidence of all protesters being at risk. It is arguable as contended however that there are insufficient reasons given for reaching that conclusion in light of background country evidence such as that seen at p1051/1175 onwards.*

...

10. *It is arguable by reference to Grounds of Appeal (2) that there may have been error of law in the Decision as identified in the application. I grant permission to appeal, limited to GOPA(2)."*

## **Discussion**

7. The basis of the Appellant's claim with regard to *sur place* activities was summarised by the First-tier Tribunal at paragraph 17 in these terms:

*"The Appellant opposed both the Iraqi and Kurdish authorities and supported the New Generation Movement. He had shared posts on Facebook which were anti-Shia and anti-Kurdish. The Appellant had used Facebook to criticise the Iraqi and Kurdish authorities for not protecting people and for their involvement in corruption, torture and killings. The Appellant stated that due to his activities on Facebook and his involvement at demonstrations he would be perceived as having a high profile in the eyes of the Iraqi authorities."*

8. Further to this the Judge set out further details of the Appellant's claim at paragraph 18 with particular reference to copies of the Facebook account which were claimed to demonstrate political motivation, and evidence of attending anti-government demonstrations. The Appellant claimed to have attended three demonstrations in the UK.

9. The Judge found that the Appellant was not genuine in his espousal of political opinion: *"I did not find the Appellant was a genuine opponent of the Iraqi authority"*(paragraph 50); and *"I do not find the Appellant's sur place activities were genuinely held by him and am satisfied that they were undertaken to bolster his claim"* (paragraph 51). There is no challenge to this finding before me.

10. The Judge's analysis led him to make the following finding at paragraph 52:

*"For the above reasons I am not satisfied, on the balance of probabilities, the Appellant has a characteristic which could cause him to fear persecution by reason of his political opinion..."*

11. In making this finding the Judge was recognising that the Appellant's fresh claim, having been made after 28 June 2022, fell to be considered under the framework of section 32 of the Nationality and Borders Act 2022: see Decision at paragraph 6-8.

12. Necessarily the element of risk on return was not directly relevant to an evaluation of the genuineness of the Appellant's political opinion. As such, any possible error at paragraph 50 in respect of the evaluation of risk was not material to the Judge's rejection of the Appellant's claimed interest in politics.

13. Indeed, it may be seen from the second part of paragraph 52 that the Judge determined that it was unnecessary to consider the reasonable likelihood of persecutory treatment eventuating - i.e. 'risk'.

14. Moreover, it is be noted that there is no challenge pleaded in the Grounds to the Judge's approach to the methodology required by section 32 of the 2022 Act.
15. It may well be that there would have been scope for pleading that the decision was not consistent with the approach outlined in **JCK (s.32 NABA 2022) (Botswana) [2024] UKUT 00100**. Even though **JCK** post-dates the decision of the First-tier Tribunal and the lodging of the application for permission to appeal, it would have been possible to apply to mend the Grounds of Appeal if considered appropriate. No such application has been made.
16. There may also been scope for pleading in the Grounds that the Judge's approach did not reflect or address the aspect of having "*a characteristic attributed... by an actor of persecution*" referred to in section 32(2)(b). Whilst no express reference was made to section 32(2)(b) in the Grounds, paragraph 9 of the Grounds - with reference to **Danian [1999] EWCA Civ 3000** - does argue that it was incumbent upon the Judge to evaluate risk in though the genuineness of the Appellant's political opinion had been rejected.
17. Notwithstanding that the Grounds have not directly engaged with the section 32 methodology, in the particular context of possible perceived political opinion, it is necessary to address the particular target of challenge upon which permission to appeal has been based: i.e. specifically the Judge's finding at paragraph 50 - "*there was little evidence, if any, to support [the] submission that all people who protest against the authorities were at risk*".
18. For completeness and for the avoidance of any doubt I note that the opening sentence at paragraph 8 of the Grounds - "*At [50] the Judge states that there was little evidence if any that protesters are at risk.*" - does not accurately reflect what the Judge stated at paragraph 50. The Judge did not use words to the effect that there was insufficient evidence that protesters are at risk, but rather that there was insufficiency of evidence "*that all people who protest against the authorities were at risk*".
19. In the premises it is necessary to understand this finding in context. In circumstances where the Judge found that the Appellant did not have any genuine political commitment, it was necessarily the case that the Judge did not anticipate that the Appellant would engage in protest if returned to Iraq - and, implicitly, the reason that he would not do so was not because of a fear of the consequence but because of a lack of interest in politics. It follows that the reference to 'protesters against the authorities' has to be understood as those taking part in protest in the UK.
20. To this extent identification of materials speaking as to how protesters active in Iraq are dealt with, is not directly on point.
21. Indeed, we are in the jurisprudentially well-traversed territory of those who might be considered to be 'hangers-on': see **YB (Eritrea) [2008]**

**EWCA Civ 360, BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC) and KS (Burma) [2013] EWCA Civ 67.**

22. In **YB (Eritrea)** Lord Justice Sedley observed that where there is evidence that a particular regime suppresses political opponents it requires little or no evidence or speculations to arrive at a strong possibility that its foreign legations film or photograph nationals who demonstrate in public against the regime, and have informers among the ex-patriate oppositional organisations who can name the people filmed or photograph; similarly it requires little affirmative evidence to establish a probability that the intelligence services of such regimes monitor the Internet for information about oppositionist groups. However, the concept of a 'hanger-on' was identified, and further considered in the cases of **KS** and **BA** – albeit in the context of Burma and Iran, and on the basis of the particular evidence filed in those appeals. It follows, in my judgement, just as it would be naive to suggest that authoritarian states do not monitor diaspora activity, in the absence of any evidence to the contrary it would be naive to suggest that such regimes are not sufficiently sophisticated as to be able to identify those that are significant players, or that they would seek to waste their resources in persecuting somebody on the basis of an essentially disinterested attendance at a demonstration, or demonstrations, and a number of Facebook re-postings.
23. Although, as identified in the grant of permission to appeal, there is no express identification of any relevant passage in the documentary 'country information' evidence, and, moreover, there is no evidence before me identifying any specific passages drawn to the attention of the First-tier Tribunal beyond the general references to submissions at paragraphs 47-49 of the Decision, Ms Sepulveda took me to a number of documents in the evidence before the First-tier Tribunal that she submitted were pertinent.
24. I was referred to passages in the 2022 US State Department report on Iraq, a news article dated 4 November 2019 reporting on a Human Rights Watch statement regarding the arrest of persons backing protests on Facebook, and a 2022 Freedom House report. I was also referred to the Skyline Report, but Ms Sepulveda readily acknowledged that the Judge had in fact addressed this report at paragraph 47 of the Decision.
25. The particular passage that I was taken to in the State Department report related to freedom of expression, and Ms Sepulveda highlighted that notwithstanding constitutional protections media and social activists faced various forms of pressure and intimidation resulting in self-censorship due to a credible fear of reprisal. This did not provide evidence that the Appellant's *sur place* activities will excite attention on return. Further, for the reasons already discussed, the Appellant is not going to have to self-censor because, on the findings of the First-tier Tribunal, he has no genuine interest in expressing any sort of political opinion.
26. The news article refers to the arrest of three persons by Iraqi security forces in the Western province (and a fourth person going into hiding), for

posting messages of solidarity with rallies taking place in Baghdad and southern Iraq. Whilst it is to be acknowledged that this article provides evidence of monitoring of Internet activity, it is not apparent who the particular persons arrested were and what their political profile might be over and above their on-line postings. Nor does the article provide any specific evidence that such actions were replicated elsewhere in Iraq at that, or indeed any other, time.

27. The Freedom House report addresses the limitations on 'Internet freedom' in Iraq. There is nothing in this that is directly on point or otherwise assists the aspect of the Appellant's case that is the focus of the challenge.
28. Having considered very carefully the materials to which my attention was directed, I find that there is nothing in them that undermines the Judge's observation that the evidence did not support the notion that all people who protest against the Iraqi authorities in the UK are at risk if returned to Iraq; there is nothing that gainsays the established approach to 'hangers-on' set out in the jurisprudence to which I have referred above.
29. In all such circumstances I find that the Appellant has not made out the challenge to the Decision of the First-tier Tribunal as articulated in Ground 2.

### **Notice of Decision**

30. The decision of the First-tier Tribunal contains no material error of law and accordingly stands.
31. The appeal of DMN remains dismissed.

**I. Lewis**  
Deputy Judge of the Upper Tribunal  
(Immigration and Asylum Chamber)  
**15 December 2024**