



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004787

First-tier Tribunal No: PA/53022/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 9th of May 2024

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

BHM
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms L King of Counsel, instructed by Migrant Legal Project
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

Heard remotely at Field House on 3 May 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) 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 (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. By the decision of the First-tier Tribunal (Judge Seelhoff) dated 3.11.23, the appellant, a national of Iran of Kurdish ethnicity, was granted permission to

appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Boyes) promulgated 19.10.23 dismissing his appeal against the respondent's decision of 10.5.23 refusing his claim for international protection on grounds of his activities as a Kolbar smuggler of alcohol and on grounds of political opinion arising from his *sur place* activities in attending demonstrations and posting on social media.

2. In short, the First-tier Tribunal concluded that the appellant was not a smuggler, not wanted for that or any other reason by the Iranian authorities, and that his political opinions were not genuinely held, that his Facebook account and postings could be deleted and, that his other *sur place* activity would not have brought him to the adverse attention of the regime.
3. Following the helpful legal submissions of both representatives, I reserved my decision to be provided in writing, which I now do. There was no skeleton argument, Ms King relying on the grounds of appeal.
4. In summary, the grounds argue that the First-tier Tribunal (i) failed to provide reasons for rejecting the smuggling claim as not genuine, giving the appearance of bias by reference to the appellant's case being generic of such claims; (ii) failed to provide reasons for finding that the appellant is still in contact with his family in Iran; (iii) applied the wrong standard of proof, requiring documentary proof; (iv) made a material error of fact in relation to the *sur-place* activities; (v) made findings contrary to Country Guidance and objective background evidence; and (vi) made findings contrary to the guidance in XX (PJAK - sur place activities - Facebook) Iran Country Guidance [2022] UKUT 23 (IAC) .
5. Permission was granted on all grounds, though Judge Seelhoff considered that in relation to the third ground the judge was entitled to refer to the absence of corroborative evidence which would have been reasonably available, consistent with paragraph 339L of the Immigration Rules. Nevertheless, Judge Seelhoff considered it arguable that in effect the judge has made only findings and provided no reasons. In particular, it was considered arguable that the judge failed to address the appellant's claim that he had lost contact with the agent and his family number when put on separate boats. The finding that smuggling activities could not bring the appellant within the Convention was considered to be arguably at odds with HB (Kurds) Iran Country Guidance [2018] UKUT 00430 (IAC). It was also considered arguable that the judge erred in stating that Facebook posts were only made after his asylum claim was refused and failed to apply XX.
6. In considering the grounds and the submissions, I must bear in mind that in Volpi & Anor v Volpi [2022] EWCA Civ 464 (05 April 2022) at [65]-[66] the judgment of Lord Justice Lewison, with whom Lord Justice Males and Lord Justice Snowden agreed, set out the following guidance:

“(i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.

(ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.

(iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence

into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.

(iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

(v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.

(vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

7. In relation to the first ground and the claimed absence of reasoning for rejecting the appellant's factual claim from [13] of the decision, it should be noted that at [12] the judge confirmed that all matters and evidence had been carefully considered before findings were made: *"I have considered with care the material and evidence relied upon by the appellant. I have taken into account all of the arguments raised by the appellant and the Home Office."* The grounds assert that the judge does not give any specific detail as to why the appellant's account was found to be weak, unsophisticated, rudimentary, or short on detail, and complaint is also made as to the judge's reference at [19] that the appellant's account is "ubiquitous" in Kolbar claims. However, it was not necessary for the decision to recite all the evidence or to provide a balanced summary of it. Having considered the decision in the round, I am satisfied that adequate reasons are set out between [13] and [19] of the decision.
8. I am satisfied that the First-tier Tribunal did not reject or dismiss the appellant's account merely because it was similar to others seen in the First-tier Tribunal but applied anxious scrutiny to the claim and reached findings open on the evidence and supported by sustainable reasoning. In particular, it is clear from a reading of the decision that the judge found "on balance" that the appellant failed to demonstrate that he was genuinely a Kolbar or that his factual claim is truthful. It cannot be said that the findings were irrational or that no reasonable judge could have reached the same conclusion. Neither does the observation about the claim being generic and lacking specific detail demonstrate actual or apparent bias. The observation that the account was similar to other such claims does not necessarily indicate any bias in the judge. Unarguably, many such claims comprise the same essential elements. There is no error of law disclosed by this ground.
9. Similarly, in relation to the second ground, it was open to the judge to reject the appellant's claim to no longer being in contact with his family in Iran, for the reasons identified at [16] of the decision. Contrary to the grounds, it was not necessary for the judge to set out there the appellant's case on lost contact. The appellant's case was set out in considerable detail from [3] through [8] of the decision and it can be assumed that all the evidence was taken into account without the need for the judge to set it out again in the reasoning. The ground makes the mistake of assuming that the findings were made sequentially as they were drafted in the decision, when the written decision is but a summary of the findings and reasons made only after the judge has read the relevant

findings and reached a conclusion, and not the working out of the decision line by line.

10. I am satisfied that the third ground discloses no properly arguable error of law. Unarguably, the judge has applied the correct standard of proof and makes clear at [15] that corroboration is not required. It was not wrong in law for the judge to observe that some elements of his claim could have been “referenced objectively.” However, that was not the reason for rejecting the claim, the judge only stating that the absence of such evidence lent weight to the respondent’s view that the claim was false, embellished, or a “sewing together” of happenings to others of which the appellant was aware. As Mr Walker submitted, the judge was entitled to take account of the fact that the claim lacked detail.
11. The fourth ground argues errors of fact in relation to the treatment of the *sur place* activities, submitting that the findings are based on an incorrect understanding of the facts and that elements of the appellant’s evidence were absent from the decision and unacknowledged. As stated above, it is not necessary for the judge to set out all of the evidence or to address each and every piece of evidence. As explained in Budhatkoki [2014] UKUT 00041 (IAC), “*it is generally unnecessary and unhelpful for First-tier Tribunal judgements to rehearse every detail or issue raised in a case. This leads to judgements becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.*”
12. The fourth ground asserts, “*Judge Boyes notes that the appellant did not undertake any social media political activity or attend demonstrations until after he was refused asylum.*” The grounds explain that the appellant was posting a significant amount of political content as far back as September and October 2022, less than a year after his arrival and more than 7 months before the refusal of his claim. At [5] the judge had noted the appellant’s first witness statement of 21.7.22 said that he had not been politically active since his arrival in the UK. The judge noted that the appellant entered the UK in November 2021 and claimed asylum the same month. At [11] the judge accurately pointed out that the *sur place* claim was raised only after the refusal letter had been sent out. The second witness statement of 18.7.23, drafted after the refusal decision, is set out in some detail from [6] of the decision and includes the appellant’s accounts of attending demonstrations and Facebook postings. At [22] the judge notes that the appellant had said that he was told to post on Facebook by other asylum seekers claiming on the same grounds. The respondent did not object to the late raising of this element of his claim, after the issue of the refusal decision. The judge also stated: “*The appellant had not shown the slightest interest in politics in Iran before his exit and did not show the slightest interest in politics until after he was told the answer was no to his original claim.*” That is consistent with not raising the *sur place* claim until after the refusal decision was issued.
13. What the judge actually stated at [22] is somewhat different from how it is put in the grounds. The judge stated that “*It is only after his initial claim for asylum is refused does the appellant attend a demonstration and begin his campaign on Facebook.*” For the respondent, Mr Walker asserted that in referring to ‘initial claim’ the judge was not referring to the refusal decision of 10.5.23 but the screening interview stage. That would make sense of the chronology and the use of the phrase ‘initial claim’ as well as the judge’s statement at [11] that the Home Office case was that the *sur place* activities, the Facebook postings and attendance at rallies, were “*nothing more than the appellant trying to*

manufacture a claim in the knowledge that his first claim was bound to fail.” In the circumstances, I am satisfied that there was no error of fact in regard to the treatment of the Facebook postings.

14. The fourth ground also refer to paragraph [2] of the decision but I assume that this is an error, and the intent was to refer to [27] of the decision, where the judge rejected the assertion that people seen in high visibility vests in the windows of a building shown in the photos were connected to the Iranian regime. The judge stated that there was no evidence that the building was the Iranian embassy and that it was preposterous that embassy officials would wear such vests and use mobile phones to take photographs.
15. The grounds and Ms King’s submissions rely on a cross-reference with other photographs said to be of the Iranian embassy and suggest that the judge failed to apply anxious scrutiny. However, it was not for the judge to make a photographic analysis and if there was no clear evidence that the building in the photographs was the Iranian embassy, that was the appellant’s responsibility. The judge was not an expert and not obliged to make side-by-side comparisons of persons and buildings show in photographs. In the circumstances, I find no error of law in either limb of the fourth ground.
16. The fifth ground as drafted asserts that the First-tier Tribunal made two specific findings that depart significantly and without reason from the Country Guidance on Iran and the background evidence.
17. The first relates to the judge’s observation at [17] of the decision that the claimed smuggling activities do not bring him within the protection of a Convention ground. The judge states that the fact that he is Kurdish does not mean in this instance he is at increased risk. The fifth ground argues that the judge departed without reason from Country Guidance on Iran, relying on HB (Kurds) Iran Country Guidance [2018] UKUT 00430 (IAC). HB established at Kurdish ethnicity is a risk factor which when “*combined with other factors*” may create a real risk of persecution or treatment contrary to article 3 ECHR. The respondent’s guidance accepts that a history of smuggling can create a real risk of persecution or serious harm on the basis of ethnicity and that Kurdish ethnicity is a risk factor, as stated at 2.4.6 of the CPIN on smugglers of February 2022: “*Evidence continues to support the findings in HB in that a person will not be at real risk of persecution or serious harm based on their Kurdish ethnicity alone, though when combined with other factors, such as involvement in smuggling, may create a real risk of persecution or Article 3 ill-treatment. Each case must be considered on its facts and decision makers must take into account additional factors, such as actual or perceived political activity, when assessing risk.*”
18. HB does not establish that being a Kolbar *per se* brings a person within the protection of the Convention. Nor is Kurdish ethnicity alone sufficient. Ms King suggested that smuggling alcohol opened the appellant to harsh treatment including inhumane prison conditions and punished by lashes and for that reason he would be a member of a particular social group (PSG). However, that does not appear to be an argument pursued at the First-tier Tribunal appeal hearing. I raised with Ms King that which the judge stated at [17] of the decision, that it was not asserted that that the “smuggling issue” could bring the appellant within the Convention. That there was no such assertion at the First-tier Tribunal appeal hearing does not appear to be challenged in the grounds, though Mr King pointed to the skeleton argument prepared for the First-tier Tribunal where the issue of smuggling alcohol is raised. I also note from the Home Office CPIN on smugglers at 2.3.1-2.3.4 that in general kolbars do fall within the Convention grounds because “*they do not share an innate characteristic, or a common background*

that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it and they do not have a distinct identity in Iran because they are not perceived as being different by the surrounding society.” However, “the question is whether the particular person will face a real risk of serious harm sufficient to qualify for Humanitarian Protection (HP).”

19. In the circumstances, I am not persuaded that there is any properly arguable error of law in the judge’s treatment of this issue and do not accept the submission in the grounds that *“If the Appellant was wanted by the authorities for smuggling alcohol, the country guidance and background evidence would therefore indicate that the Appellant was at risk of persecution because of his ethnicity.”* In any event, it appears from [17] of the decision that this was not a claim pursued at the First-tier Tribunal.
20. Complaint is also made that the judge found it speculative that the appellant’s friend would be tortured for information, when HB had considered objective evidence that the Iranian regime used torture in pre-trial detention to extract confessions. However, given the findings rejecting the claim that the appellant was a smuggler, there is nothing material in this complaint. Whilst there is no doubt that torture is employed by the Iranian authorities, the judge was entitled to point out that there was nothing other than the appellant’s pure speculation that Mohammed had been tortured and given the appellant’s name to the authorities. In the circumstances, this ground is not made out.
21. The last and sixth ground argues that the judge failed to apply and departed from the XX guidance for determining the likelihood that someone criticising the Iranian regime in social media would have come to the adverse the attention of the authorities. It is submitted that the judge failed to assess the appellant’s ‘social graph’, his profile settings, his friends and followers, or the prominence of his photos, or flags or banners he was waving, where he was taking the photographs and with whom. It is submitted that without such an assessment, it was impossible to make reasoned findings as to the risks he faces.
22. In part, this ground depends on the previous grounds including the complaint as to the treatment of the photographs and Facebook postings. However, the judge noted that the appellant had no political affiliation or interest whilst in Iran and, as stated above, only began his Facebook postings in the UK after being advised to do so by other asylum-seekers. The judge was entitled to conclude that the posts did not reflect any genuinely held political opinion. As stated at [29] of the decision, the judge was *“satisfied that there is nothing genuine about the appellant’s facebook profile, his claimed political beliefs or his attendances at demonstrations. He has simply created a false and untrue narrative to seek to remain in the UK when he has not lawful and legitimate right to do so.”*
23. There was no evidence to suggest that the posts had already come to the attention of the Iranian authorities. The posts themselves were not specific or personal to the appellant, being apparently reposts from the posts of others and given the findings in relation to his alleged attendance at demonstrations, no reason why he would have come to any particular adverse attention of the Iranian authorities. The judge also noted that he is illiterate and has no understanding of the content of his postings. In effect, the postings were a cynical device to try and boost his asylum claim. On the evidence, there was no reason why the appellant could not be expected to entirely delete his Facebook account prior to return to Iran. The judge was not required to address XX any further in those circumstances. It cannot be said that the finding in relation to any risk arising

from social media postings was irrational or one which no reasonable judge could have made.

24. In all the circumstances, I am not satisfied that there was any material error in the making of the decision of the First-tier Tribunal.

Notice of Decision

The appellant's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands as made.

I make no order as to costs.

DMW Pickup

DMW Pickup
Judge of the Upper Tribunal
Immigration and Asylum Chamber

3 May 2024