



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004885

First-tier Tribunal Nos: PA/54178/2022
IA/10428/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 8th of May 2024

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

SS
(ANONYMITY ORDER MADE)

and

The Secretary of State for the Home Department

Appellant

Respondent

Representation:

For the Appellant: Mr K Scott (Solicitor), Pickup & Scott Solicitors
For the Respondent: Mr M Parvar, Senior Home Office Presenting Officer

Heard at Field House on 22 April 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. The appellant is a Kurdish citizen of Iran, born in February 2005, who claims to face a risk of persecution in Iran because:

- (a) the Iranian authorities have an interest in him because of his suspected involvement with the KDPI; and
 - (b) his sur place activities.
2. The reason the appellant claims the Iranian authorities have an adverse interest in him is that he escaped capture when a lorry that he was working on was stopped on suspicion of connections to the KDPI. He claims that since his escape it has not been safe for him to remain in Iran as he is suspected of being a KDPI supporter. Amongst other things, he claims that his father told him that the authorities visited his village to make enquires about him.
3. With respect to sur place activities, the appellant claims that since entering the UK in 2021 he has attended demonstrations against the Iranian regime and posted anti-Iranian posts on Facebook. He states that he sees himself as an activist who wants to campaign for Kurdish rights.
4. Following the respondent's refusal of his application for asylum, the appellant appealed to the First-tier Tribunal where his appeal was heard by Judge of the First-tier Tribunal Blackwell ("the judge"). The judge dismissed the appeal and the appellant is now appealing against this decision.

The Decision of the First-tier Tribunal

5. The judge noted that the appellant was a child when the events giving rise to his claim occurred and stated, in paragraph 19, that as a consequence he would "allow significantly more leeway when assessing credibility".
6. The judge found that the appellant had not given a truthful account about events in Iran. He gave two reasons.
7. The first reason was that, according to judge, there were two major inconsistencies in the appellant's account. The judge's summary (and analysis) of the inconsistencies is set out in paragraphs 20 - 21, where he states:
 20. However I did not find the appellant a credible witness. There were two major inconsistencies in his account:
 - (a) before me he said when the police arrived he was inside the lorry and heard the police talking to the driver. He then ran away with 10 other people. He also said this in his witness statement of 10 August 2022. However in his interview he stated he ran away before the police arrived.
 - (b) before me he said that the police did not come to the house in the jungle where he was hiding. However in his witness statement of 10 August 2022 he says that the police came when he was hiding there and arrested 2 of the group and injured another.
 21. The appellant sought to explain away these inconsistencies, saying he was young at the time and it was a while ago. However, these are fundamental elements of his account, not minor details. These relate to what would have been major events in his life. I do not find it plausible in the slightest degree that he would not be able to recall these events, if they did occur.

8. The second reason given judge for not believing the appellant was that he found the appellant's account implausible. The judge stated in paragraph 22:

Furthermore, I find it implausible that 10 people were able to run away from a truck without the Iranian police noticing.

9. The judge rejected the appellant's claim to be at risk because of sur place activities because he found that the appellant's activities were minimal, the Facebook evidence was extremely limited, and his activities were opportunistic. The judge summarised his conclusions on sur place activities in paragraph 29, where he stated:

"Whilst I accept it is plausible that an Iranian Kurd would have anti-regime views, on the evidence before me I find the appellant has not shown he had anti-Iranian views. I find rather he is merely using this as an opportunistic strategy for creating an asylum claim. The very limited nature of the political material before me, combined with the fact that he was unable to give dates of having attended demonstrations, suggests to me that this is being pursued for wholly opportunistic motives."

Grounds of Appeal and Submissions

10. The grounds of appeal are set out in the two paragraphs. The first paragraph makes several submissions about the judge's assessment of the appellant's credibility. I will refer to this as "the credibility grounds". The second paragraph in the grounds makes submissions relating to the judge's analysis of the appellant's sur place activities. I will refer to this as "the sur place grounds".
11. Mr Scott and Mr Parvar made succinct submissions at the hearing which are incorporated into the analysis below.

The credibility grounds

12. In the credibility grounds, several submissions are made about the judge's assessment of the appellant's credibility. I am not persuaded that any of them has merit. I will address each in turn.
13. First, it is stated that the judge did not take adequate account of the fact that the appellant was a child when the events in Iran occurred. I do not accept that this is the case, given that the judge, in paragraph 19, immediately before setting out his assessment of credibility, highlighted that the appellant was a child and stated that he allowed him significantly more leeway because of this.
14. Second, it is stated that the judge did not take adequately into account that the events occurred a long time ago and the appellant was not able to remember all of the details. This submission has no merit because the judge explicitly addressed this in paragraph 21, where he noted the appellant's argument that he was young (and it was some time ago) when the events occurred but found that the inconsistencies were major events in his life where it was not plausible they would be forgotten. In the light of paragraph 21, there is no merit to the contention that this issue was not adequately considered.
15. Third, it is argued that the judge's finding that the appellant was inconsistent about whether the police arrived before or after he ran from the lorry (as set out in paragraph 20(a) of the decision) is undermined by the failure by the judge to

have regard to answers given by the appellant in re-examination on this issue. In order to address this submission, it is necessary to consider the evidence that was before the judge which led him to conclude that the appellant had been inconsistent about when the police arrived.

16. In the asylum interview, at questions 92 to 93, the appellant stated the following.

“92. Question

you mentioned earlier you were stationary, did the Police arrive when you were stationary?

92. Response

Before the police arrived we run away because one of the people in the group told us to run away.

93. Question

Did you know how he knew they were coming?

93. Response

No but there was lots of noise prior to them arrive one of the person told us to run away because that was lots of danger on my life I was about to die there.”

17. In the appellant’s witness statement dated 10 August 2021, the appellant stated in paragraph 32:

“The lorry was stopped by the Iranian authorities. We heard the Iranian authorities interrogating the lorry driver about his KDPI links. One of the boys in the lorry said we had to run and run fast. We all ran away as quickly as we could.”

18. The agreed transcript of the hearing in the First-tier Tribunal records the following on page 3.

“When the police came were you outside the lorry or inside it? and he said I was inside the lorry and I am able to remember.

And you were there when the police arrived? Yes I was there when the police arrived and then when I heard them I started running. I was with others and I was told to run away.

You say you heard authorities talking to the driver about the materials is that correct? As far as I remember yes.

Is it because of this reason that you decided to escape from the lorry? Yes and also those around me told me to run.

...

Then the judge said I don’t understand your answer to that - you were asked why there is inconsistencies between what you said in interview and your statement that you heard the police. What is the reason for inconsistency? There could be slight difference in translation.

Why I should start running without seeing the police coming? I didn't see them. I heard them - when I was inside lorry I heard that they were outside the lorry and speaking and I started running."

19. On page 6 of the transcript, the following is said:

"Mr Scott asked questions in re-examination

To clarify with regards to when you were in the lorry you said you were inside the lorry and heard police talking? Yes.

Then after that you ran away? Yes.

Can you clarify what you meant when you were asked in the interview - you answered 'before they arrived we escaped' what did you mean by that?

I was inside the lorry when I hear other people talking and when they start to come to us we start to run.

You mean when the police were trying to come to you? Before they came to arrest us we ran away."

20. There does appear to be an inconsistency between the appellant's statement in the asylum interview, which is that he ran away from the lorry before the police arrived; and his subsequent evidence, given in his witness statement and orally at the hearing, which is that he fled from the lorry after the police arrived.
21. There is nothing about the way paragraph 20(a) is drafted that supports the contention that the re-examination of the appellant was not considered. The judge stated in paragraph 20(a) that the appellant's evidence at the hearing was that he fled after hearing police outside the lorry. This accurately reflects the evidence given by the appellant, both in cross examination and re-examination. The judge did not need to state that the appellant repeated the same account twice at the hearing: it was sufficient that he accurately described the appellant's account. The judge was entitled to contrast the evidence before him with the answers given by the appellant in the asylum interview. The fact that the appellant was consistent at the hearing (giving the same answer in re-examination as he gave in cross-examination) does not mean that there was not an inconsistency between this evidence and the asylum interview. Moreover, the answers given in re-examination repeat the account given earlier at the hearing, they do not address why the appellant gave a different account in the asylum interview. For these reasons, the submission in the grounds about not-considering the appellant's re-examination is without merit.
22. Fourth, it is submitted in the grounds that the inconsistencies identified by the judge were not fundamental and that the appellant gave a consistent and credible overall account. I not persuaded by this submission for two reasons. First, the judge took the view, as set out in paragraph 21, that the two inconsistencies set out in paragraph 20 were fundamental elements of the appellant's account and not minor details. This is a conclusion that was open to the judge. Second, the judge did not reject the appellant's account solely because there were inconsistencies; he also found - in a finding that is unchallenged - that the account was implausible. Accordingly, the judge was entitled to find, for the reasons given, that the appellant's account was not credible in the light of its implausibility and the inconsistencies in the account given.

The sur place grounds

23. With respect to the judge's assessment of the appellant's sur place activities, it is submitted in the grounds that:
- (a) The judge did not adequately take account of objective evidence and country guidance case law on the risk faced by Iranians who attend demonstrations and engage in sur place activities.
 - (b) The judge failed to consider that even if the appellant's political activity was not conducted in good faith he would still face a risk on return as he would be at the airport and could not be expected to lie about his political activity in the UK.
 - (c) The judge speculated when finding that the appellant would delete his Facebook profile.
24. The assertion in the grounds that the judge failed to consider objective evidence about Iran is not particularised and was not developed at the hearing. I am unable to discern what objective evidence is being referred to. As drafted, this submission has no merit.
25. I am not persuaded that the judge failed to adequately consider relevant Country Guidance case law. Reference is made in the decision to both *XX (PJAK - sur place activities - Facebook) Iran CG* [2022] UKUT 00023 (IAC) and *BA (Demonstrators in Britain - risk on return) Iran CG* [2011] UKUT 36 (IAC). The judge's consideration of these cases needs to be understood in the context of the factual findings that were made. These were that (i) the appellant attended a single demonstration where he held an A4 piece of paper and was part of the crowd; (ii) he provided insufficient evidence of Facebook posts to establish he has anything other than a minimal social media presence; and (iii) his (very limited) sur place activities are opportunistic. The extant Country Guidance on Kurds in Iran makes clear that the Iranian authorities have a "hair-trigger" approach to those suspected of or perceived to be involved in Kurdish political activities or support for Kurdish rights; and that even low level activity can give rise to a risk. However, Kurdish ethnicity alone, even combined with illegal exit, does not give rise to a risk. Given the judge's findings of fact, it was consistent with the extant Country Guidance case law, and therefore open to the judge, to find that the appellant (a) would not have come to the attention of the authorities; (b) could delete his limited Facebook profile; (c) would not need to hide any protected beliefs on return; and (d) would not face a risk on return on account of activities in the UK.
26. The grounds submit that the judge was speculating when he found that the appellant would delete his Facebook account. In *XX*, the following is stated (in paragraph 9 of the headnote), in respect of considering whether an individual will delete a Facebook account:

In deciding the issue of risk on return involving a Facebook account, a decision maker may legitimately consider whether a person will close a Facebook account and not volunteer the fact of a previously closed Facebook account, prior to application for an ETD: *HJ (Iran) v SSHD* [2011] AC 596. Decision makers are allowed to consider first, what a person will do to mitigate a risk of persecution, and second, the reason for their actions. It is difficult to see circumstances in which the deletion of a Facebook account could equate to persecution, as there is no

fundamental right protected by the Refugee Convention to have access to a particular social media platform, as opposed to the right to political neutrality. Whether such an inquiry is too speculative needs to be considered on a case-by-case basis.

27. The judge's finding that the appellant would delete his Facebook profile was not based on speculation; it was based on findings that (i) the appellant's Facebook presence is extremely limited and (ii) his account was part of an opportunistic strategy to claim asylum. These are clear reasons which support the finding that the appellant would delete the account to avoid any risk that might arise as a result. I am therefore not persuaded by the submission that the judge erred by speculating about whether the appellant would delete his account.
28. For these reasons, I am satisfied that the judge, for the reasons given, was entitled to find that the appellant would not face a risk on account of his sur place activities.

Notice of Decision

29. The decision of the First-tier Tribunal did not involve the making of an error of law and stands.

D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

3.5.2024