



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

Case No: UI-2023-005248

First-tier Tribunal Nos: PA/50474/2023  
LP/01833/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 24<sup>th</sup> May 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BAGRAL**

**Between**

**SA**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr F Ahmad, Legal Representative, Hanson Law Ltd  
For the Respondent: Ms J Isherwood, Senior Presenting Officer

**Heard at Field House on 5 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**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Mehta (the judge<sup>2</sup>) dated 11 October 2023, who dismissed his appeal against a decision by the Secretary of State dated 16 January 2023 refusing his protection and human rights claim.

## Background

2. The appellant is a citizen of Iran. He is of Kurdish ethnicity. He entered the United Kingdom on 21 October 2020 and claimed asylum. The primary basis of his claim centred around his political opinion, perceived or otherwise, based on his activities in Iran, delivering KDPI material, and on his political activities in the United Kingdom *viz.* attendance at demonstrations and Facebook posts displaying opposition to the Iranian regime.

## The Decision of the Judge

3. The judge rejected the appellant's account to be of adverse interest to the Iranian regime. The judge found the appellant's account of his political activities in Iran was implausible and that his attendance at demonstrations in the United Kingdom and his Facebook posts were contrived in order to strengthen his asylum claim. The judge referred to XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 23 and set out extracts from HB (Kurds) (Iran) [2018] UKUT 430 and AB and Others (Internet activity - state of evidence) [2015] UKUT 257 and found that whilst the appellant would be questioned by the authorities on return to Iran, it was unlikely his name would feature in a Google Facebook search because he could delete his account and if he did so "...30 days before an emergency travel document was applied for [that this would] neutralise the risk on having had a critical Facebook account". The judge further concluded that the appellant did not have a significant political profile in the United Kingdom, and so it was unlikely that he would be questioned about his deleted account and nor did the Iranian regime "...have the resources to carry out a mass search of peoples Facebook accounts" (at [26]). The judge accordingly dismissed the appeal on all grounds.

## Grounds of Appeal

### *Ground 1 - Failure to give adequate reasons*

4. The judge failed to give reasons for finding that the appellant's claim is implausible.

### *Ground 2 -The judge made contradictory findings*

5. The judge contradicted himself in finding that the appellant's political activities were opportunistic.

### *Ground 3 & 4 - Failure to adequately apply Country Guidance*

6. The judge set out extracts from HB but failed to apply the guidance to the facts of the appellant's case.

### *Ground 5 - The judge erred in his consideration of the appellant's Facebook account*

7. The judge made an assumption about whether the appellant's Facebook account would be checked by the authorities and applied a higher standard of proof. The judge's finding that accounts are stored for 30 days before deletion is not in accordance with XX (PJAK).

## Rule 24 response

8. The respondent did not provide a Rule 24 response.

## Permission to Appeal

9. Permission to appeal was granted on renewed application by Upper Tribunal Judge Owens on 23 February 2024 on all grounds. In the body of the grant of permission it is stated that: “It is arguable that the judge’s approach to the appellant’s plausibility is flawed and that the judge misapplied HB (Kurds) Iran [2018] UKUT 430 (IAC)”.
10. Both representatives made submissions. Mr Ahmad’s submissions to some extent ventured impermissibly beyond that what is stated in the grounds of appeal. There was no application to amend the grounds and I have thus confined my consideration to the grounds on which permission to appeal was granted. It is not necessary to recite the submissions of the representatives, but they are reflected where necessary in order to support my conclusions.

## Discussion and Analysis

11. The appellant’s claim is not factually complex. It is based on events that occurred in Iran and events post the appellant’s arrival in the United Kingdom. As to the events in Iran, it is the appellant’s claim that when he was a minor, and approximately three to four months before he left Iran illegally in September 2020, he helped his uncle who was either a member or a supporter of the KDP-I, deliver KDP-I material on two occasions. Thereafter his family home was raided by the authorities and he fled Iran. As to the events in the United Kingdom, it is the appellant’s claim that he attended demonstrations against the Iranian regime and posted anti-regime material on his Facebook account. These claims were examined in detail during the appellant’s asylum interview and essentially the respondent’s view of the appellant’s claim was that it was inconsistent, implausible, partially based on hearsay and lacking in detail. The appellant provided a detailed riposte to the respondent’s refusal in his appeal witness statement dated 2 October 2023.
12. The judge’s findings are set out at [10]-[26]. My general observation is that whilst these findings appear to be of some length the judge’s analysis of the appellant’s case is set out at [16]-[20] and [26]. The remaining paragraphs mainly consists of extracts from case law as well as standard paragraphs on legal principles. Judges are being encouraged to avoid cutting and pasting at length and to focus on the real issues in the appeal – see for instance TC (PS compliance – “issues based” reasoning) Zimbabwe [2023] UKUT 164 (IAC).
13. I take each ground in order.

### *Ground 1*

14. The complaint in this ground is that the judge failed to give adequate reasons for finding the appellant’s claim is implausible. The grounds refer to paragraphs [18]-[19] of the judge’s decision. At [18] the judge finds the appellant’s claim is fabricated and, at [19], he finds the appellant’s attendance at demonstrations in the United Kingdom and his Facebook posts are contrived and opportunistic. This latter finding is predicated to some extent on the judge’s earlier finding at [17] that the appellant was not involved in any political activity in Iran. In oral submissions Mr Ahmad referred to paragraphs [17]-[19] of the judge’s decision. Ms Isherwood, however, submitted that as paragraph [17] was not expressly cited in the grounds, it was not open to Mr Ahmad to raise it in oral submissions. I do not agree with Ms Isherwood’s point of view. Whilst the grounds do not expressly cite paragraph [17], it is clear from the body of the grounds, that issue is taken with the judge’s findings at [17] as the grounds expressly quote from it, and which were identified in the grant of permission as being arguably flawed.

15. It is perhaps understandable why Ms Isherwood adopted that position because paragraph [17] is of some significance. As Ms Isherwood put it, the judge at [17] determines the “core issues”. In other words, it encapsulates the entirety of the judge’s reasons for rejecting the incidents the appellant claims took place in Iran, the rejection of which fed into the judge’s assessment of the appellant’s motives behind his sur place activities in the United Kingdom at [19].

16. At [17] the judge makes his primary finding as follows:

“17. The core issue in this appeal the appellant’s political opinion [*sic*]. The appellant alleges that three to four months before leaving Iran he had helped his uncle to deliver KDPI related materials on two occasions. After delivering the material for a second time the appellant alleges that his family home was raided by the Iranian security services which prompted him to leave Iran illegally in September 2020. I do not find it plausible that the appellant’s uncle would trust the appellant who was a minor to deliver such politically sensitive material. It is not plausible that the appellant would give his details to the person who he allegedly delivered the leaflet to. The appellant had no previous political affiliation or learning yet he was approached by his uncle to deliver leaflets. This is not plausible. When the appellant allegedly delivered these leaflets, he was given a code word. It is not plausible than that the appellant would readily offer up his details when all he was told was to give the code word [*sic*]. The appellant’s account as to being recruited by his uncle when he was a minor is externally inconsistent with the objective evidence. The Country Policy and Information Note (Kurds and Kurdish political groups) at paragraph 10.6 confirms that KDP-I have secret members members to help with tasks such as described by the appellant [*sic*]. It is therefore not credible that the appellant’s uncle would approach him to carry out these activities.”

(my emphasis)

17. Upon reaching these conclusions the judge at [18] found these claims were fabricated. The issue is whether this reasoning is adequate. I bear in mind that it is trite that a decision can be lawful, notwithstanding that it is imperfectly expressed and that the judge does not need to set out all of the evidence or the reasoning, but it is also the position that the reasoning must be adequate for the party who loses the appeal to understand why their appeal has been dismissed and a judge must say enough to show that care has been taken and that the evidence as a whole has been properly considered (Simetra Global Assets Limited v Ikon Finance Ltd and Others [2019] EWCA Civ 1413). In this appeal, Ms Isherwood’s primary argument in respect of this ground is that the judge’s finding that the appellant’s claim is implausible is adequately reasoned. I do not agree. I am satisfied that the reasoning is deficient.

18. At [17] the judge’s findings are opaque and much of what is said is conclusionary. I observe that these conclusions originate from matters relied on by the respondent in his refusal letter under the sub-heading “Plausibility”. The appellant had provided a detailed statement in response to the refusal. His evidence was that his uncle provided for the family and he treated him like a father. He explains amongst other things that his uncle who was either a member or supporter of the KDP-I, may have used him to deliver materials because no-one would be suspicious of a minor, and he goes on to explain why he gave his details to his uncle’s friends on delivery. The judge does not set out the appellant’s evidence and nor does the judge demonstrate that he has properly engaged with and assessed the appellant’s evidence in response to the refusal. Further, the respondent’s challenge to the credibility and plausibility of the appellant’s account is addressed in detail by reference to the evidence in the appellant’s skeleton argument at paras 14 to 38. It is plain that many of the submissions

made therein are not engaged with by the judge at [17]. The appellant is entitled to expect the evidence on which he relies to be fully considered by the judge, and for the judge to provide adequate reasons explaining why that evidence fell to be rejected. I find that much of what is said at [17] are conclusions on plausibility, and do not adequately inform the appellant why his evidence in response was not accepted.

19. Ms Isherwood prayed in aid the judge's finding that the appellant's claim is inconsistent with the respondent's CPIN at paragraph 10.6 as being sufficient to support an adverse finding overall. I have read the entirety of that section. It could be said that the judge's summary is not entirely accurate, but this is not a point that is taken by Mr Ahmad, and so I exclude it from my consideration. I am nonetheless satisfied that this finding cannot properly stand as a catch-all conclusion capable of overriding the task incumbent on the judge to demonstrate that he has considered the evidence and provide adequate reasons why the appellant's evidence was not accepted. I am thus satisfied that the judge's reasoning is not sustainable, and that ground 1 is made out. This in itself is sufficient to set aside the judge's decision as the error infects the judge's credibility assessment overall, but I shall nonetheless consider the remaining grounds.

## Ground 2

20. This ground is shortly stated. The grounds assert that there is a contradiction in the judge's findings in that at [19] the judge found the appellant's political activities in the United Kingdom were opportunistic, but at [21] failed to make any assessment of risk in light of that finding. I think the reference in the grounds to a contradiction is misconceived because all the judge was doing at [21] was reminding himself by reference to relevant case-law that opportunistic activity may give rise to persecution on return. There is no apparent contradiction between [19] and [21]. However, the crux of ground 2 appears to be that having found at [19] that the appellant's "...Facebook posts and attendance at the demonstrations is a political position which has been contrived to further strengthen his asylum claim" *[sic]*, the judge ought to have assessed risk on that basis and failed to do so. I agree to the following extent.
21. At [19] and, indeed at [20], the judge appears to have accepted the appellant's evidence that he attended demonstrations outside the Iranian Embassy. The judge's findings are limited as to how many demonstrations the appellant attended, the nature of the event(s) attended and the appellant's involvement. It is the appellant's evidence that he attended "more than 10 demonstrations in the UK always outside the Iranian Embassy..." and that his level of participation involved "[holding] flags, posters of Mahsa Amino, banners, shouting, chanting". It is not plain on reading the judge's decision why this opportunistic activity "would not give rise to situations in which asylum should be granted" (at [21]). There is in my view a gap or disconnect, rather than a contradiction, between [19] and [21]. The judge's findings at [19] concerning the deficiencies in the appellant's evidence, for instance, in relation to when he first attended a demonstration in the United Kingdom, upon which Ms Isherwood relied, does not fill that gap, and did not preclude the judge from making a clear assessment of risk taking into account the extent and level of the appellant's opportunistic activities. I thus agree with Mr Ahmad that the judge failed to adequately assess risk in light of the appellant's opportunistic political activities. I am satisfied that ground 2 is made out.

*Ground 3 & 4*

22. I am satisfied that ground 3 & 4 are also made out. The judge set out extracts from HB at [23] to [25]. At [23] the judge cites headnotes (3) to (7) and (10) of HB; at [24] paragraphs 94 to 97 of HB are quoted, and [25] quotes paragraph 114. Whilst this demonstrates the judge was aware of the relevant country guidance, I find the judge has not properly applied that guidance to the appellant's case. It is uncontentioned that a recitation of the guidance is not sufficient to demonstrate its application. The judge must demonstrate that he has evaluated the evidence in light of applicable guidance. Ms Isherwood submits that the judge applied the guidance because he recognised the appellant will be questioned on return and had considered all the evidence which demonstrates that he applied headnote (9) of HB. I am not persuaded that this demonstrates the judge did not misapply HB. First, headnote (9) of HB for some inexplicable reason is omitted from the judge's cited extract of HB at [23]. Headnote (9) makes clear that each case depends on its own facts and that even low-level activity if discovered involves risk. The judge's assessment of the extent and level of the appellant's opportunistic activity was not adequately considered for the reasons given in ground 2. Headnote (9) therefore does not dispose of ground 3.
23. Whilst the judge did accept at [26] that the appellant would be questioned on return, the judge started from the premise that the "Iranian Authorities may do a search of Facebook accounts on google but it is unlikely the appellant's name will come", which is contrary to paragraph 114 of HB (cited at [25]) that it is part of the routine process to look at an internet profile, Facebook and emails of a returnee, and not, that they *may* do such a search. The judge's understanding that the authorities *may* conduct a search is speculative rather than an assumption, but the characterisation makes no difference - the judge did not apply HB correctly.

*Ground 5 – The judge erred in his consideration of the appellant's Facebook account*

24. I am not satisfied that this ground is made out. The judge appears to conclude at [26] that the appellant's return would not elicit the Iranian authorities 'hair trigger' reaction because the appellant did not have a significant presence as an opposition supporter; if he deleted his account 30 days before an emergency travel document was applied for that this "will" neutralise the risk, and, the Iranian authorities did not have the resources to carry out mass search of peoples Facebook accounts.
25. I reject the submission that the judge here was applying a higher standard of proof, this is not supported on a holistic reading of the decision. Nor am I persuaded that the judge was wrong in stating that deletion of the account 30 days prior to the application for an emergency travel document neutralises risk because this accurately reflects the guidance given at [90] and [103] of XX (PJAK). Mr Ahmad's submission that this is wrong because it takes 90 days to delete an account is taken from the evidence before the Tribunal from Facebook Ireland, which the Tribunal did not adopt as its guidance, and this submission fails to recognise that the evidence was that it takes 90 days from the beginning of the deletion process to delete all the things the user has posted during which the deleted information is not accessible to other users (at [31] & [84]). If the deleted information is not accessible to other users during that period, it is not clear how the judge was wrong to find that deletion of the account will neutralise the risk. I agree with Ms Isherwood that Mr Ahmad is selecting references from XX (PJAK) that are not reflective of its findings.

26. In relation to the finding that the Iranian authorities do not have the resources to carry out a mass search of peoples Facebook accounts, Mr Ahmad submits that this is contrary to the findings in XX (PJAK) and the grounds purportedly quote from paragraph 67 thereof:

“There is of course a limit to quite how much data can be collected - monitoring a billion people would be unrealistic, but several tens of millions entirely plausible.”

27. Again, Mr Ahmad’s grounds do not accurately reflect the findings in XX (PJAK). First, the above quote is not from paragraph 67 but paragraph 36. Here the Tribunal was setting out the evidence of Dr Clayton. What the grounds fail to point out is that the Tribunal did not accept Dr Clayton’s evidence to this extent and concluded at paragraph 87 that: “...*the evidence fails to show it is reasonably likely that the Iranian authorities are able to monitor, on a large scale, Facebook accounts, in the sense described by Dr Clayton, of the automated extraction of data. More focussed, ad hoc searches will necessarily be more labour-intensive and are therefore confined to individuals who are of significant adverse interest*”.
28. The judge’s findings accurately reflect these conclusions and have not been shown to be in error, let alone material error.
29. Notwithstanding, having found that grounds 1 to 4 are made out, I set aside the decision.

### **Disposal**

30. Mr Ahmad submitted that the appeal should be remitted to the First-tier Tribunal because of the extent of the factual findings to be made, and Ms Isherwood was in agreement with that course of action unless I found that the findings in paragraph [17] were sustainable, which I have not. I have considered the guidance and case law and in this appeal, I find that it is appropriate to remit the appeal to the First-tier Tribunal to be heard de novo because of the extensive findings which need to be made, and because the decision of the First-tier Tribunal is vitiated by error in respect of its credibility assessment, that the appellant should be entitled to have a second hearing of his appeal by the First-tier Tribunal.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal involved the making of an error of law.

The decision is set aside in its entirety.

The appeal is remitted to the First-tier Tribunal to be heard de novo by a judge other than First-tier Tribunal Judge Mehta.

***R. Bagral***

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
5 May 2024