IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000598

First-tier Tribunal Nos: PA/55689/2022
LP/02446/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 17th of October 2024

Before

UPPER TRIBUNAL JUDGE KEITH

Between

MR (IRAN)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr L Singh, Solicitor-Advocate, agent for Hanson Law Ltd
For the Respondent: Ms S Simbi, Senior Presenting Officer

Heard at Birmingham Civil Justice Centre on 23rd 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. The reason for this order is that the appeal relates to a claim of asylum.

DECISION AND REASONS

1. These written reasons reflect the full oral reasons which I gave to the parties at the end of the hearing.

Preliminary Issue

2. A preliminary issue has arisen as to whether to adjourn this hearing. Both parties originally sought an adjournment on the basis that following the respondent's Rule 24 response and the appellant's representative's handwritten notes of the First-tier Tribunal ('FtT') hearing, said to have not been verbatim, but accurate, the parties needed to listen to the audio recording of the FtT hearing.

3. Deputy Upper Tribunal Judge Chamberlain gave a series of sequential directions on 6th June 2024. The representatives were to confirm whether they had notes of the FtT hearing. If not, they were to liaise with the Upper Tribunal and to make an appointment to listen to the audio recording of the FtT hearing. The representatives did in fact have notes of the hearing, but a case worker acting for Hanson Law Ltd then asked the FtT for a recording on 1st July 2024. The reason is not clear, and the case worker has since left Hanson. I have to consider whether, following the principles of Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC), in refusing an adjournment to allow the parties to listen to the FtT recording, it would deprive either party of a fair hearing. I bear in mind that there was already a previous adjournment on 6th June 2024.

4. Having explored the issue with the parties, Ms Simbi, on behalf of the respondent, changed her view for two reasons. First, in relation to a question of whether there had been a concession or not, the notes included a reference to disputing the appellant's illegal exit from his country of origin. More importantly, at §33, the FtT Judge had analysed the claim in the alternative, namely on the basis of the appellant fleeing illegally. The Judge concluded that even if he were wrong, illegal exit would not be a significant risk factor, applying HB (Kurds) Iran CG [2018] UKUT 00430.

5. Second, in relation to the question of whether the appellant had been cross-examined in the FtT on what measures he took to mitigate the risks against him, based on the summary notes produced by the appellant's own legal representative, it appeared that he was asked such questions.

6. Whilst Mr Singh added that he was still instructed to seek an adjournment, he did not demur from, and had nothing to add to Ms Simbi's submissions.

7. As I explored with the parties, the purpose of allowing representatives to listen to a recording is not simply in the hope that "something will turn up". The appellant's own representative has produced handwritten summary notes which appear to support the contention in the Rule 24 response that the appellant was cross-examined as to what safety measures he took to avoid any adverse attention. The representatives were unable to identify what would be gained by listening to the recording of the FtT hearing. I am therefore satisfied that it is not appropriate to adjourn this hearing for a second occasion, where the parties have not complied with Judge Chamberlain's directions and there appears to be no satisfactory reason for listening to the FtT recording. Mr Singh's continuing application to adjourn is therefore refused.

Background

8. Having dealt with the preliminary matter I turn to the background of the appeal. The appellant appeals against the decision of Judge Brooks of the First-tier Tribunal, in a 'Virtual Region' hearing, heard on 17th November 2023. The Judge dismissed the appellant's appeal on protection and human rights grounds. The Judge identified at §10 of the written reasons the following issues:

(i) the credibility of the appellant's account;

(ii) whether the appellant left Iran illegally;

(iii) whether the appellant would be at risk on return due to his association with the Peshmerga; and

(iv) whether the appellant would be at risk on return due to his 'sur place' activities in the UK.

The Judge indicated at §11 that the appellant's claims under Articles 2, 3 and 8 of the ECHR would stand and fall with the protection claim. The Judge directed herself to the law, in respect of which there is no appeal, at §§12 and 13.

9. The Judge went on to consider the appellant's activities in Iran, followed by his sur place activities in the UK. The Judge did not find it reasonably likely that the appellant had come to the attention of the Iranian authorities by virtue of assisting the Peshmerga, by providing them with bread, (see §16). At §17, the Judge concluded that the appellant's account was vague and lacking in detail and he had not explained, for example, whether he took different routes each time he delivered the bread or whether the Peshmerga were in different places on different days. In cross-examination the appellant said that sometimes he took bread in the afternoon, but he had provided no information as to the precautions he took given that he was delivering bread during daylight hours. That was a core activity which the appellant said put him at risk and which, in the absence of detail, the Judge concluded undermined the appellant's credibility. The Judge also went on to consider the appellant's account of how somebody he knew had been arrested, whom it is unnecessary to name. At §18, the Judge found that there was an inconsistency by reference to questions [86], [91] and [101] of the asylum interview records, in particular whether he had heard via his mother on two occasions or alternatively whether he had learnt from someone else of the arrest. The Judge did not regard the appellant's account as reasonably likely to be true. He did not regard it plausible that the appellant gave bread to the Peshmerga, or that the authorities were looking for the appellant because of this. The Judge rejected any adverse interest in Iran.

10. The Judge then turned to the question of sur place activities in the UK at §20 onwards. The Judge accepted that the appellant had a Facebook account with around 1,440 friends, but many of the posts he made only attracted a handful of comments or likes. The Judge considered the fact of demonstrations in the UK of which there were photographs and also of videos and at §25, the vagueness of the appellant's claimed political activities. The Judge said that it was not unreasonable to expect the appellant to be able to explain what he was protesting about. The Judge was concerned about what he regarded as the opportunistic timings, particularly after an initial refusal of the appellant's asylum claim. The Judge found that the sur place activities were contrived in the sense of being engaged with for bad faith purposes. Nevertheless, the Judge considered, at §26, that the ultimate question was whether the appellant's behaviour, even if contrived, would result in a risk of persecution on return. At §27, the Judge recited the gap in the evidence found in XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 00023 (IAC), about Facebook accounts being hacked and monitored, and the Country Policy and Information Note, Iran: social media, surveillance and sur place activities, dated March 2022, (the 'CPIN') which suggested monitoring of high-ranking activists outside Iran, with more focused

searches confined to individuals who were of significant interest. The Judge concluded at §30 there was no evidence that the appellant had received any adverse comments or threats on his Facebook account and no evidence that he had already been the subject of targeted online surveillance either because of his Facebook posts or attendance at demonstrations. The Judge concluded at §31 that the appellant's sur place activities did not reflect his genuine political opinions or political beliefs and although the appellant claimed that he would not delete his Facebook account, the appellant would truthfully confirm, if questioned on return, that he had no interest in Kurdish activities.

11. The Judge then assessed the appellant's claim to have left Iran illegally. The Judge did not find it reasonably likely that he had needed to leave illegally but crucially even if the Judge were wrong, illegal exit of itself would not amount to a significant risk factor even given the appellant's Kurdish ethnicity. Following HB, the mere fact of being a returnee of Kurdish ethnicity with or without a valid passport and even if combined with illegal exit did not create the risk of persecution or treatment in breach of Articles 2 or 3. The Judge dismissed the appellant's appeal under Article 8 at §36.

The Grounds of Appeal

12. Following the initial refusal of permission to appeal, the appellant renewed his application to appeal to this Tribunal on four grounds, on which permission was granted.

13. Ground (1) was that the Judge had failed to consider that the appellant was not asked in cross-examination whether he took different routes when delivering bread and in particular it was held against him that he had not answered how he took precautions, about which he had never been challenged.

14. Ground (2) was that the Judge had failed to consider the appellant's skeleton argument or his answer in his asylum interview to question [101], where it was clear that his mother could not have known about the arrest of third party, which answered any suggestion of inconsistency in the appellant's answers.

15. Ground (3) was that the Judge had failed to correctly consider the appellant's sur place activities and the timing of Facebook posts was irrelevant to the genuineness of those activities. The Judge had picked and chosen elements of the CPIN and had sought direct evidence of monitoring by Iranian authorities, contrary to the authority of WAS (Pakistan) v SSHD [2023] EWCA Civ 894 and ASO (Iraq) v SSHD [2023] EWCA Civ 1282. The Judge had failed to consider AB and Others (internet activity – state of evidence) Iran [2015] UKUT 00257 (IAC) which confirmed that risks remained even when a person deleted their Facebook account.

16. Finally, ground (4) was that the Judge had failed to consider the so-called "pinch point" at (see XX at §91, in the context of the appellant's Kurdish ethnicity and at the time he applied for an emergency travel document.

17. Mr Singh said that he did not seek to elaborate upon the grounds already set out.

The Respondent's Rule 24 Response

18. Ms Simbi did not seek to elaborate upon the Rule 24 response.

19. In relation to ground (1) the appellant had been cross-examined in relation to how he mitigated the risks against him in Iran.

20. In relation to ground (2) the ground of appeal was nothing more than a disagreement with the Judge's decision.

21. In relation to ground (3), the Judge had given very detailed reasons for why the sur place activities were contrived. The Judge considered all of the evidence at §20. Even on the appellant's own evidence, one of the so-called demonstrations was in fact to celebrate Iranian New Year or Nowruz. The Judge had recited the case law of XX, which stated that the evidence failed to show it was reasonably likely that the Iranian authorities could monitor on a large scale, Facebook accounts.

22. Concerning ground (4), the Judge had unarguably considered the issue of the appellant's claimed illegal exit, in particular in the context of the appellant's Kurdish ethnicity.

Discussion and Conclusions

23. I turn to each of the grounds in turn.

24. In relation to ground (1) I am satisfied that the notes taken by the appellant's own representative at the hearing adequately demonstrate that the appellant was challenged and cross-examined in relation to the steps he took to mitigate the risk against him in Iran. He was asked about his delivery of bread to the Peshmerga and was asked the following:

> "Did you use any specific measures or simply smuggle? Repeat question. Did you use any special measures to help you smuggle?
>
> Yes I would keep normal life, not talk to people and secretly smuggle these."

25. The Judge was unarguably entitled to consider that when asked what special measures the appellant took to mitigate the risk of helping the Peshmerga, his evidence was that he led a normal life and did not talk to people. The Judge was also unarguably entitled to consider the limited evidence about mitigation of risk. As submitted in the Rule 24 response, it was open to the appellant to have been re-examined and to have elaborated upon his evidence further. The Judge did not err, as the grounds contend, in considering the absence of detail and regarding the account as vague.

26. In relation to ground (2) I have considered the appellant's answer to question [101] in the Asylum Interview Record, and the skeleton argument and the submission that the Judge erred in finding the appellant's answers inconsistent. I do not myself make any finding and I am conscious that it is open to the Judge to have reached her findings, provided they are not perverse and she has not misunderstood the evidence. The evidence records:

> "When my mother called me to say that the Et'Alaat are looking for me. My uncle was with me and I told him what my mother was saying. When I told my uncle, he called (a brief phone call) a friend. When he spoke to his

friend his friend said X [name] was arrested. That friend knew X [name] as well".

27. That may be one alternative explanation for how the appellant had learnt of the arrest, but it was unarguably open to the Judge to conclude that there was a potential inconsistency with the answer to question [86] ("my mother called us to advise us of his arrest."). The Judge's reasons for doing so were adequately explained at §18. What weight the Judge placed on those inconsistencies was a matter for her.

28. In relation to ground (3) and the alleged failure to consider 'correctly' sur place activities, the Judge was entitled to consider the timing of the activities, in assessing whether the activities were contrived. The contrivance of sur place activities does not take away the fact that somebody may nevertheless be at risk, but it was relevant to the question of whether, as a consequence, if the appellant has not already come to the notice of the Iranian authorities, he would close his Facebook account. The Judge did not impermissibly seek direct evidence of monitoring by the Iranian authorities, rather she made a qualitative assessment of exactly what profile the appellant had; the 'likes' or lack of 'likes' of the various Facebook 'posts', notwithstanding a large number of 'friends.' In the circumstances, the Judge concluded that the appellant's activities were contrived and there was no real risk that he had been the subject of targeted online surveillance (§30). The Judge did not err in her assessment of the ability of the appellant to close his Facebook account, even noting his Kurdish ethnicity and the so-called "pinch-point" on return. In making that assessment, the Judge specifically referred to the appellant's Kurdish ethnicity (§33).

29. In relation to ground (4), the Judge also made an alternative assessment, even had the appellant left Iran illegally (§33). I accept the respondent's reply to this ground of appeal that it amounts to as disagreement with the Judge's findings, rather than amounting to an error of law.

Notice of decision

30. **The appellant's grounds do not disclose any error of law by the Judge.**

31. **The Judge's decision stands, and the appellant's appeal is dismissed.**

J Keith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

16th October 2024