



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-001000
First-tier Tribunal No:
PA/53694/2023
LP/02686/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 27 June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

H H R
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Vokes, Counsel

For the Respondent: Ms Everett, Senior Home Office Presenting Officer

Heard at Field House on 10 June 2024

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (512008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

1. Both the Appellant and Respondent's representatives appeared via CVP.

2. The Appellant is a national of Iran, aged 19, who on 5 July 2021 applied for asylum. The Respondent refused his application in a decision sent out on 1 June 2023.
3. The Appellant appealed to the First-tier Tribunal on 21 June 2023 and his appeal was listed before Judge of the First-tier Tribunal Dixon (hereinafter referred to as the FTTJ) Judge on 13 December 2023. The FTT Judge dismissed his appeal.
4. Permission to appeal was initially refused by Judge of the First-tier Tribunal Hollins-Tennant but permission to appeal was granted by Deputy Upper Tribunal Judge Chamberlain on 25 April 2024 who found:

“The grounds are arguable. It is arguable that the judge has failed to give adequate reasons for why the appellant’s political beliefs are not genuine. It is arguable that he has erred in his assessment of risk on return. He has accepted that the appellant would be questioned on return, that he exited illegally, and is a Kurd. He finds that the appellant would not have to lie about his activities in the UK, but this must mean that he considers that the appellant should tell the authorities that he has demonstrated against the regime, which is the case whether his beliefs are genuine or otherwise. It is arguable that the judge has failed properly to consider the consequent risk with reference to the relevant caselaw including HB (Kurds) Iran CG [2018] UKUT 00430 (IAC).”

5. The matter was listed for an error of law hearing before me on 10 Jun 2024.

SUBMISSIONS

6. Mr Vokes accepted the FTT Judge made adverse credibility findings between paragraphs [9] to [16], but submitted the FTT Judge materially erred in paragraphs [18] and [19] when looking at the Appellant’s sur place activity by finding the Appellant had not engaged in any genuine political activity.
7. Mr Vokes referred to HB (Kurds) Iran CG [2019] UKUT 00430 (IAC) and submitted that even low level political activity created a risk of persecution for the Appellant. He would be questioned on his return to Iran and if he told them he had been to demonstrations and posted on Facebook then even if his motivations were not genuine, there would be a real risk of persecution as he would be questioned why he claimed asylum. If he told them what he had done then given he is a Kurd, he would be at risk of persecution regardless of his motivation for doing what he did.
8. Mr Vokes referred to his second ground of appeal. As Kurds in Iran were generally mistreated then this ground was also made out.

9. Mr Vokes submitted that if his first ground was made out then the Tribunal could remake the decision. However, if there was only an error in respect of the second ground then a further hearing would be needed.
10. Ms Everett submitted the FTT Judge gave adequate reasons for why the Appellant's political beliefs were not genuinely held in paragraph [11] of his decision. She submitted the second ground was therefore not made out. As for the first ground, advanced by Mr Vokes, Ms Everett argued that HB did not mean he must disclose everything he had been doing. It was perfectly reasonable to require him to delete information he wrote where he did not believe what he had written and so similarly it was necessary to tell the Iranian authorities about views which were not genuinely held especially as adverse finding made about activities in Iran.
11. The FTT Judge had dealt with this matter adequately in paragraph [19] of his decision and she referred to the headnote in XX (PJAK-sur place activities-Facebook) Iran CG [2022] UKUT 00023 (IAC).
12. Mr Vokes responded that Facebook was different to a consideration of a person's beliefs. Everyone returning to Iran would be questioned and he would be asked what his claim had been about and as he was not expected to lie he would say "he supported the KDPI and went on demonstrations and posted on Facebook". With regard to the second ground of appeal even if his only belief was "Kurds were not free" then this would still be a political belief.

DISCUSSION AND FINDINGS

13. Having heard the submissions from both representatives I reserved my decision.
14. The primary argument advanced by Mr Vokes was that the FTT Judge materially erred by finding the Appellant had not engaged in any political activity in this country despite the fact he had attended demonstrations and posted on Facebook. Ms Everett countered this submission stating that the FTT Judge considered the evidence and concluded that any activity undertaken by the Appellant was not genuine. Mr Vokes submitted that it mattered not whether his activities were genuine given the Appellant would be interviewed upon return and would be expected to tell the authorities exactly what he had done in this country. I was referred in particular to the case of HB and XX.
15. Mr Vokes acknowledged the adverse credibility findings made by the FTT Judge in respect of the Appellant's activities in Iran and the grounds of appeal do not appear to challenge these findings. However, Mr Vokes submitted in HB the Tribunal made clear that "Even 'low-level' political activity, or activity that is perceived to be political, such as, by way of example only, mere possession of leaflets espousing or supporting Kurdish rights, if discovered, involves the same risk of persecution or Article 3 ill-

treatment. Each case however, depends on its own facts and an assessment will need to be made as to the nature of the material possessed and how it would be likely to be viewed by the Iranian authorities in the context of the foregoing guidance.”

16. The FTT Judge placed weight on what the Appellant had said in his own interview at Q83 when he stated he had not carried out any political involvement with the KDPI and had simply attended meetings with his father, but had not himself done anything to support the Kurdish cause. The FTT Judge rejected his subsequent claim that he assisted his father in distributing political leaflets in his own village. Save for his claim to support Kurdish independence and freedom the FTT Judge found the Appellant was unable to add any further details as to his purported political beliefs and rejected his claim to have a political profile in Iran.
17. The FTT Judge then proceeded to consider his sur place activities and made it clear he considered these activities through the lens of HB, XX and BA (Demonstrators in Britain-risk on return) Iran CG [2011] UKUT 36 (IAC).
18. The FTT Judge found at paragraph [18] that whilst he had attended at demonstrations there was nothing to indicate he had been anything other than one of the crowd as he played no significant role and there was nothing to suggest there was a real risk that his attendance at the demonstration would have come to the attention of the Iranian authorities especially as his evidence, according to his witness statement, was that he had attended three demonstrations in 2022 and one in July and one in August 2023. Two of those attendances post-dated the refusal of his claim.
19. The FTT Judge also accepted the Appellant had a Facebook account, but having examined his posts concluded there was nothing in the posts to indicate why the authorities would have been aware of his posts bearing in mind the earlier finding that he had no political profile in Iran.
20. The FTT Judge’s conclusion was that any beliefs he had were not genuine and he could therefore, in line with XX, delete his Facebook. The FTT Judge accepted he would be questioned on return especially as he left illegally and he was a Kurd he would not have to lie about any activities in the United Kingdom as they were not genuine.
21. Mr Vokes submits that this approach is materially flawed because of what the Tribunal said in HB at paragraph [9] of the headnote. Mr Vokes repeated the argument advanced by Mr Mohzam before the FTT Judge that he would have to say something when questioned. The FTT Judge addressed this point in his decision stating that as he the Appellant had been found not to have a political profile in Iran and not to have engaged in any genuine political activity in this country he would not face a risk when questioned by the authorities as he would not be required to repeat his claims as they had been rejected by the Tribunal to the lower standard of proof.

22. In an international protection claim, findings are made by specialist immigration tribunals on a daily basis, and Appellate Courts should not "rush to find misdirection" in their decision-making. The FTT Judge had the benefit of hearing and seeing the Appellant give evidence.
23. It is important to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors. The decision must be read as a whole and in reaching his decision, the FTT Judge was entitled to note the Appellant, on his own account, had originally claimed in interview he had not engaged in political activity when he lived in Iran.
24. The Tribunal in HB made clear 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 a risk of persecution or Article 3 ill-treatment. The Tribunal accepted Kurdish ethnicity is a risk factor which, when combined with other factors, may create a real risk of persecution or Article 3 ill-treatment. The Tribunal said "other factors" will include the matters identified in paragraphs (6)-(9) of the headnote to HB.
25. The Appellant has not lived in in the KRI. He had not engaged in any political activity while he was living in Iran. There was a finding that he has attended demonstrations in the UK, as an observer, and that his mere presence at demonstrations was not sufficient to attract the adverse attention of the Iranian authorities. Similarly there was a finding that the social media 'posts' by the Appellant as someone without any significant following would not cause him to be of any interest to the Iranian authorities. There was nothing before the FTT Judge to suggest the Appellant had any involvement in social welfare and charitable activities on behalf of Kurds.
26. In HB the Upper Tribunal noted that even low-level political activity was considered to lead to a risk of persecution or article 3 ill-treatment by the authorities. The Iranian authorities have demonstrated what could be described as a "hair-trigger" response suspected or perceived to be involved in Kurdish political activities or support for Kurdish rights. Here, beyond the photographs of the Appellant attending demonstrations the focus of the Appellant's claim was upon his social media activity.
27. In XX the Upper Tribunal provided some general guidance on social media evidence. In light of the other findings made by the FTT Judge, it was open to FTT Judge to find that the Appellant was not genuinely politically motivated. The FTT Judge had rejected the core of the Appellant's account that he was of interest to the authorities in Iran prior to his departure and there was nothing in the evidence before the FTT Judge of the Appellant having any sort of political profile that would arouse the interest of the authorities in Iran.

28. The FTT Judge found there was no reason why the Appellant could not simply delete his Facebook account prior to returning to Iran. As his sur place activities do not represent any genuinely held beliefs, the Appellant would not, as Mr Vokes submits, be expected to lie when questioned. The deletion of the Facebook account would not therefore contravene the principles established and set out in HJ (Iran) v SSHD [2011] AC 596.
29. It was open to the FTT Judge to find that that the Appellant was of no interest whatsoever to the authorities on return to Iran. The Appellant would not be known to the authorities and he had no political profile that would, as the FTT Judge said, be of any interest to the Iranian authorities.
30. It was in my judgement open to the FTT Judge to find that the Appellant would not be at risk upon return on account of his sur place activities for the reasons that he gave.
31. In reaching his decision, the FTT Judge considered all the evidence before the Tribunal in the round and reached findings and conclusions that were open to him on the evidence. The findings and conclusions that the Appellant had not engaged in any genuine political activity was neither irrational nor unreasonable.
32. The Upper Tribunal is not entitled to find an error of law simply because it does not agree with the decision. I am satisfied that the FTT Judge did consider headnote [9] of HB.
33. The second ground is in someways linked to the first ground. Being a Kurd would have been a factor to increase the risk posed to the Appellant if the core of his claim had been accepted. However, for the reasons given above I have found the FTT Judge made findings open to him and in the circumstances the second ground of appeal also fails.

Notice of Decision

There was no error in law. The original decision of the FTT Judge shall stand and the appeal is dismissed.

Deputy Judge of the Upper Tribunal Alis
Immigration and Asylum Chamber

21 June 2024