



**Upper Tribunal
(Immigration and Asylum Chamber)**

Case Number: UI/2024/002158
First-tier Tribunal Ref: PA/55408/2022
LP/01033/2023

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 4 December 2024

On 13th of December 2024

Before

**UPPER TRIBUNAL JUDGE BULPITT
DEPUTY UPPER TRIBUNAL JUDGE SWANEY**

Between

**MQ
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Nathan, counsel, instructed by Wilson Solicitors LLP
For the Respondent: Ms H Gilmour, presenting officer

**Direction pursuant to rule 14(1)(b) of the Upper Tribunal Procedure
Rules 2008**

Unless and until this appeal is finally determined or the court/tribunal directs otherwise 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

Background

1. The appellant is a citizen of Iran. He appeals the decision of Judge Peer of the First-tier Tribunal (the judge) made on 26 September 2023 dismissing his appeal against the respondent's refusal of his international protection and human rights claims.
2. The appellant claims that he has a well-founded fear of persecution in Iran because of his political opinion. He claims that he assisted his father in distributing leaflets for the Kurdish Democratic Party of Iran (KDPI) whilst in Iran, and that since his arrival in the United Kingdom, he has attended demonstrations and posted material online. He claims that he is of adverse interest to the Iranian authorities because of his activities. He also claims that his removal would amount to a breach of articles 2, 3, and 8 of the European Convention on Human Rights (ECHR). The appellant was aged 16 when he arrived in the United Kingdom and was 17 when the decision on his claim was made. He was cared for by the local authority and is now supported by them as a care leaver.
3. The judge found that neither the appellant nor his father had come to the attention of the authorities for reasons of his activity carried out while in Iran. The judge found that the appellant's account of his father being injured during the border crossing was consistent with regular border enforcement activity, but that there was no basis for finding that his father was specifically targeted because of his KDPI activities.
4. The judge accepted that the appellant had not been in contact with family members since his arrival in the United Kingdom, but found that there was no reason he could not make contact with them in the future if he returned to Iran, or by making efforts to contact them with the assistance of organisations such as the Red Cross.
5. In respect of the appellant's sur place activities, the judge found the evidence was limited and showed that the appellant was not a high profile activist. She found that his social media posts were limited to ones about demonstrations taking place and repeating information posted by others. She did not consider that there was evidence of the appellant posting his own content and found that he did not have many followers or a significant online profile or presence. The judge found that the production of a small part of the appellant's Facebook account was of limited evidential value because of the criticisms noted in XX (PJAK) .The judge found that there was no evidence that the appellant had come to the adverse attention of the Iranian authorities as a result of his sur place activities, or that his profile was significant or of particular reach that he would be the target of surveillance.

6. Although the judge accepted that the appellant had attended demonstrations which because of their timing may have been perceived by the Iranian regime as being about Kurdish separatism and/or specific Kurdish political activity, she found that there was no evidence that there was a real risk that he would be identified on return as a result of his participation.
7. The judge found that the appellant had exited Iran illegally, but found that of itself this was not a factor giving rise to a risk of persecution. The judge also found that illegal exit in combination with the appellant's Kurdish ethnicity was not sufficient to give rise to risk of persecution, even though she accepted that his ethnicity meant he was more likely to be subjected to heightened scrutiny on return. The judge found that the appellant's online presence is such that even if searches were conducted, he would not present a critical account and even if he cannot be expected to lie, background evidence shows that many people keep past affiliations secret to avoid being subject to monitoring.
8. The judge found that the appellant's claims pursuant to articles 2 and 3 of the ECHR failed for the same reasons as his asylum claim. She found that he did not satisfy paragraph 276ADE of the Immigration Rules and that his removal would not give rise to unjustifiably harsh consequences for him such that his removal would amount to a disproportionate interference with his rights under article 8 of the ECHR.
9. The appellant's application for permission to appeal was made to the First-tier Tribunal on 18 October 2023 and was out of time. It included an application for an extension of time and supporting evidence. Judge Hamilton refused to admit the application on 16 April 2024. On 8 May 2024, the appellant made a renewed application for permission to appeal to the Upper Tribunal. It included an application to extend time, as it was made out of time. The application to extend time was supported by a detailed witness statement from the appellant's solicitor and copies of relevant correspondence.
10. The grounds of appeal can be summarised as follows:
 - (i) The judge failed to apply properly the guidance given in HB (Iran) CG [2018] UKUT 430 (IAC) in light of the material facts which she accepted.
 - (ii) The case of XX (PJAK – sur place activities – Facebook) Iran CG [2022] UKUT 00023 (IAC) is wrongly decided because of significant concerns about the tribunal's acceptance of evidence from Facebook Ireland.
11. In a decision dated 7 October 2024, Upper Tribunal Judge Loughran admitted the appellant's application and extended time. She accepted that it was necessary in the interests of justice to both admit the application and to extend time.

12. Judge Loughran granted permission to appeal solely in respect of ground 1, finding that it is arguable that the judge erred in her application of HB (Iran). In particular, because it is arguable that the judge failed to assess adequately the risk arising from questioning of the appellant in circumstances where she had accepted that the appellant was more likely to face scrutiny on return and cannot be expected to lie. Judge Loughran also found that it was arguable that the judge had failed to give reasons as to why the appellant's Facebook activity would not meet the Iranian regime's low threshold for suspicion.
13. In respect of ground 2, Judge Loughran noted that the argument that XX was wrongly decided was not raised before the First-tier Tribunal and held that it was not arguable that the judge erred in applying XX, which is a binding country guidance case.
14. The matter came before us to determine whether the judge's decision contains an error of law. If we conclude that it does, we must decide whether to set it aside in consequence, either in whole or in part. If we do, we must then either remit the appeal to the First-tier Tribunal or re-make the decision in this Tribunal.

The hearing

15. We had before us a 610-page bundle including the core documents for this appeal, as well as all of the documents relied on by both parties before the First-tier Tribunal.
16. At the outset of the hearing Ms Gilmour indicated that she had a concession to make on behalf of the respondent. In respect of ground one, on which permission was granted, Ms Gilmour accepted that the judge's findings were contradictory in light of what she accepted and that she failed to apply the principles identified in HB (Kurds) Iran (Illegal exit: failed asylum seeker) CG [2018] UKUT 430 (IAC). In addition, Ms Gilmour accepted that there was a lack of reasons as to why the appellant's Facebook activity would not engage the Iranian authorities' hair trigger' approach to those suspected of involvement in Kurdish political activities or support for Kurdish rights.
17. We confirmed that we had reached the same conclusion and invited submissions on how the matter should be dealt with, it being accepted that the decision contained a material error of law.
18. Ms Gilmour noted the appellant's application pursuant to rule 15(2A) of the Procedure Rules and submitted that it appeared remittal to the First-tier Tribunal for the remaking of the decision would be appropriate on the basis that additional findings of fact were likely to be necessary.
19. For the appellant Mr Nathan initially agreed that remittal might be seen to be appropriate on the basis that there was concern about some of the judge's findings. However, in light of the findings of fact made in the

appellant's favour including that the appellant's political activities are genuine, that his father was involved with the KDPI, that he had exited Iran illegally, that he is Kurdish, and that he would be subjected to questioning when applying for a laissez passer and on arrival, he submitted that on balance it did not appear that additional evidence or findings would be needed in order for a decision correctly applying HB (Iran) to be made.

20. Ms Gilmour accepted that and indicated that she also accepted that the appeal fell to be allowed.
21. We agreed and confirmed that the decision contained a material error of law and that we would remake the decision allowing the appeal. Our reasons are set out below.

Discussion

22. We preserve all of the findings of fact made by the judge save for her findings about the likelihood that the appellant would delete his Facebook account and any finding that he would conceal his previous political affiliations on return. The key findings of fact which are material to the remaking of this decision are as follows:
 - (i) that the appellant is Kurdish;
 - (ii) that the appellant is credible in his explanation as to why he was not a member of the KDPI in Iran and why he has not become a member in the United Kingdom;
 - (iii) that the appellant's father was involved in the KDPI beyond mere support and that the appellant assisted him in delivering leaflets;
 - (iv) that the appellant exited Iran illegally;
 - (v) that the appellant has engaged in low-level political activity in the United Kingdom, including attending a demonstration against the Iranian authorities holding a placard expressing support for the Kurdistan Free Life Party (PJAK), a Kurdish opposition political party and has made some limited posts on Facebook about protests taking place and re-posting information originally posted by others;
 - (vi) that the Iranian regime may associate some of the appellant's attendance at demonstrations with criticism of the escalating crackdown on dress in Iran;
 - (vii) that the appellant's protesting is related to Kurdish rights and would be likely regarded primarily in this light;
 - (viii) that the appellant's Kurdish ethnicity means that he is more likely to be subjected to heightened scrutiny on return;

- (ix) the appellant has no documents and will require an emergency travel document from the Iranian authorities which may trigger online searches against his name.
23. We acknowledge that the judge made other findings of fact that were not in the appellant's favour, in particular in relation to the low level of his activity and that it had not come to the attention of the Iranian authorities. We have not disregarded those findings and we preserve them, but for the purposes of remaking the decision, they are not material.
24. We turn to the judge's finding about the appellant's Facebook account. Her finding in this regard could have been expressed more clearly, as it was phrased as a double negative. She refers to the appellant's evidence, which was that he would not delete his account and that he would continue to post in the same manner as he has been doing, in relation to political issues. There is no reference in the decision to his evidence on this point being challenged and the judge's reasons for coming to a different conclusion are in our view inadequate especially given the finding that the appellant's political opinion is genuinely held. We are satisfied to the lower standard that the appellant would not seek to delete his Facebook account prior to returning to Iran and accept his reasons for wishing to continue to post and express himself using that forum.
25. We therefore turn to apply the guidance in HB (Iran). While we accept that none of the factors identified above would be sufficient on their own to put the appellant at risk on return, the effect of those factors must also be considered cumulatively (see headnote (5) of HB (Iran)). We find specifically that risk factors (7) to (10) as identified in HB (Iran) are engaged in respect of the appellant. We find that the combination of the appellant's Kurdish ethnicity, his illegal exit, the likelihood that an application for an emergency travel document may trigger an online search against his name which will reveal his Facebook account and activity which is reasonably likely to be perceived as anti-regime and pro-Kurdish are sufficient to create a real risk that the appellant will come to the attention of the authorities on return.
26. We have found that it is reasonably likely that the appellant's activities will come to the attention of the authorities either during the process of obtaining an emergency travel document or on return. As a consequence, we find that it is reasonably likely that he will be questioned about his activities in the United Kingdom. It is accepted that the appellant cannot be expected to lie about his activities or to conceal his genuinely held political opinion in order to avoid persecution. Given our finding that he will not delete his Facebook account, it would be very difficult for him to conceal his activities and affiliations even should he wish to do so.
27. We have had regard to the judge's reference to background evidence that many people hide their past affiliations in order to avoid monitoring. Although the judge refers to this background evidence, she makes no express finding that the appellant would in fact hide his past affiliations,

i.e. his link to his father, his activities with his father or his activities in the United Kingdom. On the basis of the evidence before us, we do not accept that he would hide them. It will therefore become known to the Iranian authorities that the appellant's father was involved with the KDPI, that the appellant assisted him in distributing leaflets for the KDPI, and that the appellant has been involved in anti-regime/pro-Kurdish activities in the United Kingdom and has posted about those things on his Facebook account.

28. We are satisfied that the way those activities and affiliations will be perceived by the Iranian authorities means that he faces a real risk of persecution and/or treatment contrary to article 3 of the ECHR.
29. The decision of judge Peer, although very thorough and in general not open to significant criticism, did involve the making of a material error of law. Accordingly, we set that decision aside, preserving the findings of fact as set out above, and dispose of the appeal by remaking it ourselves, allowing the appeal on asylum grounds and on human rights grounds (article 3 of the ECHR) and dismissing it on humanitarian protection grounds.
30. An anonymity direction was made in the First-tier Tribunal and given our findings above, we maintain that order as the public interest in open justice is outweighed.

Decision

The decision of the First-tier Tribunal Judge contained an error of law and is set aside.

We remake the decision and allow the appeal on asylum and human rights grounds

Signed J K Swaney

Date 6 December 2024

Judge J K Swaney
Deputy Upper Tribunal Judge