



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

Case No: UI-2024-002293

First-tier Tribunal No: PA/52868/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 28 October 2024**

**Before**

**UPPER TRIBUNAL JUDGE MEAH**

**Between**

**DA**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Berry, Counsel instructed by Barnes Harrild & Dyer Solicitors

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

**Heard at Field House on 17 October 2024**

**DECISION AND REASONS**

**Introduction and Background**

1. The appellant, a citizen of Iran of Kurdish ethnicity, appeals against the decision of First-tier Tribunal Judge Gray (FtTJ), promulgated on 12 April 2024 (“the decision”). The appellant claimed he feared return to Iran having attended protests outside the Iranian Embassy in London in support of pro Kurdish rights, and also having delivered papers for the Kurdish Democratic Party of Iran (KDPI) on two occasions when he was in Iran.
2. By the decision, the FtTJ dismissed the appellant’s appeal against the respondent’s decision dated 05 May 2023, refusing his claim seeking asylum/international protection in the UK.
3. The appellant first arrived in the UK on 26 September 2021. He claimed asylum on 29 September 2021. The appellant’s nationality had been disputed although

the FtTJ found that the appellant is an Iranian national of Kurdish ethnicity, as claimed, at [24] of the decision.

### **The Grounds**

4. In summary, the three grounds raised challenging the decision are that the FtTJ erred by failing to properly make a finding on whether or not the appellant would, in applying the lower standard of proof, have been photographed by the Iranian authorities when attending demonstrations outside the Iranian Embassy in London. This caused a flawed assessment on risk in relation to being questioned in Iran upon return as a failed asylum seeker, and that there was a failure to lawfully assess an application to depart from Country Guidance. The focus of the grounds is on the findings on *sur place* risk and what risk of harm the appellant runs were he to be returned to Iran. The appellant avers that there are material errors of law in the FtTJ's decision, any one of which vitiates the judgment, such that a re-hearing and re-determination of risk on return is required.
5. Permission to appeal was granted by Upper Tribunal Judge O'Brien on 02 August 2022, in the following terms;

“1. The appellant seeks permission in time to appeal against the decision of First-tier Tribunal Judge Gray, dismissing his appeal against the respondent's decision to refuse his protection claim.

2. The Judge found that the appellant's attendance at demonstrations did not reflect his genuine political beliefs [53] and would not have come to the attention of the Iranian authorities [62]. However, it had been submitted at para 25 of the ASA that, in effect, the appellant could not on return be expected to lie. It is arguable that the Judge erred in law by failing to decide whether the appellant would be questioned on return, whether he would disclose in that questioning his *sur place* activities (albeit that they were insincere and opportunistic) and whether the appellant would thereby be at risk of persecution or serious harm.

3. The remaining grounds appear less meritorious; however, taking the pragmatic approach recommended in para 48 of Joint Presidential Guidance 2019 No 1: Permission to appeal to UTIAC, I grant permission on all grounds.”

6. There was no Rule 24 response from the respondent.
7. That is the basis on which this appeal came before the Upper Tribunal.

### **Documents**

8. I had before me a composite bundle which included the bundles relied upon by the parties in the First-tier Tribunal. I also received a skeleton argument from Mr Berry.

### **Hearing and Submissions**

9. Both representatives made submissions which I have taken into account. These are set out in the Record of Proceedings. Mr Berry relied on the grounds upon

which permission was granted and referred me to his skeleton argument which repeated some of the arguments in the original grounds.

## **Discussion and Analysis**

Ground 1 - Failure to make a finding as to whether or not the appellant will, on the lower standard, have been photographed by the Iranian authorities

10. The FtT deals with risk on return from [33] onwards noting at [34] that the appellant being of Kurdish Iranian ethnicity will not of itself be sufficient to show a real risk of serious harm even when considered with the fact that he exited Iran illegally. The FtT correctly self-directs referring to **HB (Kurds) Iran CG [2018] UKUT 430 (IAC)**. The FtT then at [35]-[41] sets out the applicable legal principles to assessing the appellant's *sur place* claim making reference to **XX (PJAK, sur place activities, Facebook) Iran (CG) [2022] UKUT 23 (IAC)** and **BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC)**, following which the FtT makes findings from [42]-[65] on the appellant's *sur place* claim under a separate heading entitled 'Risk on return - *sur place* activities, discussion'.
11. The FtT noted at [43] that the appellant claimed he had attended between eight to ten demonstrations in the UK, and after considering photographs and text messages the FtT noted six dates in particular from these showing attendance in front of the Iranian Embassy in London. At [44] the FtT noted the appellant was often pictured holding an A4 piece of paper and in some photographs he was wearing a high visibility vest. The FtT accepted at [50] in the light of the photographic evidence, that the appellant had attended the demonstrations of which the dates the FtT had noted at [45]. The FtT found at [53] that the appellant's attendance at demonstrations was contrived to bolster the chances of success in his asylum claim. He then self-directs at [54] that such conduct would not necessarily preclude the appellant from coming to the adverse attention of the Iranian authorities and therefore whether this conduct would be perceived as political activity thus giving rise to real risk of persecution or serious ill-treatment on return to Iran. The FtT accepted that the appellant had attended more than one demonstration although he concluded at [62] that there was no serious possibility that the appellant's attendance at the demonstrations to which he was referred would have come to the attention of the Iranian authorities.
12. Given the way in which the FtT approached the appellant's evidence and the assessment carried out against the relevant Country Guidance cases which the FtT set out, I do not accept that the FtT erred in his consideration of risk on return by not making a specific finding on whether the appellant had been photographed whilst demonstrating outside the Iranian Embassy. The FtT correctly identified the applicable standard of proof at [13] and in my judgement this is what he applied when deciding, after following the Country Guidance cases, that the appellant's attendance at the demonstrations had not come to the attention of the Iranian authorities. The FtT was entitled to make this finding and it is not a *fait accompli* that mere attendance at demonstrations, without more, is sufficient for a finding of real risk on return. Further, the FtT has given proper consideration of the appellant's Facebook activities at [56]-[57] concluding at [61], that it was not reasonably likely that the appellant would be the target of any Facebook surveillance.

13. On the complaint that there was no necessary assessment of whether the appellant may have been photographed and whether by wearing a high visibility vest he may have been either seen or perceived by the Iranian authorities to have played a significant role at the demonstrations, I do not accept that separate and/or bespoke findings were required on these components of the appellant's case. The FtTJ assessed the claim and the appellant's evidence against the applicable Country Guidance cases specifically on the attendance at demonstrations and Facebook/social media activity, where there was neither any misapplication nor misdirection in law. The FtTJ made reasonable findings that were open to him. I therefore find, contrary to the grounds averred on these points, that there were no errors in the FtTJ's consideration of all the relevant evidence which he considered appropriately by adopting the correct approach which was lawful and therefore open to him. In my judgment the FtTJ did not ignore that the appellant might have been photographed and/or that he had worn a high visibility vest in some of the demonstrations, however it does not follow that he was then required to make specific findings on these particular features or that his omission in so doing was erroneous. The question is whether the FtTJ considered all of the evidence, which would necessarily have included the wearing of the high visibility vest, which I find he demonstrably did, and this is apparent from the overall findings he has made on both attendance at the demonstrations and the Facebook activities.

Ground 2 - Flawed assessment of risk when questioned upon return as a failed asylum seeker

14. The FtTJ found at [61], having assessed the appellant's claim, that his profile was not such that he was likely to be a person of interest to the Iranian authorities or a person with a profile who might be said to be reasonably likely to be the target of Facebook surveillance. The FtTJ finds specifically at [62] in applying **BA Iran** and **XX Iran**, that there was no serious possibility that the appellant's attendance at the demonstrations referred to had come to the attention of the Iranian authorities. These findings were open to the FtTJ to make and I do not accept that there were any errors to the FtTJ's approach in applying principles in both **BA Iran** and **XX Iran**.

15. The FtTJ clearly correlates his findings here by taking into account the attendance by the appellant at demonstrations as he so found. The FtTJ then at [63] finds the appellant's activities, to date, are not likely to have been detected, and it was not speculative to consider whether the appellant would delete his Facebook account in a timely manner before applying for a travel document in order to mitigate the risk of persecution on return to Iran. The FtTJ then makes the finding at [64] that the appellant would delete his account to mitigate risk which is in accordance with the guidance in **XX Iran**. Therefore, these findings were open to him and no error is disclosed here.

16. The FtTJ further considers at [64] the Supreme Court decision in **HJ (Iran) [2010] UKSC 31**. The FtTJ adopts the correct approach in self-directing here despite his finding that the appellant was not credible in his support for any pro Kurdish political ideology or movement. In response to the FtTJ's finding in the instant case that the appellant's attendance at demonstrations outside the Iranian Embassy in London was, in essence, cynical with the sole aim of bolstering chances of success in the protection claim, Mr Berry forcefully argued the trite point that the real assessment, in the light of all the applicable case

law and authorities, was whether the appellant was reasonably likely to come to the adverse attention of the Iranian authorities. This was irrespective of whatever his motives might have been behind attending the demonstrations. On this Mr Berry referred also to **WA (Pakistan) v Secretary of State for the Home Department [2019] EWCA Civ 302** in both his skeleton argument and in his submissions at the hearing in terms of the need to ask 'why?' a returnee should be expected to be discrete in respect of his political beliefs and activities.

17. Mr Berry is of course correct on this issue insofar as motives are concerned and the point being that the correct question is how the behaviour will be perceived by the Iranian authorities rather than focus on the motives of the appellant, and the fact that these might either be contrived and/or cynical. However, I do not find the FtTJ missed this important point either, or that there was any misdirection in the way in which he approached this question in the context of potential 'pinch-points' on return and especially at the airport in Tehran.
18. There is nothing in the decision capable of showing that the FtTJ did not understand this important distinction. He has addressed his mind also to the **HJ Iran** question at [64] when he says "a person cannot be expected to suppress a characteristic that they have a right not to be required to suppress". I sought to clarify with Mr Berry at the hearing how **HJ Iran** was engaged to the extent of the appellant not being expected to lie, if questioned on return, about a belief the FtTJ found the appellant did not have in the first place. The thrust of Mr Berry's response was that the appellant, as an Iranian Kurd, would necessarily be under suspicion and it was inherent, even if the appellant had not expressly claimed that he supported any pro Kurdish rights, movement/s and/or any other kind of opposition politics in Iran, that he would simply, as a consequence of his ethnicity, still nonetheless face a risk of harm.
19. This is, respectfully, different from the **HJ Iran** point on not having to lie about a genuinely held belief. In my judgement the FtTJ's finding was that the appellant would not face a scenario where he would be expected to lie about a belief he had not professed to ever to hold, which the FtTJ dealt with properly in his decision. On the alternative argument by Mr Berry that the appellant would *prima-facie* be at a real risk owing to his Kurdish ethnicity, which might give rise to interrogation and/or ill treatment, this is considered at headnote 4 of **HB Iran** where it is stated that:

*"However, the mere fact of being a returnee of Kurdish ethnicity with or without a valid passport, and even if combined with illegal exit, does not create a risk of persecution or Article 3 ill-treatment."*

20. I have also noted in this regard the Court of Appeal's decision in **FA (Iran) v Secretary of State for the Home Department [2024] EWCA Civ 149**, where the following is stated at paragraph 57 by Laing LJ with reference to **HB Iran**:

*"In HB the UT considered the position of Kurdish Iranian nationals. The UT endorsed the statements in SSH and HR about the risks caused by illegal exit and/or being a failed asylum seeker. While Kurds face discrimination in Iran, it does not amount to persecution or to ill treatment breaching article 3. But since 2016, the authorities have become increasingly suspicious of Kurds. They are reasonably likely to be subjected to heightened scrutiny on return. The mere facts that a person was Kurdish, had no passport and had left Iran illegally did not*

*create a relevant risk. Nevertheless, being Kurdish, when combined with the other factors listed in paragraphs (6)-(9) of the headnote of HB, could create a real risk. Being Kurdish is a 'significant risk factor'...."[My emphasis].*

21. Headnotes 6-10 of **HB Iran** says:

*"..(6) A period of residence in the KRI by a Kurdish returnee is reasonably likely to result in additional questioning by the authorities on return. However, this is a factor that will be highly fact-specific and the degree of interest that such residence will excite will depend, non-exhaustively, on matters such as the length of residence in the KRI, what the person concerned was doing there and why they left.*

*(7) Kurds involved in Kurdish political groups or activity are at risk of arrest, prolonged detention and physical abuse by the Iranian authorities. Even Kurds expressing peaceful dissent or who speak out about Kurdish rights also face a real risk of persecution or Article 3 ill-treatment.*

*(8) Activities that can be perceived to be political by the Iranian authorities include social welfare and charitable activities on behalf of Kurds. Indeed, involvement with any organised activity on behalf of or in support of Kurds can be perceived as political and thus involve a risk of adverse attention by the Iranian authorities with the consequent risk of persecution or Article 3 ill-treatment.*

*(9) 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...*

*(10) The Iranian authorities demonstrate what could be described as a 'hair-trigger' approach to those suspected of or perceived to be involved in Kurdish political activities or support for Kurdish rights. By 'hair-trigger' it means that the threshold for suspicion is low and the reaction of the authorities is reasonably likely to be extreme."*

22. The FtTJ did not find the appellant to be credible about his claimed KDPI activities in Iran. He nonetheless assessed the evidence regarding the appellant's attendance at demonstrations outside the Iranian Embassy in London, and the claimed extent of social media and specifically his Facebook activities. The assessment of the claim by the FtTJ and the evidence he considered was specific to the claim brought by the appellant. I find that there is no question that that is what the FtTJ assessed and considered in deciding the appellant's appeal. This included weighing relevant factors against the applicable extant Country Guidance cases. To this end that which is stated by the Court of Appeal in **FA Iran** does not benefit the appellant given the FtTJs findings in his appeal, and in particular the fact that neither his Facebook nor his attendance at demonstrations were capable of bringing him to the adverse attention of the Iranian authorities on return. **FA Iran** does not support the proposition that the appellant would simply be at risk or at a heightened risk solely as a result of his ethnicity, as his case was found not to engage other trigger factors necessary to establish a real risk of serious harm given the FtTJ's

lawful findings that his case lacked the additional necessary features to demonstrate such a risk to the lower standard.

23. I therefore do not accept that the FtTJ erred in his approach to his assessment of the **HB Iran** trigger factors, or indeed the **HJ Iran** question of not being expected to lie about a genuinely held political or other belief that might result in persecutory treatment and/or harm, as he dealt with this correctly approaching the claim in the light of the appellant's case and the facts specific to it. I also do not find that any of the other points made under this heading in Mr Berry's very detailed skeleton argument are made out in terms of the FtTJ's approach to the key question of the appellant being returned to Iran as a failed asylum seeker and the question of any concomitant risk factor/s arising.

Ground 3 - Failure to lawfully assess application to depart from country guidance

24. I do not accept the FtTJ's decision not to depart from Country Guidance in **BA Iran** at [60] of his decision to constitute an error of law. The premise of the submission before the FtTJ was that the Iranian regime is able now to apply facial recognition software and technology such that the appellant was at risk of being identified and therefore at a real risk of serious harm. The reasoning offered by the FtTJ for not departing from the Country Guidance in **BA Iran** was adequate where he assessed it against counsel's submission regarding the deployment of such technology to identify women within Iran on public transport and other places who were not wearing the hijab. The FtTJ refers also to an Al-Jazeera article dated 08 April 2023, presented in the appellant's evidence concluding on this point that there was no evidence that such techniques are used in the Iranian Embassy in London drawing also from **XX Iran** where it was noted that there was a disparity between such claims and the actual capability of the Iranian state.

25. The underlying basis of the submission to depart from **BA Iran** was owing to that case being decided, and the guidance given therein, dating back to 2011. The suggestion was that technology had moved on, certainly in the context of surveillance software capabilities. However, I do not find that there was any error in the FtTJ's decision not to depart from the applicable Country Guidance on this matter contained within **BA Iran**. It is trite that the general rule is relevant Country Guidance must usually be followed by FtTJ's in the Immigration & Asylum Chamber, unless there are cogent reasons to depart from it. Here the FtTJ properly considered the submission seeking departure although he gave adequate reasons for not departing from it. This included **BA Iran** being endorsed in **XX Iran** as recently as in 2022, where the following was stated in the introductory headnote:

*"The cases of **BA** (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC); **SSH and HR** (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 308 (IAC); and **HB** (Kurds) Iran CG [2018] UKUT 430 continue accurately to reflect the situation for returnees to Iran. That guidance is hereby supplemented on the issue of risk on return arising from a person's social media use (in particular, Facebook) and surveillance of that person by the authorities in Iran."*

26. The issue in this matter, as discussed above under the 'Ground 2' heading, is whether or not the appellant's activities would be discovered by the Iranian

authorities, and in applying what was said by the Upper Tribunal in **BA Iran**, the FtTJ found that they would not. The capability of the Iranian state to monitor those involved in *sur place* activities is limited. The appellant has attended a limited number of demonstrations and his attendance was noted as sporadic hence I do not accept that he could be categorised as a regular participant or that he would have been separately identified as a result of wearing a high visibility vest and/or by hold an A4 piece of paper.

27. There is no evidence that the demonstrations which he attended attracted any publicity. There is no evidence of media coverage in the UK or Iran. This appellant's substantive claim was found not to be credible. His claim arises essentially from the claimed *sur place* activities only. The FtTJ was therefore entitled to ultimately conclude that the appellant's limited activity would not be discovered by the Iranian authorities. Therefore, he would not be suspected of being involved in Kurdish political activities or to support Kurdish rights so as to be at risk from the "hair trigger" approach by the Iranian authorities on account of his limited *sur place* activities in the UK.

## **Conclusions**

28. In **Volpi & Anor v Volpi [2022] EWCA Civ 464**, Lewison LJ at [2] emphasised the importance of an appellate tribunal exercising judicial restraint when reviewing findings of fact reached by first instance judges:

*i). An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.*

*ii). The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.*

*iii). An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.*

*iv). The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.*

*v). An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.*

*v). Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."*

29. Accordingly, the Upper Tribunal interferes only with caution in the findings of fact by a First-tier Tribunal which has heard and seen the parties give their evidence and made proper findings of fact. An appellate Court or Tribunal may



not interfere with findings unless they are 'plainly wrong' or 'rationally insupportable' as per **Volpi & Anor v Volpi** . That high standard is not reached here. The appellant's appeal must therefore fail.

30. In all, I do not find when reading the FtTJ's decision as a whole, that he failed to consider any of the evidence with the required degree of anxious scrutiny. The decision is well structured and a proper contextual reading of the decision shows that the FtTJ, having carefully analysed the evidence alongside all the arguments and submissions put to him, concluded as stated in the decision. It was in my judgement open to the FtTJ 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. The reason the appeal was dismissed was that the weight given to the evidence did not enable the appellant to succeed. The requirement is for reasons to be adequate, not perfect. A reader of the decision is able to understand why the FtTJ came to the conclusion set out in the decision. Whilst the appellant may disagree with the FtTJ's decision, I find in light of the issues set out above, that the appellant has failed to establish arguable legal error material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in this matter. No material legal error is made out.
32. I am satisfied that there was no identifiable errors of law in the decision by the FtTJ, and the law was applied correctly, with clear findings and sufficient reasons provided. The grounds advanced by the appellant, in my view, constitute disagreement with the conclusions reached by the FtTJ. I am satisfied that the FtTJ correctly identified the correct tests and legal thresholds which it was required to apply in considering this appeal.

### **Notice of Decision**

33. The appeal is dismissed.

34. The decision by FtTJ Gray dismissing the appellant's appeal shall stand.

### **Anonymity**

35. The Anonymity Order made by the First-tier Tribunal is maintained.

**S Meah**  
**FtTJ of the Upper Tribunal**  
**Immigration and Asylum Chamber**

**25 October 2024**