IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003808

First-tier Tribunal No:
PA/51480/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 18 November 2024

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

HK
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Azmi, Counsel, instructed by M&K Solicitors
For the Respondent: Mr M Parvar, Senior Presenting Officer

Heard at Field House on 11 November 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

Introduction

1. The Appellant appeals against the decision of First-tier Tribunal Judge J M Dixon (the judge), sent out on 28 May 2024, dismissing the Appellant's appeal against the Respondent's refusal of his protection and human rights claims. Those claims had been made in response to the Respondent's decision to deport the Appellant by virtue of various criminal convictions and to have refused further submissions and treat them as a fresh claim.

2. The Appellant claimed to be a national of Iran who had arrived in the United Kingdom back in 2007 as an unaccompanied minor. He had originally claimed asylum on the basis of his family members' alleged involvement with the KDPI in Iran. That claim had been rejected but the Appellant was granted discretionary leave by virtue of his age. He then accrued a number of convictions for shoplifting, robbery, affray, common assault, theft, and travelling on a railway without paying the fare. Relevant decisions made by the Respondent in 2011 were appealed to the First-tier Tribunal who duly dismissed that appeal (the 2011 FTT decision). The panel found the Appellant's account as to past events in Iran to be incredible and that deportation would be proportionate. The issue of the Appellant's nationality was not in issue at that stage.

3. Despite the Appellant having failed in his appeal, nothing was done to affect removal to Iran. The Appellant made further submissions on 19 June 2020. These essentially reiterated the claim he had originally made, relied on *sur place* activities in this country, and raised additional human rights grounds based on the length of residence and the consequences of suffering from PTSD. In treating the further submissions as a fresh claim but nonetheless refusing it, the Respondent disputed the Appellant's nationality. This position was based on a nationality interview conducted in 2012. The refusal decision relied on the 2011 FTT decision and rejected any risk to the Appellant on return and stated that removal would be proportionate despite the passage of time since the original refusal and First-tier Tribunal decision.

The judge's decision

4. As recorded, the core issues for the judge to determine were: whether the Appellant was Iranian; whether there was any basis to depart from the findings of the 2011 FTT decisions; whether the Appellant was at risk because of past events and/or *sur place* activity in the United Kingdom; and whether there were any very compelling circumstances with reference to section 117C of the Nationality, Immigration and Asylum Act

2002 (it being accepted on the Appellant's behalf that he could not satisfy either of the two exceptions within that section).

5. The judge referred himself to three country guidance cases relating to Iran: BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 00036 (IAC), XX (PJAK, sur place activities, Facebook) Iran CG [2022] UKUT 00023 (IAC), and HB (Kurds) Iran CG [2018] UKUT 00430 (IAC).

6. At [9] the judge concluded that the Appellant was not an Iranian national. This was because answers provided in the nationality interview of 2012 were "rather vague" and that there had been no other reliable evidence to support the claimed nationality.

7. At [10] the judge concluded that there was no basis to "depart from the previous judicial findings as regards [the Appellant's] account in Iran".

8. At [11] the judge found that the *sur place* activities had not been undertaken out of genuine political beliefs. The judge concluded that the Appellant's participation in demonstrations had been "relatively minimal" and was "unlikely" to have come to the attention of the Iranian authorities.

9. At [13] the judge referred to the Appellant's Facebook account. The judge was not persuaded that the contents of that account would have brought the Appellant to the adverse attention of the authorities and that it would be reasonable to expect that Facebook account to be deleted before a return to Iran. The judge stated that there was no issue as to the Appellant having to "deny anything to the Iranian authorities at the pinch point of return because his activity has not been genuine so he would not be lying".

10. Finally, at [15], the judge concluded that there were no very compelling circumstances such as to outweigh the public interest in deportation. The judge placed "very limited weight" on a letter from Dr F Ahmad, Consultant Psychiatrist, dated 1 August 2023. This was because the author had referred to the Appellant as having been "tortured" whilst in Iran, a claim that the Appellant had not in fact ever made. Within [15], the judge made an alternative finding, namely that even if the Appellant had significant mental health difficulties it would not "come close" to constituting very compelling circumstances.

11. Accordingly, the appeal was dismissed on all grounds.

The grounds of appeal

12. Ground 1 contends that the judge failed to explain what he meant by the nationality interview evidence being "rather vague" and that there had been a failure by the judge to place that evidence in its proper context: the Appellant had claimed to be illiterate, from a rural area, and

was only a minor when he left Iran and arrived in this country. Further, the Appellant had in fact provided apparently correct answers to a number of questions relating to places within Iran.

13. Ground 2 contends that the judge had failed to consider the extent of the Facebook posts which ran between 2019 and the end of 2023. It is said that the lengthy period of Facebook activity was relevant to whether the Iranian authorities were (or potentially could become) aware of the activities. In addition, ground 2 asserts that the judge had failed to appreciate the nature of the Appellant's involvement in demonstrations, it being said that he was involved in advertising them and arranging places to meet before moving on to the demonstration itself.

14. Ground 3 asserts that the judge misunderstood or otherwise failed to deal adequately with the letter from Dr Ahmad. It is said that the reference to "torture" in the letter should have been viewed in a broader sense and that, in any event, there was a good deal of additional medical evidence which showed a pattern of mental health problems in the United Kingdom.

The grant of permission

15. Permission was granted by Upper Tribunal Judge Neville on all grounds.

16. Following the grant of permission the Respondent did not provide a rule 24 response.

The hearing

17. I received helpful submissions by both representatives which are a matter of record. I will deal with the relevant points raised when setting out my analysis and conclusions, below.

18. At the end of the hearing I reserved my decision.

Analysis and conclusions

19. It is of course well-established that the Upper Tribunal should exercise real judicial restraint before interfering with a decision of the First-tier Tribunal, particularly when the decision under challenge involves the assessment of evidence and the undertaking of evaluative judgments. Judges' decisions should be read holistically and sensibly and one must strenuously avoid the temptation to substitute one's own view for that of the judge tasked with deciding a case at first instance.

20. Notwithstanding the restraint which I have exercised, I conclude that the judge did materially err in law and my reasons for this are as follows.

21. In respect of ground 1, the difficulty with what the judge said at [9] is that there was no expansion or clarification in relation to the phrase "rather vague". No examples are provided as to what in particular the judge found to be so deficient as to justify a conclusion that the Appellant was not in fact Iranian. I have looked at the nationality interview for myself and, on a fairly superficial level, one might say that aspects of the answers were vague and, in turn, the judge might have been justified in finding as much. However, it appears as though the Appellant did give other answers in relation to, for example, geography, which have not been criticised as being inaccurate. Further, [9] makes no mention of the Appellant's claim to be illiterate and from a very rural background, as well as having been a child at all material times. There is no consideration as to whether any of this was relevant to the extent of his knowledge when answering the questions at the nationality interview. I note also that nationality was not the subject of any discussion in the 2011 FTT decision.

22. It is the case that the Appellant did not adduce any additional evidence as to his nationality, save for a number of apparently supportive letters from individuals who did not attend the hearing. The judge was entitled to conclude that these added nothing to the Appellant's case, but at the same time the judge made no finding that these in fact positively undermined the Appellant's claim to be Iranian.

23. I acknowledge that a judge need not refer to each and every item of evidence relied on and there is no requirement for reasons for reasons. However, nationality was a core issue in the appeal. The Respondent's disputation of nationality was based on the nationality interview and in my judgment the judge was obliged to have set out why he regarded the evidence as being vague enough to support an adverse conclusion on that core issue, particularly where there had been no previous judicial findings on the point. Ground 1 is made out.

24. Given that the rest of the judge's analysis of the case was predicated on the Appellant being Iranian, it might be said that success ground 1 is not of itself enough for the Appellant to succeed in this appeal. I will therefore go on to address the remaining grounds, although to my mind it is difficult to say that an error in relation to such a fundamental issue as nationality is immaterial.

25. In relation to ground 2, there is no challenge to the judge's finding that the Appellant did not hold genuine political beliefs and I uphold it. However, that finding was not sufficient to discount any risk on return, particularly in light of the Appellant's Kurdish ethnicity and what is said in HB (Kurds). The point made by the judge at [13] concerning the Appellant's ability to tell the truth on return does not in fact cover all the

risk bases, as it were. Telling the truth in response to questions on return relates not simply to whether one's views are genuine or not, but whether the *sur place* activities have *in fact* been undertaken. If an individual has in fact undertaken relevant activities (for example, attendance at demonstrations and/or social media posts), the needs to be assessment of how the authorities would view them. The genuineness of any political beliefs is relevant, but not determinative.

26. The judge was entitled to note the absence of a full record of the Facebook account. The problem here, as highlighted in the grounds, is that the judge did have before him a large amount of evidence of that Facebook account covering a significant period of time. Whilst some of the posts are in Farsi (or possibly another language), many are not. It is self-evident on the face of them that a large number are anti-regime and highly critical of the Iranian authorities in various respects. Even though the judge was entitled to conclude that the Facebook account could be deleted prior to any return, it was incumbent on him to assess the quantity and content of the posts which had been made and whether this would have already brought him to the adverse attention of the authorities, with reasons if he concluded that they did not. Reading what is said at [13] sensibly and in context, I cannot see such an assessment or adequate reasons.

27. Similar problems with the judge's decision arise in relation to the Appellant's participation in demonstrations. It might be that the role had been "relatively minimal" but the judge was required to assess the evidence (which clearly show the Appellant at demonstrations including holding banners and such like) and place that into the assessment of risk, together with the Facebook activity, and reach a cumulative conclusion on whether the Iranian authorities would already know about the activities.

28. Further, whilst it could have been drafted with greater clarity, ground 2 it is not simply confined to the question of what the Iranian authorities might already know, but encompasses the situation on return, where the Appellant is likely to be questioned and must be expected to tell the truth. In turn, that scenario involves a possibility of information being disclosed which the authorities were not necessarily already aware of. This brings into play the question of whether the judge addressed that scenario adequately or at all. I conclude that, even if the judge was entitled to conclude that the Iranian authorities did not already know about the Appellant's activities in this country, there has been no assessment as to whether they might come to know as a result of the pinch-point issue, having regard to the Appellant's Kurdish ethnicity and his return from the United Kingdom as a failed asylum seeker.

29. Ground 2 is made out. It is clearly material and sufficient for the judge's decision to be set aside.

30. Turning to ground 3, I agree that the judge's assessment of the letter from Dr Ahmad is flawed. That letter did refer to the Appellant having been "tortured" and the judge was entitled to find that this represented a discrepancy. However, reading the entirety of the letter and the rest of the medical evidence which was before the judge it is clear that the Appellant had been treated by relevant professionals within the NHS for some time and that Dr Ahmad's letter was not an isolated item of evidence and had not been prepared for use in any Appellate proceedings. In short, the judge failed to consider the letter in its proper context and together with the other medical evidence.

31. There is an apparent obstacle in the Appellant's path here, however. At [15], the judge made an alternative conclusion to the effect that mental health difficulties, even if significant, would not have "come close" to demonstrating very compelling circumstances. I note that the reasons for refusal letter had identified a number of mental health facilities in Iran which might be able to provide relevant treatment for persons in the Appellant's situation. In the circumstances, the judge was entitled to conclude that even if the Appellant suffered from PTSD to the extent claimed, that of itself would not go to show very compelling circumstances, given the particularly high threshold applicable to that test. At the hearing, Mr Azmi urged me to take into account the length of the Appellant's residence in this country and the age at which he entered. That point had not been included in the third ground and I am not prepared to read in points which have not been either expressly stated or are even reasonably detectable by implication.

32. Ordinarily, what I have said in the preceding paragraph would lead me to conclude that the judge's findings on Article 8 should be preserved and that the issue need not be revisited. However, as pointed out in the grant of permission, the question of whether the Appellant does suffer from a mental health condition is likely to be relevant to an assessment of credibility. Credibility will clearly play a large part when the issue of nationality is reconsidered. The existence of a mental health condition may also be relevant to the issue of risk on return insofar as questioning at the pinch point is concerned. The judge's "even if" finding on the claimed mental health condition does not represent a considered assessment of that issue in the context of everything else which will need to be looked at again. Therefore, exceptionally, I do not preserve the judge's assessment of Article 8.

33. I do however preserve the findings insofar as they relate to the claimed past events in Iran (as set out at [10] of the judge's decision and the relevant passages in the 2011 FTT decision) and to the non-genuine motivation behind the Appellant's *sur place* activities.

Disposal

34. I have carefully considered whether this case should be retained in the Upper Tribunal or remitted to the First-tier Tribunal, bearing in mind paragraph 7.2 of the Practice Directions and AEB v Secretary of State for the Home Department. I have concluded that the appeal should be remitted. A number of fundamental issues need to be revisited and this will involve extensive fact-finding.

Notice of Decision

The decision of the First-tier Tribunal involved material errors of law and that decision is set aside to the extent set out in this error of law decision.

The appeal is remitted to the First-tier Tribunal (Birmingham hearing centre).

Directions to the First-tier Tribunal

(1) The remitted hearing shall not be heard by First-tier Tribunal Judge JM Dixon;

(2) When re-hearing this appeal, the First-tier Tribunal will have regard to what is said in this error of law decision. Specifically:

i. the previous findings relating to claimed events in Iran and the non-genuine motivation behind the *sur place* activities in the United Kingdom are preserved;

ii. the issues to be determined are: the Appellant's nationality; risk on return; Article 8.

H Norton-Taylor

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 13 November 2024