



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004419

First-tier Tribunal No: PA/53676/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 30th of January 2025

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE PICKERING

Between

APA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Islam instructed by Barnes Harrid & Dyer Solicitors.
For the Respondent: Ms Young, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 15 January 2025

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

1. The Appellant appeals with permission a decision of First-tier Tribunal Judge M Smith ('the Judge'), promulgated on 11 June 2024, in which he dismissed the Appellant's appeal against the Secretary of State's decision to refuse his claim

- for international protection and/or leave to remain in the United Kingdom on any other basis.
2. The Appellant is a citizen of Iran of Kurdish ethnicity who left Iran in 2021. He claimed to have travelled on an overland route, including through Turkey and France, before entering the UK on a small boat on 22 December 2021 when he claimed he was 16 years of age.
 3. The Judge summarises the Appellant's claim at [14] as being:
 - a. He worked as a Kolbar from the age of 14 or 15, essentially taking over his father's job.
 - b. When he was about 16, he, along with other Kolbars, was shot at by the Pasdaran.
 - c. Hours later when he returned to his home, he discovered it had been raided by the Ettelaat who were looking for him.
 - d. His father immediately arranged for him to flee Iran that day via an overland route and into Turkey.
 - e. Since his arrival in the United Kingdom the appellant has attended an antiregime demonstration in London in August 2023 where he was photographed participating in activities including holding posters and flags and burning a picture of Ayatollah Khamenei which have been posted on to Facebook.
 4. The key issues Judge was required to resolve are set out at [17] as being:
 - a. The credibility of the appellant's account and whether he has come to the attention of the Iranian authorities for his activities as a Kolbar.
 - b. The genuineness of the appellant's political activities.
 - c. Whether, even if his political activities are not genuine, the appellant would nevertheless face risk for what he has done.
 - d. His capacity to (re-)integrate into Iranian society and whether there would be any unjustifiably harsh consequences if the appellant's appeal was dismissed.
 5. The Judge sets out findings of fact from [30] of the decision under challenge with the actual finding from [37]. At [37 (i)] the Judge finds the answers the Appellant gave in his asylum interview are internally inconsistent with the evidence contained in his statements which significantly adversely affects the credibility of his evidence overall.
 6. The Judge rejected the suggestion that discrepancies arose due to the questions asked not being clear or any mistranslated and sets out further reasons for why the Appellant's credibility was adversely affected at [37 (l)(i-iii)] and [37(m)].
 7. The Judge therefore concludes at [54] that overall, he was not satisfied the Appellant's account of being of interest to the Iranian authorities because of his activities as a Kolbar was reasonably likely to be true.
 8. In relation to his sur place activities, the Judge sets out relevant findings at [56 (a -i)] leading to it being concluded that in light of the fact the Appellant's political activities are not genuine it will be reasonable to expect him to delete

his Facebook account and there was no risk he would seek to continue any political activity in Iran [57], that whether his activities were genuine or not, in all the circumstances, there was no real risk of him having been identified by the Iranian authorities and so had not demonstrated he faced a real risk of persecution or harm upon return [38], that even taking into account the evidence in the round, the hair-trigger approach of the Iranian authorities, and the current geopolitical situation, the Judge finds the Appellant's credibility is so adversely affected by inconsistent and implausible evidence that he was not satisfied the Appellant had met the burden of proving his case [59].

9. In relation to Article 8 ECHR, the Judges assessment is to be found at [60 (a-f)] in which the Judge finds the Appellant has retained cultural ties, speaks Kurdish fluently, remains and is in contact with his family, with whom it is in his best interest to live, and who could assist the Appellant were he to require any help.
10. The Appellant had not established there will be significant obstacles to his reintegration into Iran [61].
11. There is then an issue with the numbering of the paragraphs as after [61] they revert to [53] for some unexplained reason. In that paragraph the Judge finds the matters raised by the Appellant did not outweigh the public interest and that the Appellant would not suffer unjustifiably harsh consequences or that the decision, for any other reason, is a disproportionate interference with his Article 8 rights.
12. The Appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal, the operative part of the grant being in the following terms:

3. Ground 1 asserts that the Judge erred in failing to consider the risk to him as a past work as a Kolbar generally even if his account of his own experiences beyond that has been rejected. It is arguable that the judge did not consider the risk on return to a former Kolbar in that context.
4. Ground 2 asserts that the Judge erred in not making a finding as to whether or not the Appellant would have been photographed at demonstrations at the Iranian embassy.
5. It is arguable that the Judge has not made the necessary finding, and has focused too much on the Appellant's intentions in his political activity, and whether or not it had been discovered by the Iranian authorities bearing in mind *WAS (Pakistan) v SSHD* [2023] EWCA Civ 894 (not cited in the grounds).
6. Ground 3 argues that the judge ought to have considered the risks that will arise to the Appellant when being interviewed on entry to Iran. It is accepted that this was not pleaded before the Judge.
7. Given that the judge acknowledged SSH and HR (illegal exit: failed asylum seeker) *Iran (CG)* [2016] UKUT 308 (IAC) it is arguable they should have engaged with the process of interviews on return to Iran. I am just persuaded that this ground is arguable.
8. Permission to appeal is granted on all grounds.

13. There is no Rule 24 response from the Secretary of State.

Decision and reasons

14. We indicated to the parties at the outset of the hearing as a preliminary indication that we did not consider there was any arguable merit in Grounds 2

- and 3 , and that Ground 1 was the stronger of the three grounds, although having considered the submissions we find no material legal error in that decision either, for the reasons we now give.
15. For the sake of completeness, Ground 2 asserting the Judge did not make findings on whether or not the Appellant would have been photographed at a demonstration at the Iranian embassy and failed to focus upon whether he had been discovered by the Iranian authorities, fails to take into account the Judge's analysis of the Appellants Sur Place activities and the finding that he had failed to establish any real risk from the Iranian authorities as a result. Within that the Judge clearly considered the Appellant's role in the demonstration, relevant case law, motivation which was relevant to whether it is a credible activity or one undertaken to enhance a poor asylum claim (although we accept a disingenuous claim could also result in persecution in certain circumstances), before coming to the finding that there was no such risk. We find the Judge considered the evidence with the required degree of anxious scrutiny and made a finding that is adequately reasoned that no risk arises as a result of the demonstrations, individually or cumulative with the other relevant issues.
 16. Ground 3 argues the Judge should have considered the risk to the Appellant at the pinch point on return to Iran when he will be interviewed, although it is accepted in the grounds that this was not argued before the Judge. A simple point is that if the Judge was not asked to deal with a specific issue it cannot be an error of law for the Judge not to do so. As this matter was not raised evidence would not have been provided but the Judge was well aware of the country conditions and case law relating to Iran and makes a clear finding on the basis of cumulative evidence as a whole that even at the point on return the Appellant had failed to establish he will face any real risk from the Iranian authorities.
 17. Ground 1 asserts the Judge erred in failing to consider the risk to the Appellant based upon his past work as a Kolbar. Reference was made during the course of the hearing to the Country policy and information note: smugglers, Iran, February 2022 (CPIN) at paragraph 2.4.6 and 2.4.7 which read:
 - 2.4.6 Evidence continues to support the findings in [HB](#) in that a person will not be at real risk of persecution or serious harm based on their Kurdish ethnicity alone, though when combined with other factors, such as involvement in smuggling, may create a real risk of persecution or Article 3 ill-treatment. Each case must be considered on its facts and decision makers must take into account additional factors, such as actual or perceived political activity, when assessing risk.
 - 2.4.7 Persons who have been involved solely in smuggling are likely to face prosecution. It is lawful for the authorities to prosecute those engaged in smuggling illegal items, or goods which would be subject to import tariffs. However, those prosecuted for such crimes may face a trial which does not meet international standards of fairness. Smuggling can incur a range of penalties, from fines to flogging, or the death penalty (see [Penalties and prosecution](#)).
 18. The Judge was aware that the appeal centred around risk from the Iranian state due to the Appellant's Kurdish ethnicity, smuggling and political activities including Facebook entries. The Judge directed themselves to and clearly took into account the relevant country guidance caselaw which is noted at [22] and the general position outlined in the various Country Policy Information Notes to which reference is made at [23]. The former being binding upon the Judge.
 19. The Judge accepts that the country evidence shows that Kolbars can be shot at, and indeed prosecuted by the authorities, but found that fell short of proving

- the Appellant faces a real risk of serious harm as the Judge finds he would not be required to engage in such employment in the future as he has other available economic activities, and the authorities were unaware of his smuggling activities to date. The Appellant's claim that they were and that he will face a real risk was part of the evidence the Judge found lacked credibility.
20. Being a Kolbar is not a fundamental element per se, of an individual's personality in the same way as religion, sexual orientation, or political belief may be. Taken at its highest, the evidence before the Judge indicates the Appellant undertook such activities as he followed in his father's footsteps for economic gain, as most Kolbar do. It was not made out the Appellant would have to reveal to the authorities what he had done or what he smuggled across the border. It is a sustainable finding of the Judge that the authorities have no idea of this.
 21. Similarly, the Judge finds the Appellant's political activities in the UK are not genuine and do not represent a fundamental aspect of his beliefs or personality, meaning he will not have to disclose undertaking the same on return to Iran and could close his Facebook account as found by the Judge, without infringing the HJ (Iran) principal.
 22. The Judge clearly considered the issues he was required to consider in the appeal, as advanced by the parties, as recorded in the determination. That included considering the matter in the context of country information and the country situation. The country information does not say that all Kolbar are at risk, and there is no country guidance to this effect. The burden is upon an individual to show that they will face a credible real risk sufficient to warrant a grant of international protection. The finding of the Judge is that on the evidence relied upon by the Appellant he had not discharged that burden.
 23. The Judge considered the evidence with the required degree of anxious scrutiny and has made a number of findings supported by adequate reasons. Rejection of the Appellant's claim has not been shown to be outside the range of those reasonably open to the Judge on the evidence.
 24. Whilst the Appellant disagrees, the Judge's findings have not been shown to be rationally objectionable sufficient to warrant the Upper Tribunal interfering any further in this matter.

Notice of Decision

25. The First-tier Tribunal has not materially erred in law. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

22 January 2025