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

**Case No: UI-2023-004773**
**First-tier Tribunal No:**
**PA/51277/2023**
**LP/01899/2023**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**
**On the 25 July 2024**

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**
**DEPUTY UPPER TRIBUNAL JUDGE LEWIS**

**Between**

**K S**
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Ms E. Stuart-King, instructed by Elder Rahimi Solicitors
For the Respondent: Mr E. Tufan, Senior Presenting Office

**Heard at Field House on 11 July 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity because the case involves protection issues. 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 appealed the respondent's decision dated 06 February 2023 to refuse a protection and human rights claim.

2. First-tier Tribunal Judge Colvin ('the judge') dismissed the appeal in a decision sent on 16 October 2023. The judge heard evidence from the appellant and was in the best position to assess the credibility of the witness. The judge considered the appellant's account of events in Iran. The appellant said that he agreed to look after a box for a friend called 'K' who later disclosed that it contained materials relating to the KDPI (Kurdish Democratic Party of Iran). K then blackmailed him into helping him to distribute leaflets by threatening to report the fact that he had hidden these materials to the authorities. The appellant agreed to help K distribute leaflets, which they did in two local villages on one occasion in May 2021. K was arrested the next day and is said to have blamed the appellant. When a search of the family home took place the materials were found and it is said that the appellant's father was also arrested. The appellant was visiting his uncle in Sardasht at the time. His uncle found out that they had been detained and helped to make arrangements for the appellant to leave the country [3][5]. Since he arrived in the UK he realised that he was free to protest about Kurdish issues. He has attended demonstrations outside the Iranian Embassy and posted messages on Facebook [6]-[7].

3. The judge gave a series of reasons for finding that the appellant's account of events in Iran was implausible and lacked credibility [21]-[28]. The judge considered the credibility of the appellant's account in the context of the background evidence, which indicated a risk of detention and ill-treatment for known or suspected Kurdish activists in Iran [22]. However, the judge went on to take into account several inconsistencies. In particular, the judge considered that the appellant's account of how his uncle found out about his father's and K's arrests. In doing so the judge also took into account the appellant's explanation for his seeming lack of knowledge about how his uncle discovered the information [23].

4. The judge considered the claim in light of the background evidence. She considered that the account that his uncle would simply encounter K sitting waiting at a police station if he had been arrested on suspicion of activities for the KDPI was inconsistent with the background evidence, which showed that arrests of political activists were often surrounded by secrecy. She also found that the account of his uncle obtaining information from the police station was also inconsistent with the background evidence, which indicated that the authorities often failed to provide information as to why family members had been arrested [24].

5. The judge also expressed concerns about the credibility of the appellant's claim to no longer to be in contact with his family. He confirmed that both his parents had mobile phones. The judge concluded that it was not credible that the appellant would have set off on the journey to the UK without their details or that he could not reestablish contact with family members in Iran by telephone or through social media. Although the appellant had said that he had contacted the Red Cross for assistance in family tracing, there was no evidence produced to support this claim [25]-[26]. Having considered the evidence as a whole, the judge concluded that the appellant's account of past events in Iran was not credible or plausible [28].

6. The judge went on to consider whether any other aspects of the claim might give rise to a risk on return. The judge noted that the appellant had said in interview that he had not learned about Kurdish political parties while in the UK [29]. She considered what evidence there was of the appellant's attendance at

demonstrations, said to have been held outside the Iranian Embassy. The judge accepted that there were a couple of photographs which showed the appellant wearing a high visibility vest and holding a megaphone. She also accepted that screenshots had been provided of the appellant's Facebook account, which showed anti-regime sentiments reposted by the appellant in Kurdish. The judge noted that, in interview, the appellant had said that he mainly copies and pastes the posts from other people. He thought his Facebook account is public [30].

7. It is clear from the decision that the judge went on to direct herself properly with reference to the relevant country guidance decisions in *BA (Demonstrators in Britain – risk on return) Iran* CG [2011] UKUT 36 and *XX (PJAK, sur place activities, Facebook) Iran* CG [2022] UKUT 00023 (IAC) [32]. However, it is accepted that the judge did not make specific reference to the country guidance decision in *HB (Kurds) Iran* CG [2018] UKUT 00430 (IAC), which was relied on in the appellant's skeleton argument.

8. In assessing the potential risk from these sources the judge took into account the fact that she had rejected the appellant's claim to have come to the adverse attention of the authorities before he left the country. She concluded that the photographic evidence before her mainly showed the appellant as part of a crowd rather than taking any significant role. She did not consider that this broad finding was altered by a couple of photographs of him holding a megaphone. No video recordings of the demonstrations were made available for the hearing. For these reasons, the judge concluded that the appellant's participation in some demonstrations in the UK was not reasonably likely to bring him to the adverse attention of the Iranian authorities [33].

9. Turning to the screenshots from the appellant's Facebook account, she noted that it was not presented in the way outlined in *XX*, which suggested that screenshots alone were of limited evidential value. The judge concluded that the limited evidence of postings on Facebook did not show that the appellant had a significant profile as a political activist. In light of her other findings relating to past events, and the likelihood of risk arising from demonstrations in the UK, the judge found that 'it is most unlikely that his Facebook account has been the subject of even an ad hoc search by the Iranian authorities.' [34].

10. The judge went on to find that there was no evidence to show that an open internet search relating to the appellant would provide any information that might inform the Iranian authorities of his social media activities in the UK. The appellant did not answer the question when asked if he would voluntarily close his Facebook account if returned to Iran, instead, he repeatedly stated that he believed that his *sur place* activities would put him at risk if returned. The judge considered whether the appellant's activities in the UK were 'opportunistic' given that he began to attend demonstrations shortly after arrival having admitted that he had not had any prior political involvement in Iran. While recognising that it was difficult to assess, she concluded that it was at least reasonably likely that the appellant would mitigate the risk by deleting his Facebook account if he were to be returned to Iran [35]. Having considered all the evidence, she concluded that there was not a reasonable degree of likelihood that the appellant would be at risk on return [37]. For these reasons, the appeal was dismissed.

11. The appellant applied for permission to appeal to the Upper Tribunal on the following grounds:

(i) The First-tier Tribunal erred in failing to have regard to the country guidance in *HB (Kurds) Iran* CG [2018] UKUT 00430 (IAC).

(ii) The First-tier Tribunal's findings relating to risk on return were irrational.

(iii) The First-tier Tribunal erred in its analysis of the credibility of past events in Iran.

(iv) The First-tier Tribunal erred in placing weight on the fact that the appellant had not joined any political organisations in the UK.

12. We have considered the First-tier Tribunal decision, the documentation that was before the First-tier Tribunal, the grounds of appeal, and the submissions made at the hearing, before coming to a decision in this appeal. It is not necessary to summarise the oral submissions because they are a matter of record, but we will refer to any relevant arguments in our findings.

13. The Supreme Court in *HA (Iraq) v SSHD* [2022] UKSC 22 reiterated that judicial caution and restraint is required when considering whether to set aside a decision of a specialist tribunal. In particular, judges of the specialist tribunal are best placed to make factual findings. Appellate courts should not rush to find misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently: see *AH (Sudan) v SSHD* [2007] UKHL 49 and *KM v SSHD* [2021] EWCA Civ 693. Where a relevant point is not expressly mentioned by the tribunal, the court should be slow to infer that it has not been taken into account: see *MA (Somalia) v SSHD* [2020] UKSC 49. When it comes to the reasons given by the tribunal, the court should exercise judicial restraint and should not assume that the tribunal misdirected itself just because not every step in its reasoning is fully set out: see *R (Jones) v FTT (SEC)* [2013] UKSC 19. We have kept these principles in mind when considering our decision.

## Decision and reasons

14. We will consider the grounds in the chronological order in which the issues were considered by the First-tier Tribunal judge.

15. We conclude that there is no merit in the arguments put forward in the third ground. The judge heard evidence from the appellant and was in the best position to assess his credibility as a witness. The judge gave sustainable reasons for finding the appellant's account of past events in Iran to be implausible and lacking in credibility.

16. The judge considered the credibility of the appellant's claim to have been blackmailed by a friend into distributing KDPI leaflets (even though making a false report was likely to create a risk to his friend if the appellant explained the situation). It was open to her to find that his account of how his uncle found out about the detention of K did not accord with the background evidence relating to the secrecy often involved when perceived activists are detained. In our assessment, the mere fact that there is generalised evidence relating to the existence of corruption in Iran is insufficient to render the judge's findings to be flawed. In any event, it seems that the appellant had not suggested that his uncle discovered the information through payment of a bribe.

17. Ms Stuart-King referred to evidence contained in the appellant's bundle before the First-tier Tribunal, which does not appear to have been highlighted in the

appellant's original skeleton argument or in the grounds of appeal to the Upper Tribunal. An NGO called Iran Human Rights reported on 20 October 2022 that some people arrested in the widespread demonstrations taking place at the time were detained in unofficial buildings because official detention centres were full. This report was not likely to make any material difference to the judge's assessment. It relates to the large scale protests in 2022 where unofficial detention areas were used because of the numbers being detained. It is difficult to see how it relates to the credibility of the appellant's account of what might have happened in a rural area of Kurdistan when he left Iran before the protests began. Ms Stuart-King also referred to a report from the Kurdistan Human Rights Network dated 05 April 2022, which reported that dozens of Kurdish people were detained in Newroz celebrations. The fact that perceived Kurdish activists might be detained is trite and does not take the judge's assessment of the credibility of his account any further.

18. Although the appellant might disagree, it was also open to the judge to conclude that it was not credible that he would travel to the UK as an unaccompanied minor without any means of contacting his family in Iran given that his family members were said to have mobile phones. It was also open to the judge to consider the fact that there was no evidence to show that the appellant had approached the Red Cross for assistance with family tracing as claimed.

19. We disagree with the assertion made in the grounds that the appellant would have nothing to gain from claiming that he had not contact with his family. Where the appellant's initial claim was made as a minor, it might have been perceived as helpful to his case not to have contact with his family because this would inform any consideration of returnability and reception arrangements in Iran. To continue to claim that he had no contact with his family might also serve as an explanation for the unavailability of supporting evidence or up to date information about family members in Iran.

20. Grounds 1-2 and 4 seek to challenge the judge's assessment of risk arising from the appellant's *sur place* activities in the UK.

21. Ground 4 asserts that the judge erred in drawing an adverse inference from the fact that the appellant was not a member of a Kurdish organisation in the UK. It is true to say that it is a not a requirement to be a member of an organisation, but in light of the factors identified by the Upper Tribunal in *BA (Iran)*, it was necessary for the judge to consider the nature and extent of the appellant's activities to assess whether he had a profile that was likely to come to the adverse attention of the Iranian authorities. For this reason, we conclude that nothing in the fourth ground discloses an error of approach.

22. Grounds 1-2 are interrelated so we will take them together. It is accepted that the judge did not give specific consideration to the country guidance decision in *HB (Iran)*. However, neither the original skeleton argument nor the first ground of appeal make any detailed argument beyond a general reference to the 'hair trigger' approach taken towards Kurds as outlined in that case.

23. In *HB (Iran)*, the Upper Tribunal considered evidence about the risk to Kurds in Iran. It concluded that Kurds were not at risk on return solely on grounds of ethnicity, but it would depend on the particular profile of the person. It was common ground that Kurds who were members of political groups faced a real risk of treatment amounting to persecution [90]. The evidence showed that the Iranian authorities were likely to have a 'hair trigger approach to those suspected

of or perceived to be involved in Kurdish political activities or support for Kurdish rights.' By this the Upper Tribunal meant that 'the threshold for suspicion is low and the reaction of the authorities is likely to be extreme.' [95].

24. Although the Upper Tribunal in *HB (Iran)* referred to the earlier country guidance decision in *BA (Iran),* it did not appear to make any specific findings as to whether the risk for Kurds who demonstrate in the UK was any higher than other Iranians who conducted similar activities. The focus of the decision related to the general evidence relating to the risk to Kurds in Iran. The Upper Tribunal did not appear to receive any specific evidence to indicate that Kurdish demonstrations in the UK were more closely monitored than any other. We observe that, similar to the 'hair trigger' response, *BA (Iran)* was decided in relation to events that took place at a time of heightened political tension following elections in 2009.

25. The assessment of the appellant's potential profile relied on the credibility of his account of past events and the quality of the evidence relating to the nature and extent of any *sur place* activities in the UK.

26. We have already found that the judge's findings relating to the credibility of past events do not disclose any errors of law. No evidence was identified in the appellant's skeleton argument, the grounds of appeal, or the submissions made at the hearing, to show that attendance at a Kurdish demonstration in the UK was more likely to attract closer scrutiny than demonstrations considered in *BA (Iran)*.

27. Whilst recognising that the Iranian authorities would be interested in actual or perceived Kurdish activists, the Upper Tribunal in *HB (Iran)* did not discuss any heightened risk in relation to surveillance of *sur place* activity. In the circumstances, it is difficult to see how the decision in *HB (Iran)* would have made any material difference to the assessment of risk arising from the appellant's activities in the UK. It was open to the judge to focus on the factors identified in *BA (Iran)*, which considered the scope of any potential surveillance and the ability of the Iranian authorities to identify activists.

28. In so far as the second ground alleges that the judge's findings relating to risk arising from *sur place* activities is perverse, the test is a stringent one. In order to demonstrate that the judge's decision was irrational, the appellant would need to show that a properly directed judge was bound to find that the evidence produced in support of this appeal showed a real risk arising from his *sur place* activities.

29. Having directed herself properly to relevant factors identified in *BA (Iran)* we consider that it was open to the judge to consider the fact that the appellant, even on his own account, had not been politically active with any Kurdish organisations in Iran. The evidence showed that the appellant might have attended around 8-9 demonstrations in the UK in support of Kurdish rights. However, he was not an active member of a particular organisation where infiltration might give rise to a heightened risk of identification by the Iranian authorities. It was within a range of reasonable responses to the evidence for the judge to conclude that, despite the few photos showing the appellant wearing a yellow vest and holding a megaphone at a couple of demonstrations, there was little other surrounding evidence from others who attended or organised the demonstrations to support the appellant's claim that he was acting as a steward or had any other meaningful role that might heighten the risk of being identified. At interview the appellant said that he did not know who organised the protests. He only saw them advertised on Facebook [qu.161].

30. On his own evidence at the interview, the appellant's Facebook activity was confined to reposting existing information rather than expressing his own opinions [qu.166 & 168]. This in itself is likely to be seen a criticism of the Iranian authorities given its sensitivity to Kurdish protest. However, it was open to the judge to consider the likelihood of these posts coming to the attention of the Iranian authorities in light of the country guidance in *XX (Iran)*.

31. Having considered the first two interrelated grounds together, and for the reasons explained above, we conclude that the judge's failure to make specific reference to *HB (Iran)* would have made no material difference to the assessment in the absence of any other evidence to indicate that Kurdish demonstrations in the UK are likely to be more closely monitored than any other demonstration outside the Iranian embassy. Although the country guidance suggests that the Iranian authorities are highly sensitive, and likely to be interested in actual or perceived Kurdish activists, it was open to the judge to consider the likelihood of the appellant's somewhat limited activity in the UK having come to the attention of the Iranian authorities. It cannot be said that her conclusion was irrational or otherwise outside a range of reasonable responses to the evidence that was before her. For these reasons, we conclude that the first two grounds do not disclose any material errors of law.

32. For the reasons given above, we conclude that the First-tier Tribunal decision did not involve the making of any material errors of law. The decision shall stand.

## Notice of Decision

The First-tier Tribunal decision did not involve the making of a material error of law

**M.Canavan**
Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 July 2024