IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006225

First-tier Tribunal No: PA/51436/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 8th of November 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

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(Anonymity Order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms G Patel, instructed by Greater Manchester Immigration Aid Unit
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 26 October 2023

DECISION AND REASONS

1. This is the re-making of the decision in the appellant's appeal, following the setting aside of the decision of First-tier Tribunal Judge Dilks who had dismissed the appellant's appeal on asylum, humanitarian protection and human rights grounds.

2. The appellant is a citizen of Iran, born on 1 August 1994, of Kurdish ethnicity. He arrived in the UK on 13 March 2020 by lorry, having left Iran on 6 September 2019 and travelled through Iraq and Italy. He claimed asylum on 13 March 2020, but his claim was refused on 25 March 2022.

3. The appellant's claim was made on the basis that he was at risk on return to Iran because of the assistance he had given to the PJAK party. He claimed that, whilst working as a shepherd in 2019 or 2020, he befriended two kolbars (border smugglers) who travelled through the area and were members of the PJAK and who asked him to hide a letter for the PJAK in his barn which he agreed to do. He believed that the letter was collected by members of PJAK. One or both of the kolbars was subsequently arrested and the appellant's family home was raided. He went into hiding and then left Iran. The appellant claimed that since coming to the UK he had been politically active, attending demonstrations against the Iranian regime and posting on social media (Facebook).

4. The respondent, in refusing the appellant's claim, accepted that he was Kurdish and that he had left Iran illegally, but did not otherwise accept his claim in relation to his support for the PJAK, either in Iran or in the UK, and considered that his activities in the UK were not such as to bring him to the adverse attention of the Iranian authorities. The respondent considered that the appellant would be of no interest to the Iranian authorities and that he was at no risk on return to Iran.

5. The appellant appealed against that decision. His appeal against that decision was heard by First-tier Tribunal Judge Dilks on 17 October 2022. Judge Dilks considered the appellant's account of his support for PJAK to be internally inconsistent, vague and lacking in detail and she did not accept that it was a credible account. Having considered relevant country guidance, she did not accept that the appellant would be at risk simply as a Kurd or as a failed asylum seeker. The judge accepted that the appellant had attended four or five anti-regime demonstrations outside the Iranian Embassy in London and she also accepted that he had made some anti-regime Facebook posts whilst in the UK and that, if discovered by the Iranian authorities, he would be at risk of persecution in Iran. However, she did not accept that his attendance at the demonstrations or his Facebook posts would have led him coming to the attention of the Iranian authorities. With regard to the demonstrations, he was just a face in the crowd, and with regard to the Facebook posts, the judge found that the appellant's 'social graph' (in the terms used in XX (PJAK, sur place activities, Facebook) Iran (CG) [2022] UKUT 23) was not such that he would have been the focus of targeted surveillance. The judge found there to be no reason for concluding that the appellant's Facebook account would have been specifically monitored and she considered that he could close his accounts prior to the relevant 'pinch-points' during the application process for an emergency travel document (ETD) and on return to Iran, given that his *sur place* activities were opportunistic and not genuine and that he held no genuine political beliefs. The judge concluded that the appellant would therefore not be at any risk on return to Iran and she accordingly dismissed his appeal on all grounds.

6. The appellant sought permission to appeal to the Upper Tribunal against Judge Dilks' decision. Permission was refused by the First-tier Tribunal but was subsequently granted by the Upper Tribunal on a renewed application. In the decision of the Upper Tribunal granting permission it was made clear that the only part of the grounds which had any arguable merit was the judge's assessment, as referred to in grounds one and two, of whether the appellant would be identified as of interest to the authorities and whether he would disclose or would have to disclose any of his *sur place* activities when interviewed on return to Iran.

7. The matter then came before Upper Tribunal Judge Kamara on 20 July 2023 who, in a decision promulgated on 13 September 2023, noted the Home Office Presenting

Officer (Mr Walker)'s concession in regard to the first two grounds and set aside Judge Dilks' decision on the following limited basis:

> "Decision on error of law
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> 11. Like the judge granting permission and Mr Walker, I am of the view that there is only merit in the first and second grounds of appeal.
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> 12. There is no error in the judge's detailed and careful findings as to the lack of credibility of the appellant's pre-flight claim or the conclusion that his limited sur place activities were not reasonably likely to have come to the attention of the Iranian authorities. Grounds three, four and five amount to little more than disagreement with the conclusions of the judge and as such they identify no error of law.
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> 13. I accept the submission that the judge's assessment of the risk to the appellant did not include a consideration of whether his sur place activities would be likely to come to the attention of the Iranian authorities either when an application for an Emergency Travel Document is made or during screening upon arrival in Iran.
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> 14. The judge accepted that the appellant had attended several anti-regime demonstrations outside the Iranian Embassy in London during which he had been photographed while holding anti-regime posters and flags supporting Kurdish political parties.
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> 15. I should add that the judge provided sound reasons at [64] onwards for treating the evidence relating to the appellant's claimed Facebook posts with circumspection.
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> 16. That returnees to Iran are screened and interviewed is referred to in BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC) as well as PS (Christianity - risk) Iran CG [2020] UKUT 46 (IAC) at headnote (4) which refers to the necessity of decision-makers considering '*the possible risks arising at the 'pinch point' of arrival' and confirms that 'all returning failed asylum seekers are subject to questioning on arrival, and this will include questions about why they claimed asylum*.'
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> 17. The respondent, neither in the Rule 24 response nor submissions, refers to any passage of the decision where the judge grappled with the existence of any risk to the appellant based solely on what he could reasonably be expected to say to the Iranian authorities regarding the basis of his asylum claim or the extent of his political activities when questioned, particularly on arrival in Iran. This amounts to a material error given the importance of the pinch-point issue, as highlighted in PS. Given this error, the overall conclusion of the judge as to the risk to the appellant on return to Iran and the decision dismissing the appeal are set aside. Her remaining findings are preserved.
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> 18. I canvassed the views of the parties as to the venue of any remaking and Ms Patel sought a remittal to the First-tier Tribunal. Applying AEB [2022] EWCA Civ 1512 and Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC), I carefully considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the Senior President's Practice Statements.
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> 19. I took into consideration the history of this case, the nature and extent of the findings to be made and concluded that as the majority of the judge's findings are preserved, it is appropriate and fair for the remaining issue of risk on return to be decided in the Upper Tribunal."

8. The matter then came before me to re-make the decision in the appellant's appeal, following the issue of a transfer order.

9. The appellant was present but did not give oral evidence as Mr Bates confirmed that he did not wish to cross-examine him and accepted the appellant's most recent witness statement at face value.

10. The appellant relied upon a consolidated appeal bundle which included a recent statement of 13 October 2023 and further photographs of him at anti-regime demonstrations and Facebook posts. In his statement the appellant referred to his attendance at demonstrations on 13 July 2021, 22 March 2022, 5 April 2022, 17 April 2022, 25 May 2022 and 10 August 2022, which had been accepted by Judge Dilks, and a further four demonstrations since the hearing before Judge Dilks, on 22 November 2022, 2 January 2023, 11 June 2023 and 5 August 2023, all outside the Iranian Embassy in London. The appellant stated that on all those occasions he had been vocal and visible and had frequently worn a hi-vis jacket which he was given in the first demonstration, so that he was not just a face in the crowd. He stated that he had also shared his support for PJAK on Facebook and he believed that the Iranian authorities would find his social media accounts and activities. He could not delete his older Facebook account which he could not access, having lost his phone, and he would be at risk from the Iranian authorities on return to Iran.

11. Both parties then made submissions.

12. Ms Patel submitted that the appellant had attended nine demonstrations to date outside the Iranian Embassy in London and had been photographed holding anti-regime posters, scarfs and photographs which were all highly derogatory of the Iranian regime. She submitted, with reference to [65] of BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36, that the Iranian authorities were not concerned with whether or not the appellant's activities were opportunistic. Ms Patel submitted, with regard to the first 'pinch-point' of return identified in XX, namely the ETD application, that the appellant's Facebook activities would be flagged up as he would already have been identified as a person of interest. He would also be identified on the second 'pinch-point', when arriving in Iran, as he would be screened and questioned as a failed asylum seeker who had left Iran illegally, as found in PS (Christianity - risk) Iran CG [2020] UKUT 46. When questioned, he would not be expected to lie and would have to reveal his *sur place* activities. In accordance with SSH and HR (illegal exit: failed asylum seeker) Iran (CG) [2016] UKUT 308, there was a risk he would be detained for further questioning Ms Patel relied upon the guidance in HB (Kurds) Iran (illegal exit: failed asylum seeker) CG [2018] UKUT 430 on the 'hair-trigger' approach of the Iranian authorities to those suspected of or perceived to be involved in Kurdish political activities or support for Kurdish rights and she submitted that the appellant, who would have to admit to having participated in demonstrations against the regime, would be at risk of persecution. The appeal should therefore be allowed on asylum and Article 2 and 3 human rights grounds.

13. Mr Bates submitted that, in the absence of any credible explanation for the appellant's departure from Iran, it was considered that he had left for economic reasons. Judge Dilks' preserved findings were that the appellant did not hold any genuine political beliefs, that his *sur place* activities were opportunistic and that his attendance at demonstrations would not have come to the attention of the Iranian authorities. The new evidence was simply more of the same and did not provide evidence to show that the appellant would have come to the attention of the Iranian authorities. The appellant could simply delete his Facebook account prior to the ETD

interview, as he would no longer have any motivation to keep his posts, given that they were purely opportunistic. On return to Iran there would be no need for him to volunteer information about his Facebook account since it had only been created to deceive the UK authorities and he would therefore not be lying. Even if he was asked about attending demonstrations he would not lie by saying that he pretended to be an attendee but that it did not reflect any genuine beliefs. He would therefore not be at any risk on return.

14.In response, Ms Patel repeated that the appellant would come to the attention of the Iranian authorities at the pinch point of return, as a Kurdish Iranian who had left Iran illegally and who would be questioned on return.

Consideration and findings

15.In her decision, Upper Tribunal Judge Kamara found no error of law in Judge Dilks' findings as to the lack of credibility of the appellant's pre-flight claim or the conclusion that his limited *sur place* activities were not reasonably likely to have come to the attention of the Iranian authorities. She found that Judge Dilks had provided sound reasons for treating the evidence relating to the appellant's claimed Facebook posts with circumspection. It was also the finding of Judge Dilks, as preserved by Upper Tribunal Judge Kamara, that the appellant's *sur place* activities were not a reflection of any genuine political belief, but were opportunistic and were undertaken in order to provide a basis for demonstrating a risk on return to Iran.

16.I agree with Mr Bates that the additional evidence provided by the appellant does not take his case any further, being "more of the same", and that there remained no reason why his attendance at anti-regime demonstrations would have come to the attention of the Iranian regime. As Mr Bates submitted, this is not the same as XX whose new evidence "*shows his attendance at identified locations, with banners or holding the PJAK flag, and include photographs of him in close proximity to a prominent member of the PJAK*" ([109]), and whose "*carefully curated (albeit contrived) social graph*" was " *just sufficient … to establish a risk that he has been subject to surveillance in the past that would have resulted in the downloading and storing of material held against his name*" ([118]). In that case, it was found that XX had "*drawn enough attention to himself by the extent of his "real world" activities, to have become the subject of targeted social media surveillance*", and that "*Deletion of his Facebook material and closure of his account before he applied for an ETD would serve no purpose, as his profile is such that there is a real risk that he had already been targeted before the ETD "pinch point."* "

17.In this appellant's case, whilst photographed wearing a hi-vis jacket and holding posters, the appellant is pictured with his back to the Iranian Embassy, at a distance from the Embassy and apart from the crowds at the demonstration. Contrary to the appellant's evidence in his statement, there is nothing in the photographs to suggest that he was an active participant or that he was an interested and identifiable protestor, or that he was anything other than a face in a crowd. Rather the photographs suggest that he had simply posed for a few photographs for the purposes of his asylum claim, standing apart from the main demonstration. As Mr Bates submitted, there is no supporting evidence such as video footage to show that the appellant was an active and vocal participant, and that his involvement was anything other than posing for a few photographs. Neither is there any evidence to support his claim to have played a role of guiding the protestors or to have invited others at his college to attend the demonstrations, as stated in his statement. There is nothing to

suggest that he would have been observed by the Iranian authorities or that he would have come to their attention in any way.

18.The same can be said of the appellant's Facebook postings which, as Judge Dilks found, were not accompanied by full disclosure in electronic format and, as Mr Bates submitted, did not include any meta-data showing that his account had not been edited, as the guidance in the headnote to XX refers at [7] and [8]. As Mr Bates submitted, that in itself diminished the weight to be given to the posts as evidence of the appellant's perceived political stance. Further, as Judge Dilks found, and as Mr Bates submitted, with reference to [100] of XX, there is no reason why the appellant could not close his Facebook account and not volunteer the fact of a previously closed Facebook account, prior to the application for an ETD, given that the postings were not a reflection of any genuinely held political beliefs. Unlike the situation in XX, where deletion of XX's Facebook material and closure of his account before he applied for an ETD would serve no purpose since his profile was such that there was a real risk that he had already been targeted before the ETD 'pinch point', there is no basis in this appellant's case for concluding that he is already known to the Iranian authorities or has been targeted for surveillance. He has no 'social graph' as in XX which would have led to attention being drawn to him and which could have made him the subject of targeted social media surveillance. Contrary to Ms Patel's submission, therefore, there would be no interest 'flagged up' in relation to the appellant at the first 'pinch-point' at the EDT application stage since any internet or others searches against his name would not produce any information adverse to the Iranian regime.

19.Ms Patel submitted, with reference to BA and PS, that the appellant, as a failed asylum seeker who had left Iran illegally, would be screened on arrival in Iran and would be questioned about what he was doing in the UK and why he claimed asylum. Ms Patel relied upon the 'hair trigger' approach of the Iranian authorities and the low threshold for suspicion in relation to Kurdish returnees, as discussed in HB. It is accepted that neither of those cases, or the case of SSH, finds that those factors, without more, would put the appellant at risk and it is accepted that the risk would only arise as a result of suspicion of involvement in political activity or support for Kurdish rights. It was Ms Patel's submission that the appellant's *sur place* activities would, however, give rise to such a risk and that the appellant would be required to tell the truth about his activities in that regard. She submitted that he would be detained when being questioned further and that the detention in itself would give rise to a breach of Article 3, as per the country guidance in SSH at [23].

20.The relevant and determinative question, therefore, is what would the appellant say, or what could he reasonably be expected to say, when questioned by the Iranian authorities at that point. It is that specific point which has given rise to the need for the decision in this appeal to be re-made.

21.Ms Patel submits that the appellant cannot be expected to lie about his activities in the UK and the basis of his asylum claim, and that his disclosure of his Facebook postings and attendance at demonstrations would be sufficient to put him at risk irrespective of the fact that they may have been opportunistic. However, as Mr Bates submitted, not only would the Iranian authorities have no prior knowledge of the appellant's attendance at demonstrations or of his Facebook activities and would not find any presence on social media since the appellant would have deleted his account, but that, as established in XX, the appellant would not be required to volunteer information about activities which were not an expression of any genuinely held beliefs and which had been contrived solely to enhance a false claim for asylum and to deceive the UK authorities. That was precisely the point made by the Upper Tribunal in

XX at [100] where it was said that "*Decision makers are allowed to consider first, what a person will do to mitigate a risk of persecution, and second, the reason for their actions. If the person will refrain from engaging in a particular activity, that may nullify their claim that they would be at risk, unless the reason for their restraint is suppression of a characteristic that they have a right not to be required to suppress, because if the suppression was at the instance of another it might amount to persecution*."

22.As Mr Bates submitted, the appellant's true account was that he had been photographed at the back of a demonstration pretending to be an attendee but that that did not reflect any genuine beliefs, and that he had created a Facebook account and postings to deceive the UK authorities. There was no reason why he should volunteer that information and the withholding of such information would not impact upon any fundamental rights protected by the Refugee Convention. There is accordingly nothing in the guidance in SSH to support Ms Patel's submission that there would be a second stage of questioning which would involve detention and a risk of Article 3 ill-treatment. As was found in that case at [23], "*a person with no history other than that of being a failed asylum seeker who had exited illegally and who could be expected to tell the truth when questioned would not face a real risk of ill-treatment during the period of questioning at the airport*." Likewise, there is nothing in the guidance in HB, BA or PS to support Ms Patel's submission in that regard.

23.Accordingly, there being no reason for the Iranian authorities to have any suspicion of the appellant on the basis of any actual or perceived activities in the UK, and there being no reason for him to be detained and transferred for further questioning, the appellant has simply failed to demonstrate any basis for being at risk on return to Iran. There is no reason to believe that he would wish to engage in anti-regime activities in Iran, having never previously held any genuine political beliefs and having never previously been genuinely or knowingly involved, or perceived to be involved, in anti-regime activities. The appellant's removal to Iran would not, therefore, give rise to any real risk of persecution and he has failed to make out any grounds of claim on asylum, humanitarian protection or human rights grounds.

DECISION

24.The making of the decision of the First-tier Tribunal involved an error on a point of law and has been set aside. I re-make the decision by dismissing the appeal on all grounds.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

1 November 2023