IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000561
First-tier Tribunal No:
PA/51087/2021
IA/04770/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 11 September 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MK
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Wood of Immigration Advice Service.
For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 30 August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 (*and/or other person*). 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 Hatton ('the Judge'), promulgated on 19 December 2022, in which the Judge dismissed the appellant's appeal against refusal of his application for leave to remain in the United Kingdom on protection and/or human rights grounds.
2. The appellant is a citizen of Iran of Kurdish ethnicity born on 11 May 1999. That aspect of his claim was not disputed before the Judge.

3. The Judge had the benefit of considering the documentary and oral evidence and sets out his findings from [18] of the decision under challenge.
4. The Judge was concerned by the number of what he describes as "shifts in the appellant's narrative" since his initial screening interview on 11 March 2019. The Judge refers to those in detail in the determination leading to his conclusion at [65] that he was not satisfied, even to the applicable lower standard of proof, that the appellant's evidence is reliable and that the incidents which he claimed took place happened as described, or at all. The Judge finds the appellant's asylum claim internally and externally inconsistent and inherently implausible.
5. In relation to his sur place activities in the UK, considered from [66] onwards, the Judge by reference to the applicable country guidance case of XX assesses the appellants claim and on the evidence concludes that the appellant had cynically manufactured an anti-Iranian stance on his Facebook in an attempt to bolster his asylum claim, and that the evidence provided of his sur place activities is of "extremely limited probative value".
6. The Judge goes on to consider whether the appellant's claimed activities would have caused the Iranian authorities to take an adverse interest in him but finds there is no risk of the appellant coming to the adverse attention of the Iranian authorities as his claim to have done so is based upon an account the Judge finds not to be credible, is not satisfied the appellant has actively participated in public demonstrations in the UK against Iranian authorities, and not established a real risk on account of his Facebook activities.
7. The Judge considers real risk of discovery from [103] but finds the appellant can delete his Facebook account before approaching the Iranian authorities which eliminate the possibility of any such detection, and that no risk arises in relation to any other claimed aspect of the appeal. The Judge particularly notes on the appellant's own testimony his family had not been harmed in Iran. The appeal is dismissed on all grounds.
8. The appellant sought permission to appeal which was refused by another judge the First-tier Tribunal but renewed to the Upper Tribunal. Permission to appeal was granted by Upper Tribunal Judge Canavan on 5 April 2023, the operative part of the grant being in the following terms:

    2. Many of the judge's findings were likely to be open to him to make, including the credibility findings relating to the evidence given in the screening interview that, despite his change of evidence, were perpetuated by the appellant's evidence at the hearing.
    3. It was also likely to be open to the judge to question the way in which the photographs that purported to be from Facebook were presented i.e. by way of a series of photographs on a blank page without the original screenshot from Facebook itself. Nevertheless, if the comparator photograph provided in the grounds is in fact a photograph of the appellant, it is arguable that the judge might have erred in finding that none of the photographs of the demonstrations included in the hearing bundle appeared to include the appellant. As a matter of fact, they do appear to feature the appellant in a series of rather staged poses. If the judge had any doubts, it would have been fair to ask the appellant to point out where he was said to be in the photographs, but this does not appear to have been done. Any potential error is likely to be material to a proper assessment of the sur place claim.
    4. Although some grounds are more arguable than others, I do not limit the grant of permission. Given the main issue relates to the appellant's identity, the appellant will be expected to attend the hearing before the Upper Tribunal.

Discussion and analysis

9. Notwithstanding the specific indication in the grant of permission to appeal that the appellant will be expected to attend the hearing before the Upper Tribunal, given that the main issue related to his identity, the appellant did not attend.

10. Mr Wood had emailed the Upper Tribunal in the days prior to the hearing indicating that he was without instructions from his client who had not been in contact for some time. There is on the Upper Tribunal case management system an entry in July 2023 in which a friend of the appellant telephoned the Upper Tribunal to ascertain what was happening in the appeal, claiming not to have been able to get in touch with or to have heard from his legal representative. Mr Wood confirmed, however, that he had received a telephone call from his client the day before the hearing asking him to attend and confirming his instructions. I am satisfied therefore that the appellant was aware of the reason for the error of law hearing and the issues being considered. I have not received a satisfactory explanation for why he failed to attend the hearing.
11. Mr Wood as an advocate making submissions cannot give evidence, although he believes that the person appearing in the print of the photograph attached to the application for permission to appeal is the appellant who did attend the demonstrations.
12. The grounds seeking permission to appeal to the Upper Tribunal assert (i) the Judge has materially misdirected himself in law in relation to the appraisal of the content of the appellant's screening interview. The appellant argues notwithstanding the Judge identifying discrepancies in the appellant's evidence the appellant was alleging a mistake had been made in the completion of the screening interview, yet there is no indication within the decision that the Judge considered whether a mistake had occurred. I find no material legal error in this ground. The Judge clearly considered the evidence with the required degree of anxious scrutiny and set out his findings supported by adequate reasons as to why he was concerned about the content of the evidence and the discrepancies that were identified, which are clearly referred to in the determination. The appellant may have provided an explanation for the discrepancies, which clearly shows that they were brought to his attention, but the Judge was not persuaded, even to the lower standard, that that provided a sufficient explanation enabling the Judge to disregard the discrepancies. The Judge was not required to set out each and every aspect of the evidence and having reviewed the same it is not made out the Judge's conclusions are outside the range of those reasonably open to him on the evidence in relation to the discrepancies and consequences upon the credibility of the appellant's claim.
13. Ground (ii) suggests the Judge is made an irrational finding of fact on a material matter in finding at [86] that the Facebook evidence did not contain any images of anyone who appeared to be the appellant. The grounds assert it is irrational of the Judge to have concluded the Facebook images did not depict the appellant. In support of the claim the Judge erred the appellant has attached a print of a photograph to the grounds of appeal, which was taken the day before the hearing, extracted from his Facebook account, although it is accepted by Mr Wood that it was not before the Judge. I cannot compare the image to the appellant as he failed to attend the error of law hearing. The grounds assert this is material as it impacted upon consideration of the appellant's sur place activity.
14. I do not find any merit in the assertion at [19] of the grounds that the Judge had "closed their mind" to any material weight being attached to Facebook evidence no matter what format it was presented in. The Judge clearly considered the evidence with the required degree of anxious scrutiny when assessing the evidence and raised matters with the appellant's advocate to enable the Judge to understand the case fully to enable him to come to a proper conclusion.
15. From [66 - 99] of the determination the Judge was considering the answer to the question, posed as the second issue to be determined, whether the appellant's claim sur place activities since arriving in the UK were credible.

16. The Judge's concerns about the appellant's claim to have attended demonstrations arise from a number of sources, not just the Facebook image evidence. The appellant had claimed in replies to a preliminary information questionnaire (PIQ) submitted on 4 September 2020 that he had attended demonstrations by the Iranian embassy to promote the rights of the Kurdish people denouncing the ill-treatment of Kurdish people in Iran during the period from 8 September 2019 to 30 July 2020 inclusive and to have been very active on Facebook since setting up an online public account on 22 May 2019 [66].
17. The Judge noted that in his substantive asylum interview on 16 September 2020 the appellant confirmed he was never involved in any kind of political activities in Iran.
18. The Judge notes the appellant's reply at question 112 of the asylum interview when he was asked to confirm when he attended demonstrations in the UK, that the appellant was unable to provide details of a single demonstration he had attended notwithstanding that in his PIQ which was submitted just twelve days before his substantive interview took place he lists the dates of all eleven demonstrations that he purportedly attended [68]. The Judge notes at [69] the dates of demonstrations the appellant purportedly attended, as listed in this witness statement of 5 July 2022 did not correlate with the dates provided in his proceeding PIQ [69].The Judge finds it a striking discrepancy that although the appellant claimed in the questionnaire to have attended eleven demonstrations from 8 September 2019 to 30 July 2020 inclusive in his subsequent statement he only stated he attended seven demonstrations, during the period 8 September 2019 to 30 July 2020. The appellant also claimed that the dates for the demonstrations he attended in the UK are shown on his Facebook account, leading the Judge to conclude that if the dates are genuinely all covered on the Facebook record the lack of consistency in his evidence was "remarkable" [70]. These are findings reasonable open to the Judge on the evidence.
19. The appellant was aware the question of whether he had attended demonstrations was a live issue. The Secretary of State did not accept the appellant had attended political events outside the Iranian embassy in London as claimed in the Refusal letter of 19 December 2021. Part of the reason was that although the appellant alluded to Facebook evidence confirming his attendance that material had not been produced.
20. The Judge notes the appellant did not adduce the Facebook evidence until 26 July 2022, one year and five months after the refusal of his protection claim and that the appellant had still only seen fit to adduce fragments or what purports to be pages from his Facebook profile some of which are "clearly duplicates" [73].
21. The Judge refers the country guidance case of XX [2020] UKUT 00023(IAC) which provided guidance in relation to sur place activities involving claims related to Facebook. The Judge refers in particular to headnote [8] that it is easy for an apparent print out of electronic exert of an Internet page to be manipulated by changing the page source data and that for the same reason, where the decision-maker does not have access to an actual account, printouts from such an account may also have very limited evidential value.
22. The Judge also refers to the fact that all the pages provided purportedly to be genuine exerts from the appellant's Facebook account are in English is a matter of concern, as the appellant confirmed he can only read and write in Kurdish as well as speaking some Fasi. The Judge considers whether the documents in English are merely translations but does not find weight can be placed upon them as the untranslated originals had not been provided [78 – 79]. That is also a finding reasonably open to the Judge.
23. The Judge finds at [81] that the Facebook pages are incapable of corroborating or otherwise supporting the appellant's claim that he had attended various

demonstrations on the date stipulated either in his preliminary information questionnaire or subsequent witness statement. The Judge notes at [82] that neither the appellant's statement nor his appeal skeleton argument makes any attempt to highlight or otherwise identify which of the relevant pages, if any, show the appellant engaging in demonstrations outside the Iranian embassy in London.

24. The grounds specifically criticise the Judge's findings at [86] in which it is written:

> 86. My finding in this regard is bolstered by the fact that none of the images before me which purports to emanate from the Appellant's Facebook page contain pictures of individuals who bear any discernible resemblance to the man who appeared before me at the hearing which took place on 12 December 2022. In particular, I am mindful the Appellant presented as a man with a long beard several inches long and also had long curly hair. During the hearing, I scrolled through the various images at [HB, pp.61-159] and was unable to identify a single image of a man who bore a passing resemblance to the Appellant before me.

25. Production of a photograph which was not adduce to the Judge of a person purporting to be the appellant who did not attend the error of law hearing does not undermine the finding of the Judge at [86]. I accept the submission by Mr Wood that people may change over time and that they may look different to photographs taken of them some time previously. The Judge would, no doubt, have been aware of that as we all change over time. The claim by the appellant was, however, that the demonstrations he attended were during the period September 2019 to July 2020 in his PIQ or the other period as identified by the Judge. The hearing before the judge took place on the 12 December 2022 so this is not a case where a substantial period of time has passed between when it was alleged images were taken and the date of the hearing. In addition to this the Judge had the benefit of not only looking at the images which it was claimed were of the appellant but also having the appellant sat in front of him in court. The Judge was therefore well placed to make a comparison between the physical image of the appellant and the picture of the person appearing in the photographs on the Facebook pages. It is not made out that the Judge's conclusion, having exercise judgement on this point, has resulted in a finding which is outside the range of those reasonably open to the Judge on the evidence.

26. The Judge's finding having assessed the evidence at [98] that the appellant has cynically manufactured an anti-Iranian government stance in a belated attempt to bolster his asylum claim and that it is not made out his sur place activities are genuine, has not been shown to be finding outside the range of those reasonably available to the Judge on the evidence.

27. Thereafter the Judge went on to consider whether the appellant's claimed activities could cause the Iranian authorities to take an adverse interest in him. The Judge finds that there is no real risk of him coming to the adverse attention of the Iranian authorities on account of his claimed assistance of the Kurdish groups as the Judge was not satisfied that event actually occurred. The Judge was not satisfied the appellant had actively participated in public demonstrations in the UK against the Iranian authorities for which adequate reasons are also given. The submission the appellant was at risk on account of his Facebook activities was rejected, especially as he could delete his Facebook profile prior to any interaction with the Iranian authorities, as what is recorded there has not been found to be genuine reflection of the fundamental view held by the appellant. The Judge's finding that the appellant's sur place activities will not have come to the adverse attention of the Iranian authorities is a finding

within the range of those reasonably open to the Judge on the evidence for which further reasons are given at [106].

28. Having reviewed the evidence, the determination, the grounds seeking permission to appeal, and the submissions made on the appellant's behalf, I find the appellant has not established legal error material to the decision to dismiss the appeal.

Notice of Decision

29. The First-tier Tribunal has not been shown to have materially erred in law. The determination shall stand.

C J Hanson
Judge of the Upper Tribunal
Immigration and Asylum Chamber
31 August 2023