IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004697

First-tier Tribunal No: PA/54496/2022
IA/11066/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 28 December 2023

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

BH
(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 Avery, Senior Home Office Presenting Officer

Heard remotely at Field House on 20 December 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. By the decision of the First-tier Tribunal (Judge Nightingale) dated 20.10.23, the appellant, a citizen of Iran of Kurdish ethnicity, has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Farrelly) promulgated 15.6.23 dismissing his appeal against the respondent's decision of 15.6.22 refusing his claim for international protection.

2. The Upper Tribunal has received the respondent's Rule 24 reply of 8.11.23 and Ms Patel's skeleton argument, dated 13.12.23, both of which I have carefully considered, together with the oral submissions made to me at the error of law appeal hearing. Following those submissions, I reserved my decision to be provided in writing, which I now do.

3. The appellant's case is that he worked as a Kolbar, a smuggler of goods into Iran, and had a relationship with a girl from his village who was pledged to another man, A. The appellant suspected that A planted incriminating Kurdish rights material which was discovered on a raid of his home by Iranian authorities. As a result, he fled Iran and came to the UK. He claims to fear persecution by the Iranian authorities because of his work as a Kolbar and for imputed political opinion because of the discovered Kurdish material. He also participated in anti-regime demonstrations whilst in the UK and made anti-regime Facebook posts, claiming to be additionally at risk for that reason on return.

4. The First-tier Tribunal rejected the appellant's factual account of events in Iran as not credible, finding that he had no political profile and was of no adverse interest by the Iranian authorities before leaving Iran.

5. The First-tier Tribunal considered but at [24] of the decision rejected as not credible the claim to a relationship with a local girl, a finding not challenged by the grounds. It follows that there was no basis for A to plant incriminating Kurdish rights material in revenge for the relationship with the woman allegedly pledged to A. It also follows that the claim that his home was raided was rejected; no Kurdish rights material was found and there would be no adverse interest in the appellant on the basis of imputed political opinion before leaving Iran. These unchallenged findings are important when considering whether the appellant would be at risk on return.

6. Whilst it was accepted that he had engaged in some *sur place* activity by attending demonstrations, and by uploading anti-regime Facebook posts, the First-tier Tribunal concluded that this activity was of such a low level that it would not have generated adverse interest by the Iranian authorities so that he would not be at risk on return.

7. In summary, the grounds argue that the First-tier Tribunal (i) failed to consider the risk on return with the appellant having been a Kolbar (smuggler); (ii) failed to apply the guidance in HB and BA; and (iii) failed to take account of the appellant's Facebook activities in line with XX (Iran).

8. In granting permission on all grounds, Judge Nightingale considered it arguable that the First-tier Tribunal failed to consider that even those at a low level could be at risk in view of the 'hair trigger' approach of the Iranian authorities. It was also considered arguable that in view of XX, the judge fell into error in respect of the Facebook postings and the risk at the 'pinch point' on return. Judge Nightingale considered there to be less merit in the first ground, given that the appellant had never come to the attention of the authorities because of his Kolbar activities.

9. Ms Patel relied on all three grounds and referred to her skeleton argument. She submitted that the judge had made no sufficient reference to the relevant

Country Guidance cases and erred for that reason. The focus of the remainder of her submissions was that as a young Kurd who had left Iran illegally, and returned on a laissez-passer or ETFD, the appellant would face a 'pinch-point' of questioning on return. It was submitted that he would be asked and obliged to disclose his previous role as a Kolbar, the basis of his protection claim, his attendance at demonstrations, and his anti-regime Facebook posts, which would result in detention, torture and treatment amounting to persecution and/or infringing article 3 ECHR.

10. Mr Avery relied on the Rule 24 response and further submitted that which the judge could have provided a more detailed analysis but in reality, he applied the correct law. In that regard, I note that the First-tier Tribunal had the benefit of Ms Patel's skeleton argument of 27.4.23 before making the findings. The judge must be taken to have read that and the relevant Country Guidance.

11. Mr Avery submitted that on the findings made by the First-tier Tribunal there was nothing which would trigger the 'hair-trigger' approach by the Iranian authorities. It is implicit in the findings that the appellant has no genuine political interest and attempted to bolster a false asylum claim by self-serving activity such as attending demonstrations and making Facebook posts, which the judge found inconsistent with his claim to be uneducated.

12. From the Country Guidance, I accept that as a young Kurd returning to Iran following illegal exit, the appellant is likely to be questioned at the 'pinch-point' of return. I accept that there is a very low threshold for suspicion and that the Iranian authorities operate on a 'hair-trigger' basis. I also accept Ms Patel's submission that the Iranian authorities would not care whether political activity was genuine or not. However, on the findings of the First-tier Tribunal, there was no basis upon which either his Kolbar occupation or his sur place activities would be known to the authorities, or the appellant would be obliged to disclose.

13. In relation to the first ground based on being a Kolbar, the bare fact of which has been accepted, reliance is made on SSH & HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC) and HB (Kurds) Iran CG [2018], to the effect that whilst a person will not be at real risk of persecution or serious harm based on Kurdish ethnicity alone, such a risk may arise when combined with other factors, such as involvement with smuggling. However, given that there is no evidence that his Kolbar occupation was ever known to the Iranian authorities, I am satisfied that the judge was correct to find that there is no risk on return on that basis. The First-tier Tribunal found that the appellant had no political profile before leaving Iran; he was not of adverse interest to the Iranian authorities.

14. Ms Patel argued that under HJ (Iran) principles, the appellant could not be expected to lie about being a Kolbar. She also submitted that it would come out in torture. I do not accept either of those submissions. As Mr Avery pointed out, there was no reason why the appellant would be obliged to disclose his illegal activities as a Kolbar when there is no evidence that this is known to the authorities. Neither could it be said that this occupation was an expression of his political opinion. It follows that the first ground is entirely without merit and discloses no error of law.

15. In relation to the second ground and any risk arising from the appellant's *sur place* activities, the grounds argue that the photographs of the appellant holding the Kurdish flag and posters with anti-regime messages were not considered by the First-tier Tribunal. However, contrary to the grounds, at [26] the judge accepted that the appellant had attended demonstrations in the proximity of the Iranian Embassy (his oral evidence was that he had attended six such

demonstrations) and that there were a number of photographs of him "holding banners and so forth." It is clear that the judge was full aware of the evidence relied on by the appellant. Nevertheless, the Tribunal found that he was only one of many taking part, having had no organisational role, a finding which is unchallenged. The judge accepted that the Iranian authorities would be targeting ringleaders and higher profile members, particularly if they had a history of such activity in Iran, which excluded the appellant. The judge accepted that being Kurdish was a risk factor but only in the context of a real adverse interest by the authorities.

16. I have considered those findings against the Country Guidance. HB recognised that Kurds involved in Kurdish political groups or activity are at risk of arrest, detention, and physical mistreatment by the Iranian authorities. Even Kurds expressing peaceful dissent or who speak out about Kurdish rights face real risk of persecution or treatment infringing article 3 ECHR. Even low-level political activity, if discovered, involves the same risk. As stated above, the Iranian authorities demonstrate what could be described as a 'hair-trigger' approach to those suspected of or perceived to be involved in Kurdish political activities or support for Kurdish rights. The threshold for suspicion is low and the reaction of the authorities is likely to be extreme.

17. It is argued that the First-tier Tribunal failed to consider HB or explain why the 'hair-trigger' approach does not apply to the appellant. It is also argued that the First-tier Tribunal failed to consider that even if not genuine, the appellant's *sur place* political activity may be perceived as such and give rise to a real risk of persecution or serious ill-treatment on return. It is further submitted that if questioned the appellant cannot be expected to lie about his basis for claiming asylum in the UK and the background country evidence is that on return, he would be questioned about illegal exit and the basis of his failed asylum claim.

18. The difficulty with Ms Patel's submissions is that they all depend on the risk activities either being already known to the Iranian authorities or likely to be disclosed on questioning at the 'pinch-point' of return. I accept that if those activities were to be or become known to the Iranian authorities, the appellant would be at risk on return. On the findings of the First-tier Tribunal, however, there was no reason to consider that to the lower standard of proof that any of the risk activities would be known. As the First-tier Tribunal found, given his low-profile behaviour at the demonstrations, he was not likely to have come to the adverse attention of the Iranian authorities for that reason, a finding which is consistent with BA (Demonstrators in Britain – risk on return) Iran CG) [2011] UKUT 36 (IAC), which held that the Iranian authorities attempt to identify persons participating in demonstrations outside the Iranian Embassy in London, by filming the protests, suggesting that they have access to facial recognition technology. Even though an appellant's participation may be opportunistic, this is not likely to be a major influence on the perception of the regime. But this supposes that those activities are known or will be disclosed.

19. In relation to the third ground and the appellant's Facebook activities, the judge accepted at [27] of the decision that posts had been made but found that the content was limited and superficial and, given his lack of political profile, there was no indication or likelihood that this activity would have come to the attention of the authorities. It was concluded that the Facebook activity did not place the appellant at risk on return.

20. As the respondent has pointed out in the Rule 24 response, given the way the evidence was presented, the Facebook material falls into the category of evidence to be afforded little weight, consistent with the guidance in XX, which

was specifically referenced by the First-tier Tribunal. I note that the appellant's case is of a much lower profile than the appellant in XX, who was photographed with a prominent person of adverse interest to the Iranian authorities. Even then, the Upper Tribunal found that the facts in that case were "only just" enough to establish a risk of surveillance and downloading of his social media posts. As stated, I accept that there is a 'pinch point' of questioning on return, but given that he has been found not to have any genuine political profile, the appellant can be expected to have deleted his Facebook account before return, and given his low profile there was no reason for the Iranian authorities to have searched for and downloaded his profile at any stage before deletion. It follows that the judge was entitled to conclude that no real risk arose from the Facebook postings.

21. I am satisfied that, despite being liable to questioning on return, in the absence of any adverse interest in the appellant prior to his departure from Iran and in the light of the very low-level participation in UK-based activities, as found by the First-tier Tribunal, and even with the additional risk factor of being Kurdish, and the low threshold for suspicion, the judge was entitled to conclude that there was no real risk on return. In short, the judge was entitled to find that there is no reason for the Iranian authorities to have any adverse interest in him.

22. It was not a point made to me in submissions, but I have considered whether there is any error in the First-tier Tribunal by dividing findings in relation to the *sur place* activity between attendance at demonstrations and Facebook posts and thereby not considering the evidence in the round. However, I am satisfied that taken in the round, starting with the risk factor of a young Kurd returning following illegal exit, the judge was correct to reject the claim of a real risk on return. The findings are fully sustainable. The 'pinch point' does not put the appellant at any specific risk as there is no basis to consider that any of his self-serving *sur place* activity has already or would come to the attention of the Iranian authorities.

23. For the reasons summarised above, I am satisfied that there is no material error of law in the making of the decision of the First-tier Tribunal.

Notice of Decision

The appellant's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands as made.

I make no order as to costs.

DMW Pickup

DMW Pickup

Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 December 2023