



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

Case No: UI-2021-001902

First-tier Tribunal No: PA/51284/2021  
IA/02698/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 14<sup>th</sup> March 2024**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**KH**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M McGarvey, Counsel, instructed by Crowley & Co Solicitors  
For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

**Heard at Cardiff Civil Justice Centre on 7 March 2024**

**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**

**Introduction**

1. The appellant was granted permission to appeal the decision of First-Tier Tribunal Judge CH O'Rourke dismissing his appeal, following a hearing which took on 20 July 2021.
2. Following an error of law hearing which took place on 10 November 2023, the previous decision was set aside by Upper Tribunal Judge Norton-Taylor, albeit the First-tier Tribunal's findings at [27] of the decision and reasons were preserved, together with the unchallenged findings relating to what the judge found to be the opportunistic nature of the appellant's sur place activities, as they stood at the date of the judge's decision in July 2021. Paragraph 20 of the Upper Tribunal decision establishes the position clearly.

In light of the above, I set the judge's decision aside. In doing so, I expressly preserve the findings of fact set out at paragraph 27 of the judge's decision, together with that relating to the opportunistic nature of the Appellant's sur place activities, as they stood at the date of the judge's decision in July 2021. There is nothing unfair or artificial about doing this. The findings were plainly open to the judge and in any event have not been challenged on appeal.

### **The hearing**

3. At the hearing before me, the representatives agreed that the sole matter in issue was whether the appellant's sur place activities would place him at risk on return to Iran applying *HB* (Kurds) Iran CG [2018] UKUT 430 (IAC) and *XX* (PJAK; sur place activities; Facebook) Iran CG [2022] 23 (IAC), in particular.
4. I heard oral evidence from the appellant and submissions from both representatives. The appellant relied on further evidence of his political activities which post-dated the hearing in July 2021. That evidence related to the appellant's attendance at approximately a dozen protests mainly outside the Iranian embassy in support of Kurdish rights as well as a plethora of Facebook posts denouncing the Iranian government.
5. At the end of the hearing, I reserved my decision.

### **Decision on remaking**

6. The burden of proof is on the appellant to establish that he is at risk of persecution or ill-treatment contrary to Article 3 ECHR. In this appeal, given the vintage of the decision in this case, the standard of proof regarding past events as well as future risk is that of a reasonable degree of likelihood.
7. The only facts accepted by the respondent are that the appellant is an Iranian national of Kurdish ethnicity. His asylum claim was based on his claimed involvement with members of PJAK. That claim was dismissed by the First-tier Tribunal and those findings were not challenged on appeal. All that remains is an assessment on the appellant's sur place activities which took place following the First-tier Tribunal hearing which took place on 20 July 2021. As noted in the error of law determination, the First-tier Tribunal considered that the activities as

at the date of the hearing were 'opportunistic.' Mr Lawson did not stray from that position in his submissions, there being no dispute that the appellant had indeed attended the demonstrations, posed for photographs with anti-regime material and posted similar material on his Facebook page.

8. While the genuineness of the appellant's political belief is not determinative of the issue of the risk posed by his activities, I am prepared to accept the appellant's evidence that he is strongly committed to Kurdish rights. Given that he resides in Wales, I accept that the appellant's regular attendance at demonstrations in London over several years demonstrates a degree of commitment to his political views, given the distance and expense involved.
9. I also note that the appellant has been attending demonstrations long before the decision was taken to refuse his asylum application in 2021. Furthermore, in his oral evidence the appellant grappled with his reluctance to delete his Facebook page owing to the strength of his beliefs. It is to his credit, that he eventually accepted that if he were to be he confronted with the reality of his removal to Iran that he would 'one hundred per cent' delete his Facebook page for reasons of self-preservation.
10. Notwithstanding the foregoing findings, I accept Mr Lawson's contention that the Facebook posts are designed to bolster the appellant's case given that the appellant, by his own account, is not particularly literate in either English or Kurdish and copied posts from other people, including other asylum claimants. That the appellant has sought to bolster his claim does not, without more, indicate that his physical political activity can be discounted.
11. Applying *XX* (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 00023 (IAC) I take into consideration that it was found in that case that the Iranian authorities did not have the capability of investigating all Facebook accounts. Given that the substance of his pre-flight claim was rejected, the appellant is not a person of significant interest in Iran, he had no political profile, and he has stated that he would delete his Facebook account. According to *XX* the data on a Facebook account is irretrievable thirty days after closure of the account. Given the foregoing in the event an Emergency Travel Document application is in prospect, the appellant can avoid his Facebook activity potentially coming to the attention of the Iranian authorities by deleting his account. Thus, it is not reasonably likely that he would face persecution in Iran solely owing to the deleted Facebook posts. Nonetheless, given the appellant's genuinely held beliefs, he ought not to be expected to take steps to conceal his views to avoid persecution, with reference to *HJ*(Iran) [2010] UKSC 31.
12. *HB* (Kurds) Iran CG [2018] UKUT 00430 (IAC), contains useful guidance in relation to attendance at demonstrations.

(7) Kurds involved in Kurdish political groups or activity are at risk of arrest, prolonged detention and physical abuse by the Iranian authorities. Even Kurds expressing

peaceful dissent or who speak out about Kurdish rights also face a real risk of persecution or Article 3 ill-treatment.

(9) Even 'low-level' political activity, or activity that is perceived to be political, such as, by way of example only, mere possession of leaflets espousing or supporting Kurdish rights, if discovered, involves the same risk of persecution or Article 3 ill-treatment. Each case however, depends on its own facts and an assessment will need to be made as to the nature of the material possessed and how it would be likely to be viewed by the Iranian authorities in the context of the foregoing guidance.

(10) 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. By 'hair-trigger' it means that the threshold for suspicion is low and the reaction of the authorities is reasonably likely to be extreme.

13. Also relevant to the appellant's case is the decision in *BA* (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC) which continues to be good law notwithstanding *XX*, which supplements it. The appellant has regularly attended demonstrations outside the Iranian Embassy in London over a period of years and has posted photographs of himself at these demonstrations on his Facebook account. The following paragraph of *BA* has relevance here, at [65].

We are persuaded that the Iranian authorities attempt to identify persons participating in demonstrations outside the Iranian Embassy in London. The practice of filming demonstrations supports that. The evidence suggests that there may well have been persons in the crowd to assist in the process. There is insufficient evidence to establish that the regime has facial recognition technology in use in the UK, but it seems clear that the Iranian security apparatus attempts to match names to faces of demonstrators from photographs. We believe that the information gathered here is available in Iran. While it may well be that an appellant's participation in demonstrations is opportunistic, the evidence suggests that this is not likely to be a major influence on the perception of the regime. Although, expressing dissent itself will be sufficient to result in a person having in the eyes of the regime a significant political profile, we consider that the nature of the level of the sur place activity will clearly heighten the determination of the Iranian authorities to identify the demonstrator while in Britain and to identify him on return. That, combined with the factors which might trigger enquiry would lead to an increased likelihood of questioning and of ill treatment on return.

14. In *YB* (Eritrea) [2008] EWCA Civ 36, the Court advised caution in relation to the surveillance of demonstrations by regimes which suppress political opposition, stating at [18],

'it requires little or no evidence or speculation to arrive at a strong possibility – and perhaps more – that its foreign legations not only film or photograph their nationals who demonstrate in public against the regime but have informers among expatriate oppositionist organisations who can name the people who are filmed or photographed. Similarly it does not require affirmative evidence to establish a probability that the intelligence services of such states monitor the internet for information about

oppositionist groups. The real question in most cases will be what follows for the individual claimant.'

15. I therefore accept that it is reasonably likely that the appellant has come to the attention of the Iranian authorities through his demonstrations in support of Kurdish rights outside the Iranian embassy, that it is likely that he could be identified at the point when removal is in prospect when his details would be taken for the production of an Emergency Travel Document and he would therefore be at risk of persecution upon return to Iran because he will be viewed as a political opponent of the Iranian regime.

16. He has therefore established that he has a well-founded fear of persecution on the basis of his actual as well as perceived political opinion.

### **Notice of Decision**

The appeal is allowed on protection grounds.

**T Kamara**

**Judge of the Upper Tribunal  
Immigration and Asylum Chamber**

**Dated: 8  
March 2024**

### **NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

**5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**

**6. The date when the decision is “sent” is that appearing on the covering letter or covering email**