



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006641
First tier number: PA/50929/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 1st of March 2024

Before

UPPER TRIBUNAL JUDGE LANE

Between

KAZ
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Holmes

For the Respondent: Mr Bates, Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 12 January 2024

DECISION AND REASONS

1. The appellant, who was born on 10 June 1991, is a male citizen of Iran. He appealed to the First-tier Tribunal against a decision of the Secretary of State dated 21 February 2021 refusing his claim for international protection. The First-tier Tribunal dismissed his appeal. The appellant now appeals to the Upper Tribunal.
2. A summary of the grounds of appeal and her reasons for granting permission are succinctly set out in Judge Grant-Hutchison's grant decision:

It is arguable that the Judge has erred in law (a) by finding at paragraph 64 of the Decision & Reasons that neither the Representative or the Appellant could refer to the Judge to a single posting within the 105 pages of evidence that actually refers to the Komala party but at paragraph 68 finds that the Appellant

had posted a photograph of the logo of said Party and is “satisfied that if that page came to the attention of the Iranian authorities it would be recognised by them as implying support of that political group”. It is arguable that the Judge’s findings in both paragraphs cannot be reconciled; and (b) at paragraph 70 of the Decision & Reasons the Judge considers the Appellant’s Facebook live videos posted when Appellant has attended political demonstrations in London. The Judge concludes that there is no evidence in those clips of the Appellant being photographed or filmed by anyone outside or inside the Embassy without considering and taking into account that ‘Identification of risk’ is one of the factors at paragraph 64 (ii) of the Country Guidance case of *BA (Demonstrations in Britain-risk on return) Iran CG* [2011] UKUT 36 (IAC) which sets out the factors to be considered when assessing risk and return for someone participating in demonstrations in the UK.

3. I find that the first ground of appeal is made out. At [64], the judge dismisses in particularly trenchant terms any suggestion that there is a ‘a single posting within the 105 pages of evidence that actually refers to [the Komala] party.’ However, at [68], the judge writes:

On 2nd March 2021 the Appellant posted a photograph of the logo in red and white of the Komala Kurdistan Organisation of the Communist Party of Iran. It is the same logo he uses for the front page and title page of his Facebook account. I am satisfied that if that page came to the attention of the Iranian authorities it would be recognised by them as implying support of that political group.

4. First, the judge’s contradiction of his own previous assertion, made only four paragraphs earlier, is not resolved anywhere in the decision. Secondly, I accept Mr Holmes’s submission that the appellant, , was effectively ‘non-plussed’ by the judge’s question. Although illiterate, it seems probable that the appellant would have recognised the Komala logo and would have been aware that an image of that logo appears in his bundle of documents. Not surprisingly therefore, the appellant queried the judge’s assertion that there was no mention at all of Komala in the bundle and then gave ‘no response’ when the judge repeated his question. I accept the submission that the illiterate appellant would be unlikely to be able or willing to take the judge to the Komala image in a bundle of documents which he could not read. The judge’s response to the appellant’s apparent hesitation was unequivocal:

I find it incredible that the Appellant would place his life and the lives of friendly and friends in Iran under scrutiny and perhaps at risk from the authorities there because of his interest and support in the Komala party yet he and his legal representative cannot refer me to a single posting within the 105 pages of evidence that actually refers to that part.

5. I acknowledge that the appellant’s representative may have been expected to be able to take the judge to the Komala logo but the decision is unclear as to the representative’s response to the judge’s question. I do not accept that the appellant should be penalised for what may have been the representative’s failure to intervene in order to refer the judge to the Komala image.

6. The second ground of appeal has less merit. At [70], the judge writes:

The Appellant has provided five MP4 video clips of him attending demonstrations in London. I have viewed the clips and the Appellant explained the contents in his oral evidence. He claimed four of the videos depicted him outside the Iranian Embassy in London and one showed him demonstrating near to Downing Street. I find the Appellant is identified in all five videos and that the demonstrations took place in the locations as claimed. On each occasion the Appellant can be seen taking a video clip of himself surrounded by demonstrators. In one of the videos there is chanting in what I assume to be Kurdish that can be heard in the background and the Appellant whilst looking at the camera rather than directing his chants to the Embassy briefly repeats some of the chants. I find no evidence on the clips of the Appellant being photographed or filmed by anyone either within or outside of the Embassy.

7. The appellant complains that the judge has not considered the evidence in the light of the relevant country guidance, that is *BA (Demonstrations in Britain-risk on return) Iran* CG [2011] UKUT 36 (IAC), in particular at [64]. Whilst it would have been helpful had the judge considered his findings in the light of the risk factors in *BA*, I accept Mr Bates's submission that had he done so, the judge's finding is likely to have been the same; the appellant, a Kurd with no political or political profile in Iran, would, notwithstanding his participation in a demonstration, be unlikely to be identified by the Iranian authorities such that he would be exposed to a real risk on return. However, I also acknowledge that the judge's characterisation of the appellant relies on a flawed credibility assessment, especially given the weight the judge attached to what he wrongly considered to be the appellant's inability to produce documentary evidence of his support for Komala. In my opinion, that error infects the whole credibility analysis of the judge. In the circumstances, I find that the First-tier Tribunal's decision should be set aside accordingly.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision after a hearing *de novo*.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 20 February 2024