



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004132

First-tier Tribunal Nos: PA/56049/2022
LP/00371/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 7th June 2024

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

HRS
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Staunton, Counsel instructed by Virgo Solicitors Ltd
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on 21 May 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

1. The FTT made an order to anonymise the Appellant. There is no reason to interfere with this. Taking into account Guidance Note 2022 No.2 Anonymity Orders and Hearings in Private. I have weighed up the competing interests of the Appellant and his family's rights under ECHR against the need for open justice.
2. The Appellant is a citizen of Iran. His date of birth is 3 January 2005. He claimed asylum on the basis of a well-founded fear of persecution in Iran as a result of his political opinion. He appealed against the decision of the Respondent dated 15 December 2022 to refuse his asylum and human rights claim.
3. The Appellant's appeal was dismissed by the First-tier Tribunal (Judge Coutts) on 21 August 2023. On 10 March 2024 the Upper Tribunal (Deputy Judge of the Upper Tribunal Black) found that the FTT materially erred. She did not find an error of law in relation to all the grounds.
4. Judge Black in relation to the second ground of appeal stated as follows:-

"Turning now to the second ground of appeal, which argues that HB (Kurds) was not properly applied. The Judge accepted that the appellant had engaged in sur place activities by attending demonstrations outside the Iranian Embassy; on one occasion photographed holding the Kurdish flag and on the second occasion holding a leaflet. The Judge found that he was not a prominent person but a relatively low level activist [53]. This ground argues that there was a failure to apply headnote 9 and 10 of HB, together with the fact that the appellant, a Kurd, would be returning without a passport having left illegally and that he would be questioned on return during which his political activities may become known to the authorities given that he cannot be expected to lie about his political beliefs (RT (Zimbabwe) [2012] UKSC 38".

This ground has merit and I am satisfied that the Judge failed to properly apply HB (Kurds) to the extent that the Judge did not go far enough in considering that the appellant would be subject to heightened security when questioned, in the context that the authorities adopt a 'hair trigger' approach, and having regard to the risk factors cumulatively. Further having found that he was involved in low level political activities the Judge failed to take into account the perception of the authorities not simply the activities themselves".

5. Judge Black indicated that the matter was to be determined by way of submissions only.
6. At the hearing before me Ms Staunton relied on her skeleton argument. There was no skeleton argument from the SSHD, however Mr Tufan made oral submissions.
7. Judge Coutts was not satisfied that the Appellant had been persecuted in Iran owing to his claimed political activities. He went on to consider sur place activities at paragraph 49 of his decision. He took into account at paragraph 50 that the Appellant produced two photographs. The first showed him outside the Iranian Embassy holding a Kurdish flag. The second showed him with a group of people standing outside the embassy holding a leaflet with photographs of two

people together with some writing at the top and bottom which showed a yellow cross drawn over the images of the two people.

8. At paragraph 51 the judge recorded the Appellant's oral evidence about the second photograph. The Appellant could not identify the people shown on the leaflet but said it was the leader of Iran. When he was asked about the policies of this person the Appellant said that he was not sure what they were but later clarified this by saying that everyone knew what the policies were and they were against the Kurds and human rights.

9. At paragraph 52 the judge accepted that the Appellant had attended demonstrations outside the Iranian Embassy in London because this was supported by the photographic evidence. The judge said "[h]owever, the appellant was still unable to name the people on the leaflet he was holding though I accept he said that the regime was against Kurds and human rights generally". The judge made the following findings:-

"53. The evidence suggests that the appellant is not a prominent person of any organisation here protesting against the Iranian regime and it is reasonable to conclude that the sur place activities shown, being of a relatively low level, would not bring him to the attention of the regime and place him at risk on return to Iran.

54. The respondent accepted that the appellant was a national of Iran and of Kurdish ethnicity. However, the background information and country guidance states that whilst people of Kurdish ethnicity face discrimination in Iran it is not of a level to engage the Refugee Convention or article 3 of the Human Rights Convention.

55. I am not satisfied, in light of the background information, that the appellant working as a Kolbar is a reason that engages the Refugee Convention.

56. Apart from the claimed incident involving the paperwork, which I do not accept, the appellant claims no other difficulties with the authorities in Iran which includes his work as a Kolbar. There is no reason to think the Iranian authorities would be on the lookout for him and so I conclude that there is not a reasonable degree of likelihood of the appellant's persecution on the basis of his claimed work as a Kolbar.

...

58. In terms of being a failed asylum seeker the country guidance suggests that there is no evidence of the use of facial recognition technology by the Iranian authorities and it is not considered that just being a Kurd would mean that someone would be perceived as being involved in political activism. I therefore find that the appellant would not be at risk in this regard".

10. In submissions Mr Tufan referred to paragraph 15 of Ms Staunton's skeleton argument where it is stated that the FTT found that the Appellant was genuinely against the Iranian regime's treatment of Kurds and human rights record generally and that he should thus be accepted to be a committed opponent of

the regime and that as such there is a real risk that he would have been surveilled in the UK. Mr Tufan did not believe that this was an accurate representation of the finding of the judge with reference to paragraphs 49 and 53. There were only two photographs in support of the Appellant's case and he was not a member of any group. Mr Tufan drew my attention to the Appellant not being able to name who was shown on the leaflet. The photograph showed that people were looking away whilst the Appellant was posing for the camera. Mr Tufan submitted that the Appellant does not have genuine political beliefs on the basis of the photographs and the judge found that he was not genuine so that he would be asked about his political beliefs and would not be expected to deny these. There would be no obligation on the Appellant to lie. He was found not to be credible.

11. Mr Tufan referred to the case of BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36. He relied on XX (PJAK – sur place activities – Facebook) Iran CG [2022] UKUT 23. He submitted that there was no evidence of facial recognition in the context of the Appellant's case. Mr Tufan relied on HB (Kurds) Iran CG [2018] UKUT 430 with reference to paragraphs 8, 9 and 10 of the headnote.
12. Ms Staunton relied on her skeleton argument and she responded to Mr Tufan's submissions. She submitted that the judge did make findings of genuine political belief and she referred to paragraphs 49 and 53. There was no finding that the Appellant had fabricated the account of sur place activities or that he did not have genuine political belief, albeit he was found to be at a low level. She submitted that sur place activities were essentially accepted by the judge. Ms Staunton submitted that if I am not with her on this point, the authorities will become aware of the Appellant's activities because he will still be questioned on return. She submitted in her skeleton argument that the demonstrations that the Appellant has attended and the photographs support that this would be sufficient to trigger the *hair trigger* approach were the authorities aware of them and whether they would be aware of the Appellant's activities depends on whether the authorities would likely have been monitoring the Appellant and whether his sur place activities would come to light on return to Iran.
13. Ms Staunton relied on HB (Iran) specifically paragraph 10 of the headnote. It was accepted that the Appellant left Iran unlawfully and is of Kurdish ethnicity, both of which are risk factors. Low level does not mean that the risk goes away and Ms Staunton relied on FA (Iran) [2024] EWCA Civ 149. Ms Staunton relied on paragraph 61 of FA and the reference to HB and paragraph 98 of XX concerning sur place activities. She submitted that the Appellant was found to be outside the Iranian Embassy with a Kurdish flag and she relied on paragraph 65 of BA and the attempt to identify those outside the embassy. Whilst being a failed asylum seeker does not attract risk in itself, the Appellant is likely to be questioned as someone with Kurdish ethnicity (see paragraph 97 HB (Kurds)).
14. Ms Staunton relied on XX (PJAK – sur place activities – Facebook) (Iran) where the Upper Tribunal confirmed that factors that could prompt surveillance include;

“the theme of any demonstrations attended, for example, Kurdish political activism; the person's role in demonstrations and political profile; the extent of their participation (including regularity of attendance); the publicity which a demonstration attracts; the likelihood of surveillance of particular demonstrations; and whether the person is a committed opponent”.

15. Ms Staunton submitted that it is accepted that the Appellant is Kurdish and has attended demonstrations outside the Iranian Embassy and holding a Kurdish flag which shows that he was involved in Kurdish political activism. In BA, the Upper Tribunal concluded that “the Iranian authorities attempt to identify persons participating in demonstrations outside the Iranian Embassy in London” and that this information is available in Iran (see paragraph 65). There is however, according to Ms Staunton, a further risk to the Appellant. If the authorities are not already aware of his sur place activities they would become aware on his return. HB confirms “[W]hat is not disputed is that a returnee without a passport is likely to be questioned on return”. The Appellant would thus be questioned on return, as a returnee without a passport who left Iran illegally.
16. Ms Staunton submitted that in SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 where the Tribunal found; “if there are any particular concerns arising from their previous activities either in Iran or in the United Kingdom or whichever country they are returned from, then there would be a risk of further questioning, detention and potential ill-treatment” (see paragraphs 325, 23). It is submitted that the Appellant could not be expected to lie about his political beliefs relying on RT (Zimbabwe) [2012] UKSC 38 HB 378 at page 120). There is thus a real risk that his opposition to the regime and his genuinely held beliefs against the regime because of its treatment of Kurds and its human rights record in general would be discovered when he was questioned on return. He would either have to hide his political opinion or be prosecuted should he continue demonstrating on return amounting to persecution.

Findings and Reasons

17. I do not need to set out the country guidance. I will summarise the relevant parts of the guidance so far as they are relevant.
18. I agree with Ms Staunton in respect of the judge’s findings as regards genuine political belief. While the judge found that the Appellant was not credible in relation to his substantive asylum claim, he did not find so in respect of the evidence about sur place activities. The findings of the judge can be summarised:
 - (1) The Appellant left Iran illegally and is of Kurdish ethnicity.
 - (2) The Appellant has demonstrated twice outside the Iranian Embassy in London.
 - (3) The Appellant was unable to name people on the photographs he relied on in evidence. However, the judge said “I accept that [the Appellant] said that the regime was against Kurds and human rights”.
 - (4) The Appellant is not a prominent person protesting against the regime.
 - (5) The Appellant’s sur place activities are at a low level (the judge is likely in my view to have taken into account his findings at paragraph 52 in order to reach this conclusion).
 - (6) There is no evidence of the authorities using facial recognition technology.

The judge did not find that the Appellant was not genuinely against the regime. However, I do not agree with Ms Staunton that the Appellant was found to be a committed opponent of the regime. His involvement was found to be low level and not be a prominent person protesting against the regime.

19. In XX the UT stated that the cases of BA, SSH, HR and HB continue to accurately reflect the situation for returnees to Iran. This Appellant does not rely on a social media profile and therefore XX has limited application in this case. I have considered paragraph 92 relied on by Ms Staunton; however the UT were assessing the risk to those with a Facebook account and the likelihood of the account coming to the attention of the authorities depending on various factors. In any event, the factors to consider overlap with the relevant Country Guidance in BA which I will go onto consider.
20. In BA the UT found that large numbers of those who demonstrate in the UK and the publicity which demonstrators receive, for example on Facebook, combined with the inability of the Iranian Government to monitor all returnees who have been involved in demonstrations here regard must be had to the level of involvement of the individual as well as any political activity which the individual might have been involved in Iran before seeking asylum in the UK. A returnee who meets the profile of an activist may be detained while searches of documentation are made. Iranians are generally screened on arrival. There is no risk of persecution for those who have exited Iran illegally or are merely returning from the UK. There is no evidence of the use of facial recognition technology at the airport, however there may be officials who may be able to recognise up to 200 faces at any one time. If information is known about activities abroad they may be picked up for questioning. It is important to consider the level of political involvement before considering the likelihood of an individual coming to the attention of the authorities. The UT set out a number of factors to be considered when assessing risk on return in relation to sur place activities. The nature of the sur place activity is relevant including the theme of demonstrations and how they will be categorised by the state, the role in demonstrations and political profile, whether the Appellant is simply a member of the crowd or active, for example does he carry a banner and what is his motive and whether this is relevant to the profile he will have in the eyes of the regime. The extent of participation is relevant, for example has the person attended one or two demonstrations or is he a regular participant. The publicity attracted is a relevant factor and the issue is whether the demonstrations had attracted media coverage.
21. Applying BA, in terms of the nature of this Appellant's activities, I take into account that he has attended pro-KDPI demonstrations. In HB it was found that Kurds involved in Kurdish political activity or groups are at risk of persecution and ill-treatment under Article 3 ECHR and that would include even low level political activity or activity that is perceived to be political including the mere possession of leaflets or espousing or supporting Kurdish rights. I take into account that while the Appellant's role in demonstrations and his political profile is low level, he is shown to carry the Kurdish flag and an anti-regime leaflet while demonstrating outside the Iranian Embassy.
22. Ms Staunton's argument is that applying HB and the case law generally that since 2016 the Iranian authorities have been sensitive to Kurdish political activity. The relevant part of the headnote in HB reads as follows:

(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.

23. The issue is whether or not the Appellant's activities would be discovered by the authorities and applying what was said by the Upper Tribunal in BA. I find that they would not be. The capability of the Iranian state to monitor those involved in sur place activities is limited. The Appellant has attended two demonstrations only and cannot be categorised as a regular participant. There is no evidence that the demonstrations which he has attended have attracted publicity. There is no evidence of media coverage in the UK or Iran. This Appellant's substantive claim has been dismissed. His political profile is low level and arises from limited sur place activities only. I conclude that the Appellant's limited activity would not be discovered by the authorities. Therefore, he would not be suspected of being involved in Kurdish political activities or to support Kurdish rights so as to be at risk from the "hair trigger" approach by the Iranian authorities on account of sur place activities.
24. I have more sympathy with the alternative argument presented by Ms Staunton on the basis that it was agreed by both parties in the case of HB at para 97 that a returnee without a passport is likely to be questioned on return. This Appellant will be returning without a passport. He has been engaged in anti-regime activities, albeit at a low level and his beliefs are genuine. This Appellant cannot be described as politically neutral despite his as a low level. Bearing in mind his profile he would when questioned be expected to lie about his political beliefs which is no answer to an asylum claim (even taking into account what was said by the Upper Tribunal in XX at paragraphs 98 and 99) applying RT (Zimbabwe).
25. For all of the above reasons I find that the Appellant has established on the lower standard of proof that he would be at risk on return.
26. The appeal is allowed.

Joanna McWilliam

Judge of the Upper Tribunal
Immigration and Asylum Chamber

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29 May 2024