IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001348

First-tier Tribunal No:
PA/01651/2023
and PA/54039/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 19th of December 2024

Before

UPPER TRIBUNAL JUDGE SMITH
DEPUTY UPPER TRIBUNAL JUDGE LOKE

Between

H M S
[ANONYMITY DIRECTION MADE]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Mohzam, Counsel instructed by CB solicitors
For the Respondent: Ms C Newton, Senior Home Office Presenting Officer

Heard at Field House on Monday 11 November 2024 via CVP

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant (HMS) 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

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge Farmer dated 31 January 2024 ("the Decision") dismissing the Appellant's appeal against the Respondent's decision dated 19 June 2023 refusing the Appellant's protection and human rights claims.

2. The Appellant is a national of Iraq (born on 9 July 1995). The Appellant's case is that he faces a real risk of persecution due to his political opinion. This is on the basis of his 'sur place' activities and Facebook account. The Appellant also claimed that he would be unable to obtain the documents he needed to return.

3. In the Decision, the Judge found the Appellant not to be credible. The Judge adopted the credibility findings of the Tribunal in a previous appeal dated 23 July 2021 and found the Appellant was not an activist with genuine political views. The Judge gave limited weight to the Facebook posts. The Judge accepted that the Appellant had attended demonstrations but found he was a low-level activist who had not come to the adverse attention of the authorities. Regarding documentation, the Tribunal adopted the findings of the previous Tribunal and found that the Appellant could access his documents through his family.

4. The Appellant appeals the Decision on three grounds as follows:

   Ground 1: the Judge erred in her interpretation of XX (PJAK, sur place activities, Facebook) Iran (CG) [2022] UKUT 23 as she found that print outs of Facebook posts should be given limited weight, when in fact para 7 of the headnote of XX does not state how much weight should be given to print outs.

   Ground 2: the Judge erred in considering BA (demonstrators in Britain-risk on return) Iran CG [2011] UKUT 36 (IAC) as this case involved an appellant from Iran and this Appellant originated from Iraq.

   Ground 3: the Judge failed to make proper findings regarding credibility, in particular explaining her findings as to why the Appellant did not hold genuine political views.

5. Permission to appeal was granted by Judge Dainty on 21 March 2024. The Judge relevantly stated:

> "There is an arguable error of law here. It is arguable that the guidance in XX (PJAK) has been overstated by the judge in terms of precisely what weight to place on Facebook print outs. It is also arguable that the judge has conflated cases of Iraqi Kurds demonstrating in Britain with Iranian sur place activity in particular by reference to the application of the approach in the country guidance case of BA (Demonstrators in Britain). As a knock on effect although some reasons are given for the non-genuineness of the political beliefs, it might

> arguably be said that having proceeded in the way the judge has as to those authorities, inadequate reasons are therefore given as to the conclusions on the genuineness of the political beliefs in this case."

6. The appeal comes before us in order to decide whether there is an error of law. If we determine that the Decision does contain an error of law, we then need to decide whether to set aside the Decision in consequence. If we set the Decision aside, we must then either re-make the decision or remit the appeal to the First-tier Tribunal to do so.

7. We had before us a bundle running to 597 pages (pdf) ([B/xx]) containing the documents relevant to the appeal before us, and the Appellant's and Respondent's bundles before the First-tier Tribunal. There has been no Rule 24 Reply from the Respondent.

8. Having heard from Mr Mohzam and Ms Newton we indicated we would reserve our decision and provide that in writing, which we now turn to do.

DISCUSSION

9. In relation to the first ground, at [22] of the Decision the Judge quotes XX (Iran) stating that it makes clear that print outs should be given limited weight. We acknowledge that this is not stated in terms in XX (Iran). However it is worth looking at [22] of the Decision in its entirety:

> "22. I have given careful scrutiny to the Facebook posts made by the appellant. I have considered their scope, nature and quality. Firstly, as *XX (Iran)* makes clear, print outs should be given limited weight. They can be manipulated and in order for full weight to be applied to his social media posts, his Facebook account should be downloaded and provided in the form of electronic data. The appellant has failed to do this and I find that I can therefore attach less weight to the evidence he as provided of "posts"."
>
> [our emphasis]

Notwithstanding her reference therein to XX (Iran), at the outset the Judge stated she had considered the Facebook evidence with care. The Judge also considered the nature and quality of the evidence. She then went on to exercise her discretion to attach less weight to the print outs.

10. The Judge went on at [23-25] to analyse the Facebook evidence in detail, demonstrating that she had indeed given careful scrutiny to the posts. The Judge looked particularly at the public profile of the Facebook account. From [23] it is clear she went through each post, identifying the number of likes. At [24] the Judge considered the number of friends the Appellant had on Facebook and the evidence, or lack thereof, of any engagement with his content.

11. The Judge also compared the posts to the Appellant's own evidence, which she found at [23] to be 'vague and unconvincing'. The Judge considered the Appellant's account of the threat made on Facebook, concluding that the Appellant was 'extremely evasive when asked about this.' The Judge did not find his account of why he did not report such a threat to be credible.

12. When we examine the contents of the Decision at [22-25] it is evident that the Judge did not simply find that as print outs the Facebook evidence should be given limited weight. The Judge analysed the content of the Facebook evidence in detail and in the context of the Appellant's own account, before reaching her conclusions. Thus we find the reference to XX (Iran) at [22] is not indicative of an error of law.

13. We further note that while XX (Iran) does not prescribe that limited weight should be given to print-outs, para 7 of the headnote does indicate that production of a small part of a Facebook account or photocopies may be of limited evidential value. Thus the country guidance encourages judges to recognise the deficiencies in social media evidence that is present in some cases, as was indeed present in this particular case. The Judge's conclusion, which we are satisfied was made as a result of a proper analysis of the evidence, was one that was open to her in accordance with the Tribunal's guidance.

14. In any event, the Judge considered the evidence of the Facebook account at its highest stating at [23]:

> "When looking at all his posts in the round and even considering the culminative effect of his posting, I am satisfied that the level of likes he has received, either individually or taken together, cannot be properly categorised as a significant profile on Facebook."

At [26] the Judge took into account the objective evidence, concluding that there was no clear evidence before her that the Iraqi government monitor Facebook. Even if the Judge had given the Facebook evidence weight, she would not have found that it brought the Appellant the adverse attention of the authorities. At [35] the Judge went back to consider the Facebook account and concluded that even if the Facebook account were genuine, he would be expected to delete the account as the Judge did not accept that the Appellant's political views were genuinely held.

15. In relation to the second ground, the reference to BA(Iran) is no indicator that the Judge was misapplying factors pertaining to Iran to this Iraqi Appellant. The only reference to BA (Iran) is in the context of [32] where the Judge states:

> "32. I have considered BA (demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC) and the areas it directs me to consider namely the nature of the sur place activity, the identification risk,

> factors triggering enquiry/action on return; the consequences of identification and the identification risk on return."

The factors that the Judge extrapolates from this country guidance are factors which are general and relevant to the sur place activities undertaken by an appellant from any country. There is nothing in the content of the Decision which would suggest that the Judge was applying factors specific to Iran when considering this Appellant. In fact, when taking into account XX (Iran) at [26], the Judge was alive to ensuring she did not apply features specific to Iran to the Appellant's case.

16. With respect to the third ground, the Judge did give an explanation as to why she found the Appellant did not hold genuine beliefs. At [28-30] the Judge accepted that the Appellant had been on television and had attended demonstrations. However the Judge found at [30] that the Appellant could not remember the last demonstration he had attended. The Judge also noted that the Appellant had only started posting on his Facebook account four months prior his previous Tribunal hearing. We note that these findings made were in addition to the adverse credibility findings the Judge had already made at [23] and [25] of the Decision. The Judge concluded at [30] by stating:

> "I am satisfied based on all the evidence before me, that the appellant does not have genuinely held political views. I find the timing of his posts, his lack of engagement with the demonstrations he has attended and his lack of political activity in Iraq, leads me to conclude that he is not a genuine activist with genuinely held political views."

We find the Judge's finding was sufficiently supported by those reasons cogently given in [30].

17. Within ground 3 the Judge's consideration at [34] of the Decision regarding the letter from the DAKOK Support Centre, which can be found at [B/46-47], is criticised. It is submitted on behalf of the Appellant that the Judge 'puts the cart before the horse' in rejecting this letter as the Judge had already rejected the Appellant's claim to have a genuine political opinion. The Judge was entitled to take into account the fact that no one from the DAKOK support centre attended to give oral evidence. The Judge considered what weight to give to the letter after looking at all the evidence in the round, in accordance with the principles held in Tanveer Ahmed [2002] UKIAT 439.

18. The oral submission was made to us that the Country Policy Information Note: Iraq Opposition to the Government ("the CPIN") in the KRI at 3.1.1 indicates that there is a possibility of risk where a person is protesting against the KRG generally. This is immaterial given the Judge found the Appellant did not hold genuine political views. However for the sake of completeness, 3.1.1-3.1.2 of the CPIN taken from B/39] provides:

> 3.1.1 CPIT was unable to find any evidence that substantiates a generalised real risk of mistreatment or risk relating to the support, membership or any activity on behalf of an individual political party in the Kurdistan Region of Iraq (KRI) in the sources consulted. If there was such a risk, it is reasonable to consider it would be reported on and there would be information available. Based on the available evidence, it is concluded that any risk regarding political activity in the KRI is centred around protesting against the KRG more generally, rather than as a result of being a supporter, member or carrying out activities on behalf of a specific political party.
>
> 3.1.2 The evidence is not such that a person will be at real risk of serious harm or persecution simply by being an opponent of, or having played a low level part in protests against the KRG. Despite evidence that opponents of the KRG have been arrested, detained, assaulted and even killed by the Kurdistan authorities, there is no evidence to suggest that such mistreatment is systematic. The instances of mistreatment are small in relation to the vast numbers who attended the protests. Additionally, there is no evidence to suggest that the KRG have the capability, nor the inclination, to target individuals who were involved in the protests at a low level. As such, in general, a person will not be at risk of serious harm or persecution on the basis of political activity within the KRI. The onus is on the person to demonstrate otherwise. Decision makers must consider each case on its merits.

The Judge concluded at [33] of the Decision that even with the evidence considered at its highest, there was nothing to suggest that the Appellant was anything more than a low level demonstrator and social media poster. She reasonably interpreted the CPIN at [36] in concluding that as such the Appellant would not have a profile that would lead to the adverse interest of the authorities.

CONCLUSION

19. For the reasons set out above, the Decision does not contain an error of law. We dismiss this appeal and uphold the Judge's decision dismissing the Appellant's asylum appeal.

NOTICE OF DECISION

The Appellant's appeal is dismissed. The decision of First-tier Tribunal Judge Farmer dismissing the Appellant's appeal stands.

S Y Loke
Deputy Upper Tribunal Judge Loke

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

26 November 2024