



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003310

First-tier Tribunal No: PA/53738/2023
LP/02231/2024

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 23 January 2025**

Before

**UPPER TRIBUNAL JUDGE PINDER
DEPUTY UPPER TRIBUNAL JUDGE GREER**

Between

**AA
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Azmi (of Counsel)

For the Respondent: Mr Lawson (Senior Home Office Presenting Officer)

Heard at Birmingham Civil Justice Centre on 7 January 2025

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. This is the re-making of the decision in the Appellant's appeal, following the setting aside of the decision of Judge of the First Tier Tribunal Nixon who had dismissed the Appellant's appeal on asylum, humanitarian protection and

human rights grounds. The earlier decision of the Upper Tribunal setting aside Judge Nixon's decision is appended to this decision as a separate annex.

Background

2. The Appellant is a 20-year-old citizen of Iran of Kurdish ethnicity originating from Sara Village in the Kurdistan Province of Iran. It is his case that prior to leaving Iran he worked as a cross-border smuggler, also known as a 'kolbar', bringing goods into Iran from Iraq such as televisions, washing machines and fridges. It is his case that the Iranian State detected his smuggling and wished to prosecute him.
3. The Appellant arrived in the United Kingdom on 3rd November 2021 and made an application for asylum on the same day. In a decision dated 9th June 2023, the Respondent refused the Appellant's application for asylum. The Respondent accepted that the Appellant was a Kurd originating from Iran who left Iran illegally but the Respondent did not accept that the Appellant had worked as a kolbar or that he would be at risk of ill treatment upon return to Iran. Although the Respondent did not dispute the Appellant's claim to have attended demonstrations in favour of Kurdish causes in the United Kingdom, the Respondent did not consider that the Appellant's activities would put him at risk upon return to Iran.
4. The Appellant appealed against the Respondent's decision, enjoying a right of appeal to the First Tier Tribunal. His appeal went before Judge of the First Tier Tribunal Nixon for a hearing on 19th April 2024. In a written determination promulgated on 28th April 2024, Judge Nixon dismissed the Appellant's appeal. The Judge found that it was not reasonably likely that the Appellant was a smuggler or that the Iranian authorities have an adverse interest in him (at [25]). The Judge found that the Appellant's political activities in the United Kingdom would not put the Appellant at risk of persecution (at [27]).
5. The Appellant sought permission to appeal against that determination and, by order of Upper Tribunal Judge Gill, was granted Permission to Appeal to this Tribunal. The matter came before Upper Tribunal Judge Ruddick for an error of law hearing on 22nd October 2024. In a decision promulgated on 23rd October 2024, UTJ Ruddick set aside the First Tier Tribunal's determination on the following, limited basis:

The decision of the First-tier Tribunal involved the making of material errors of law in connection with the consideration of the appellant's sur place political activities and any risks arising therefrom. It is set aside. The Judge's findings with regard to the appellant's account of the reasons he left Iran have not been successfully challenged and are preserved.

6. As mentioned above, UTJ Ruddick's decision is appended in a separate annex to this decision. The matter then came before us on 7th January 2025 for the decision in the Appellant's appeal to be re-made.

The Hearing

7. On 18th December 2024 the Appellant made an out of time application to rely on further evidence of his online activities pursuant to Rule 15(2A) Tribunal Procedure (Upper Tribunal) Rules 2008. At the hearing before us, Mr Lawson confirmed that the Respondent had not been properly served with this

application but that Mr Azmi had provided copies of his skeleton argument and the Appellant's most recent witness statement, which formed part of this application, on the morning of the hearing. The remaining documents could not be sent to Mr Lawson as the files were too large. Mr Lawson indicated that if this bundle were to be admitted, he would not have sufficient time to consider this evidence and would apply for the matter to be adjourned. In response, Mr Azmi indicated that he would not be pressing his application to rely on the contents of the bundle filed on 18th December 2024 (the updating Facebook posts of the Appellant), save for the Appellant's witness statement and his skeleton argument. Mr Lawson indicated that he had no objection to the witness statement and skeleton argument being admitted and so we granted Mr Azmi's application to adduce these.

8. We heard evidence from the Appellant who was assisted by the Tribunal appointed interpreter in the Sorani dialect of the Kurdish Language. He was cross examined. We then heard helpful submissions from each advocate. At the end of the hearing, we reserved our decision.

Issues

9. On behalf of the Respondent, Mr Lawson indicated that there was no challenge to the Appellant's claim to have attended around 15 demonstrations against the Iranian State in the United Kingdom. Nor was there any challenge to the Appellant's claim to operate a personal Facebook account on which he posted content critical of the Iranian State. Mr Lawson also accepted that if the Appellant's attendance at demonstrations in the United Kingdom or his Facebook page became known to the Iranian authorities, and if the authorities associated the Appellant with these, then the Appellant would be at risk upon return to Iran. However, he argued that the Appellant's profile was not such that the Iranian authorities would already aware of the Appellant, and, as the Appellant did not hold any genuine political beliefs, he could delete his Facebook page prior to the beginning of any documentation process prior to removal.
10. Although UTJ Ruddick refers to the First Tier Tribunal as having made a finding that the Appellant's political activities in the United Kingdom were *opportunistic* at paragraph 15 of the error of law decision, Mr Lawson accepted that the First Tier Tribunal made no such finding, and it was for this Tribunal to determine the Appellant's motives afresh. Mr Lawson did however argue that the preserved (adverse) findings in respect of the Appellant's reasons for leaving Iran were a relevant consideration when determining the Appellant's motives for his *sur place* activities.
11. The parties agreed that the remaining issues to be determined in this appeal are as follows:
 - i. Are the Appellant's activities in the United Kingdom reasonably likely to have attracted the attention of the Iranian Authorities, such as to put the Appellant at risk of ill-treatment upon return to Iran?
 - ii. If not, does the Appellant genuinely hold political views hostile to the Iranian State?
 - iii. If so, will he be required to confess under questioning that he had attended demonstrations in the United Kingdom, operated a Facebook account or otherwise expressed views against the state authorities in the United Kingdom at the pinch-point of return?

Consideration and findings

12. We have kept in mind all of the Country guidance cases relating to Iran, in particular, **XX (PJAK, sur place activities, Facebook) Iran (CG) [2022] UKUT 23 (IAC) (20 January 2022)**, **PS (Christianity - risk) Iran CG [2020] UKUT 46 (IAC) (20 February 2020)**, **HB (Kurds) Iran (illegal exit: failed asylum seeker) CG [2018] UKUT 430 (IAC) (12 December 2018)**, **SSH and HR (illegal exit: failed asylum seeker) Iran (CG) [2016] UKUT 308 (IAC) (29 June 2016)** and **BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC) (10 February 2011)**.
13. As a general observation, we find that the evidence of the Appellant's Facebook activity contained within the papers before the Tribunal is reliable and an accurate representation of the Appellant's online profile. This is because the Appellant has provided his 'download your information file' and an unchallenged witness statement from his solicitor explaining how this material came to be before the Tribunal.
14. When determining the risk facing the Appellant, we have considered the factors set out at [64] of **BA (Demonstrators in Britain - risk on return) Iran CG**, and kept in mind what is said at [92] and [95] of **XX (PJAK, sur place activities, Facebook) Iran (CG)**. Having done so, we find that it is reasonably likely that the Appellant's *real world* political activities in the United Kingdom have attracted the attention of the Iranian State such as to have exposed him to a risk of being the subject of targeted on-line surveillance. This is for the following reasons:

The theme of the demonstrations

15. The Appellant does not describe the specific theme of each of the demonstrations that he attended. However, we accept the Appellant's evidence that they each fit the broad theme of being against the Iranian Regime (*Appellant's Witness Statement Paragraph 20, FTT bundle, Page 24*). We are satisfied that these demonstrations are likely to be viewed by the Iranian State as hostile to the Iranian State, bearing in mind the Iranian State's sensitivity to Kurdish nationalism (see **HB (Kurds) Iran (illegal exit: failed asylum seeker) CG** at 98(3),(7)-(10)).

The Appellant's role in demonstrations and political profile

16. On the one hand, on the preserved findings of fact made by the First Tier Tribunal ('the FtT'), the Appellant had no existing political profile before leaving Iran.
17. On the other hand, we accept that the Appellant has played an active and highly visible role in demonstrations in the United Kingdom since March 2022. His evidence before us, which we accept, is that he has been asked by the organisers of the demonstration to wear a luminous yellow, high-visibility jacket and to act as a steward to ensure the demonstrations remained orderly. His claims were supported by photographs before us and the FtT (*FTT Bundle, Page 35, 37, 38, 40, 46, 214*). His physical stature, and the fact that he has worn a high visibility jacket, is likely to make him a visible target for surveillance of the demonstrations. In short, he is not difficult to pick out from a crowd.

18. We have also considered photographs of the Appellant holding a megaphone at what is said to be a demonstration outside the Iranian embassy in London (*FTT Bundle, Page 38*). His written and oral evidence, which we accept, is that he was addressing the crowd with slogans critical of the Iranian State and leading the crowd in chanting Kurdish political slogans. This would have made him the centre of attention of anyone monitoring the demonstration.

19. In other photographs, the Appellant is seen in prominent positions, at the front of the crowd, burning photographs of the supreme leader of Iran (*FTT Bundle, Page 34*). In one photograph, the Appellant is photographed at the head of the crowd, immediately in front of the Iranian embassy holding the Kurdish Flag (*FTT Bundle, Page 478*). Drawing this evidence together, we are satisfied that the Appellant played a significant, highly visible role in demonstrations.

The extent of the Appellant's participation

20. The Appellant has been a frequent attendee at demonstrations, over a significant period of time. The Appellant attended his first demonstration in March 2022 and has attended 14 more demonstrations since then. As Mr Azmi argued in his submissions, each attendance would have given the Iranian authorities another opportunity to see and identify the Appellant. That the Appellant has attended numerous demonstrations covering a period spanning nearly 3 years will have given the Iranian state ample opportunity to identify the Appellant, and view him as someone seriously committed to the Kurdish nationalist cause. We also accept the Appellant's written and oral evidence that he would have attended more demonstrations and events had his finances permitted him to do so. The Appellant explained that he was limited by his finances as travelling to London from where he lived in the West Midlands was very costly to him.

The publicity attracted by the demonstrations

21. Mr Lawson rightly submitted that we were not taken to any evidence to suggest that the demonstrations attended by the Appellant, or the Appellant's participation in the same, were reported in legacy media. There is no evidence before the Tribunal to suggest that the Appellant's attendance at demonstrations has been reported anywhere other than by him on Facebook. However, we have seen evidence that the demonstrations were advertised on the Appellant's Facebook account in advance of the demonstration (*FTT Bundle, Page 280, 300, 316, 359, 378, 394, 408, 417, 422, 442, 456*) and photographs of the demonstrations were shared on Facebook, a website the Iranian Authorities are known to seek to monitor – see **XX (PJAK, sur place activities, Facebook) Iran (CG)** at [85] – [89]. The Iranian authorities are likely to have been aware of these demonstrations, and taken steps to monitor them. Several of the demonstrations attended by the Appellant also took place in front of the Embassy.

Extent of the Appellant's online profile

22. As we have found, the Appellant's Download Your Information file is a reliable representation of the Appellant's online profile. We find that the Appellant has operated a Facebook account since 18th November 2021 (*FTT Bundle, Page 209*). He has since then acquired 5,000 friends and has posted frequently; his posts cover several hundred pages in the Tribunal Bundle (*FTT bundle, Page 261 – 461*). Amongst his posts are photographs of the Appellant attending

demonstrations (*for example, at FTT Bundle, Page 481*). He has commented upon and *liked* the posts of others (*FTT Bundle, Page 482 - 562*) and the Appellant is a member of a Facebook group called Kurdish Iran in the UK (*Appellant's Bundle, Page 562*). This satisfies us that the Appellant has a large digital footprint, capable of being found by the Iranian authorities in the United Kingdom, should they look for him.

23. We have stood back and looked at the Appellant's circumstances as a whole. On the one hand, the Appellant had no political profile prior to leaving Iran. On the other hand, he has played a prominent, visible role at numerous demonstrations against the Iranian State spanning a lengthy period. He has publicised his attendance at these demonstrations on Facebook, on which he has 5,000 friends. Taking all of these considerations together, we find that there is a real risk that the Appellant has drawn enough attention to himself by the extent of his *real world* activities, to have become the subject of targeted social media surveillance.

24. Mr Lawson agreed that if we were to find that the Appellant's attendance at demonstrations in the United Kingdom had come to the attention of the Iranian Authorities then the Appellant's appeal must succeed. As such, it is not necessary for us to determine any of the other issues in dispute between the parties.

25. We allow the asylum appeal.

Notice of Decision

- (1) The decision of the First-tier Tribunal involved the making of an error on a point of law.
- (2) We remake the decision by allowing the appeal on protection grounds.

J. Greer

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

13th January 2025