



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: LP/00265/2020
[PA/50155/2020] (V)

THE IMMIGRATION ACTS

Heard at : Manchester Civil Justice Centre
On 19 November 2021

Decision & Reasons Promulgated
On 02 December 2021

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

MM
(Anonymity Order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Sadiq, instructed by Adam Solicitors

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision refusing his asylum and human rights claim.
2. The appellant is a citizen of Iran of Kurdish ethnicity born on 27 August 1995. He arrived in the UK on 1 November 2019 and claimed asylum the same day. His claim was

refused on 10 March 2020 and his appeal against that decision is the subject of these proceedings.

3. The appellant claimed that he worked as a kulbar from 2015, transporting alcohol from Iraq into Iran and that he was also a voluntary supporter of the Democratic Party of Kurdistan (DPK) from 2015, transporting goods for them including delivering leaflets and pictures and posting them on walls. He claimed to have been arrested in the summer of 2015 and to have been convicted of supporting the DPK. He claimed that he served a six month prison sentence during which time he was tortured by being burned on his hand and arm. Alternatively he claimed to have been arrested for drinking alcohol and for having a tattoo which was burned from his hand and that he was tortured and detained for three to four weeks. The appellant claimed further that in 2017 he was arrested and detained for one month for transporting alcohol into Iran and that he attended a number of demonstrations in Sardasht the same year. He claimed to have been identified by CCTV and stated that he received a call from Ettela'at requesting that he attend their offices but he did not attend and instead fled Iran. He claimed to have heard that the Iranian authorities had raided his house twice. He used Instagram and Whatsapp to communicate with the DPK and to criticise the Iranian regime and he had posted an image of the Kurdish flag and a comment about Ghasem Solymani since coming to the UK. He would be hanged by Ettela'at if he returned to Iran because he had worked for the DPK.

4. The respondent, in refusing the appellant's claim, accepted that he was from Iran and was Kurdish but, owing to inconsistencies in his accounts, rejected his claim to have worked as a kulbar and to have had problems in that regard and in transporting materials for the DPK. The respondent noted further that the appellant had given inconsistent evidence about his attendance at a demonstration in Sardasht and about being identified by CCTV and rejected his account of having been called by Ettala'at and of his home being raided. The respondent, further, rejected the appellant's claim that the authorities had traced him because of his online political activity, concluding that his online activity was at a low level and would not draw the attention of the Iranian authorities. As for the appellant's claim to have left Iran illegally, the respondent did not accept that he had left the country in the manner claimed and did not accept that he would be at any risk on return on that or any other basis. The respondent had regard to the country guidance in HB (Kurds) Iran (illegal exit: failed asylum seeker) CG [2018] UKUT 430 and concluded that the fact of the appellant being Kurdish did not create a risk of persecution. The respondent considered further that the appellant's removal to Iran would not breach his human rights under Article 3 or 8.

5. The appellant appealed against the respondent's decision and his appeal was heard in the First-tier Tribunal on 7 January 2021 by Judge Austin. The appellant gave oral evidence before the judge, explaining that his Facebook account had been opened for him by a friend after his arrival in the UK in a different name and that he did not know whether it was public or private. The judge recorded that the appellant was not relying upon his claimed activities as a kulbar as a basis for his claim, but in any event noted various inconsistencies in that claim and in his account of having attended a demonstration and been identified by CCTV and telephoned by Ettala'at and rejected his claim as lacking in credibility. With regard to the appellant's social media sur place

activities in the UK, the judge found that his Facebook activities could not be linked to him and that his evidence lacked credibility. The judge found that he would be at no risk on return and dismissed his appeal on asylum, humanitarian protection and human rights grounds.

6. The appellant sought permission to appeal the decision to the Upper Tribunal on the grounds that the judge had failed to consider a core argument as to risk, namely that following the guidance in HB (Iran), the appellant would very likely be questioned on return as a Kurd and could not be expected to lie about his Facebook activity in the UK.

7. Permission to appeal was refused by the First-tier Tribunal but was granted upon a renewed application to the Upper Tribunal on the basis that the judge had arguably failed to consider what would happen to the appellant on the 'pinch point' of return when being questioned.

8. The matter then came before me and both parties made submissions.

9. Mr Sadiq submitted that the judge had failed properly to apply the country guidance in HB (Iran) when considering the risk on return to the appellant as a result of his sur place activities in the UK, at [28] to [31]. It was not the appellant's case that he had a public profile or that he was a significant activist but what the Tribunal should have considered was whether his Facebook activities, which included criticism of the Iranian regime, albeit under a pseudonym, would put him at risk at the point of return. Mr Sadiq submitted that the country guidance in PS (Christianity - risk) Iran CG [2020] UKUT 46 made it clear that all asylum seekers returned to Iran were questioned on return and HB (Iran) made it clear that Kurds were at risk of heightened scrutiny and that the threshold for being suspected of involvement in Kurdish activities was low. The Tribunal should have given detailed consideration to that country guidance and thus fell short of a proper consideration of risk.

10. Mr Tan submitted that the judge's findings at [28] to [31] referred back to the appellant's evidence at [15] and [16] whereby he stated that it was a friend who had opened the Facebook account for him and that it had been opened in a different name, referring to a city as part of that name. The judge, at [28] and [29], found the appellant's evidence about his Facebook activity inconsistent and concluded that it was not clear if the appellant had a command or awareness of what was going on in his Facebook account. The appellant's evidence of having attended a demonstration was rejected and the judge did not believe that he held any genuine political belief. The judge did not accept that the appellant left Iran illegally. The only element of his profile left was his ethnicity, but HB (Iran) found that to be insufficient to put him at risk on return, even if combined with illegal exit. Mr Tan submitted that it would therefore be speculative to suggest that there was anything to warrant further interrogation at the point of return to Iran. The appellant's claim to be at risk as a Kurd with a privately available social media account was not one covered by HB (Iran). As to the HJ (Iran) point, that the appellant could not be expected to lie about his genuinely held beliefs, Mr Tan submitted that he did not have any genuinely held belief and therefore would not be at risk. The Facebook account was not in his name and he could reasonably be expected to delete it. He would not come to the adverse attention of the authorities.

11. Mr Sadiq, in response, submitted that the judge had made no clear finding that the appellant had no genuine political motivation or that his Facebook posts communicated beliefs that were not genuinely held. His account of his Facebook activity included politically sensitive posts and there had been no finding against him as to the sincerity of the views expressed. As a Kurd he would be scrutinised on return and he would be exposed to risk as a result of his Facebook account containing political criticism of the Iranian government.

Discussion

12. The issue in this case is a very narrow one and concerns the situation at the point of return to Iran, whereby it is accepted in HB (Iran) that, as a Kurd, the appellant would reasonably likely be subjected to heightened scrutiny and in PS (Iran) that, as a returned failed asylum-seeker, he would be questioned about what he had been doing in the UK. In line with the guidance in HJ (Iran) he could not be expected to lie about his activities.

13. It is the case put forward by Mr Sadiq that, on that basis, the appellant would reveal his Facebook activity which would then expose him to risk due to the political nature of his posts and that the judge had failed to consider that. Mr Tan, however, submits that since the appellant did not have any genuinely held political beliefs and the Facebook account was not in his name, he could reasonably be expected to delete the account, as consistent with the guidance in PS (Iran) in relation to non-sincere converts to Christianity, and he would therefore not come to the adverse attention of the authorities.

14. Mr Sadiq's response was that the judge had not made any findings to the effect that the appellant was not sincere in the political views expressed in his Facebook posts. However it seems to me that that was indeed the effect of the judge's findings.

15. At [23] the judge found that the appellant had not been involved in any activities in Iran or the UK which would put him at risk and in the following paragraphs he rejected all aspects of the appellant's claim in relation to his activities in Iran as lacking in credibility, for reasons which have not been challenged. When turning specifically to the appellant's claimed sur place activities by way of Facebook postings, at [28] and [29], he did not accept that the information on Facebook was publicly available and he did not accept that the account could be linked to the appellant as it was not even in his name. He found that the appellant appeared to be ignorant of what was going on his Facebook account, giving inconsistent evidence about the posts. At [30] he concluded that the appellant had not been engaged in any sur place activity against the Iranian government which would lead to him being identified as having any political involvement.

16. It is abundantly clear from those findings that the judge rejected any claim by the appellant to have had any genuine political involvement or genuinely to have expressed any political beliefs. Accordingly I agree with Mr Tan that if the appellant was questioned about his activities in the UK there would be nothing which he would have to divulge that would lead the Iranian authorities to have any adverse interest in him beyond his Kurdish ethnicity. That limited profile was considered by the judge at [31] as against the country guidance in HB (Iran) and his conclusion, that the appellant would not be at risk on return to Iran, was one which was entirely open to him on the evidence before him.

17. Accordingly I do not find any errors of law in the judge's decision requiring it to be set aside and I uphold his decision.

DECISION

18. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Anonymity

The anonymity direction made by the First-tier Tribunal is maintained.

Signed: *S Kebede*
Upper Tribunal Judge Kebede

Dated: 26 November 2021