IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004851

First-tier Tribunal No: PA/57752/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 12 February 2025

Before

UPPER TRIBUNAL JUDGE RUDDICK
UPPER TRIBUNAL JUDGE PICKUP SITTING IN RETIREMENT

Between

HA
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr R Ahmed of Counsel, instructed by Hanson Law Ltd
For the Respondent: Ms Newton, Senior Home Office Presenting Officer

Heard remotely by CVP at Field House on 30 January 2025

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is a decision to which both judges have contributed.

2. The appellant, a citizen of Iran of Kurdish ethnicity, appeals to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Parkes) promulgated 8.9.24 dismissing his appeal against the respondent's decision of 3.10.23 refusing his claim for international protection. The claim was made on the basis of the appellant, a Kolbar smuggler with no personal political opinion and no apparent political profile whilst in Iran, having agreed to store KDPI leaflets at his farm, which were subsequently discovered by the Iranian authorities and his uncle arrested. He also relied on *sur place* Facebook postings and attendances at anti-regime demonstrations in the UK.

3. Permission to appeal to the Upper Tribunal was refused by the decision of the First-tier Tribunal (Judge Boyes) dated 7.10.24. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Owens granted permission in the decision issued on 26.11.24.

4. In granting permission, Judge Owens considered that:

> *"It is at least arguable at [17] that the judge has failed to take into account the risk to an individual of storing leaflets supporting Kurdish rights in accordance with HB(Kurds)Iran CG [2018] UKUT 430 (IAC). The judge has arguably engaged in speculation as to how the appellant would behave at [20] and at [21] in relation to how long materials would be stored in the farm buildings and at [20] has arguably failed to take into account the background evidence in the CPIN and country guidance that physical leaflets are distributed in Iran as well as electronically. It is arguable that at [22] the judge took into account immaterial considerations. The judge also arguably failed to take into account all of the factors which might put the appellant at risk and arguably failed to properly apply the country guidance. The remaining ground is weaker but I do not limit the grant of permission."*

5. Following the helpful submissions of both representatives the panel reserved the decision to be provided in writing, which we now do.

6. Mr Ahmed indicated that although he was instructed to pursue all grounds his main ground and the thrust of his submissions was in relation to [17] of the decision.

7. As drafted, the grounds argue that at [17] the judge '*underplays the role and adverse interest that the appellant is likely to face as according to the FtTJ he only stored leaflets…"* In his submissions, Mr Ahmed argued that [17] should be read as a finding that the judge accepted that leaflets were stored by the appellant and discovered by the authorities. If true, he submitted, the judge then erred in law by failing to apply the relevant country guidance to that finding. However, for the reasons set out herein, the panel has concluded that Mr Ahmed's interpretation cannot survive scrutiny.

8. At [17] of the decision, the judge stated:

> *"It is not suggested that the Appellant was involved politically in Iran, other than with occasionally storing political leaflets on behalf of others, not apparently out of any conviction on his part. Aside from the events that form the basis of this decision there is no other basis on which the Appellant would have a profile in Iran or otherwise be of interest to the authorities."*

9. We are satisfied that this sentence cannot properly be read as an acceptance of the appellant's claim to have stored KDPI leaflets. It is quite clear from not only the sense of the sentence itself but also the rest of the decision, read as a whole, that the judge rejected the appellant's factual claim in its entirety.

10. In reaching that conclusion, we have taken into account that in support of his argument, Mr Ahmed also relied on a single sentence from [26] of the decision: "*I find that the Appellant is not wanted by the Iranian authorities for the storage of political materials or otherwise*." Mr Ahmed asked us to read this as an acceptance by the judge that leaflets were stored but that, in the judge's assessment, he was not wanted by the authorities. Hence the submission that the judge had underplayed the significance of KDPI leaflets being discovered. We have no hesitation in rejecting that interpretation as misconceived. The ordinary meaning of the sentence is that the claim was rejected. In any event, the judge made it quite clear in the preceding sentence that the appellant's entire account was rejected: "*Taking all of the above into consideration I find that the Appellant's account of events in Iran is not credible*." In our view, nothing could be clearer. In the circumstances, the panel finds that the ground is misconceived and derives from a misunderstanding of what we find the judge stated quite plainly.

11. Mr Ahmed readily accepted that if the judge had rejected the appellant's factual claim to have stored leaflets which were then discovered by the authorities, then ground four, the complaint that the judge failed to apply country guidance authority, falls away. The panel noted that in any event this ground was entirely unparticularised. The judge was not required to set out or precis the relevant case law and it is incumbent on the appellant to elaborate on the materiality of any such deficiency.

12. The remaining grounds, also appear to misunderstand or misinterpret various aspects of the decision, particularly those between [19] to [21] of the decision, where the judge was mostly summarising the appellant's case or the respondent's submissions. For example, at [20], the judge sets out the respondent's case that given the risks to his family, the appellant would neither have agreed to store KDPI leaflets, nor engage in anti-regime activity in the UK. This was not a specific finding of fact, though it may well have been a consideration in the overall assessment of the appellant's credibility.

13. Mr Ahmed accepted that no error is disclosed by the judge's assessment at [21] that on his own account, the appellant's role was a lesser one than that of his uncle. The judge did "*agree with the practical observation in the Refusal Letter that materials would be stored for the shortest time to minimise the risks involved*," but it is an obvious point and one which we are satisfied was open to the judge, as Mr Ahmed conceded. We also find that the complaint that the judge did not accept that flyers are produced on paper as well as electronically is misconceived. At [20] the judge merely pointed out what the respondent's case was about such leaflets and was not making a finding of fact. As we pointed out to Mr Ahmed, the grounds and his submissions on this particular point appear to be rather inconsistent with his main submission that the judge had accepted that the appellant stored paper leaflets.

14. The third ground addresses the judge's statement at [22] of the decision, which was that in general agents are not trusted and final payment is made only when the traveller has confirmed arrival in the destination country. Although the reference to agents from Afghanistan may have been irrelevant and not very helpful, nothing in fact turns on this point and, as the judge stated, it was not a significant point and therefore could have played no material part of the overall credibility assessment.

15. The fifth ground asserts that the judge failed to consider the risk on return arising from the issues of military service, illegal exit and the appellant's Kurdish ethnicity. We note that in granting permission, Judge Owens considered it

arguable that the First-tier Tribunal Judge failed to take into account all of the factors which might put the appellant at risk and arguably failed to properly apply the country guidance. However, the ground is a bare assertion which has not been developed or particularised. Illegal exit, military service and the appellant's ethnicity are all addressed at [28] of the decision. It appears from that paragraph that illegal exit was not an issue in the appeal, perhaps because the fact of illegal exit was accepted but the appellant did not place particular reliance on it, taken alone. In any event, Mr Ahmed accepted that military service was not an issue, and he did not pursue this ground to any degree, preferring to rely on what he considered his primary submission, that the judge had accepted that the appellant stored KDPI leaflets.

16. As drafted, the sixth and final ground asserts that although the judge addressed the alleged *sur place* activities at [18] of the decision, making adverse findings at [27] that the appellant was not motivated by any genuine political interest, there remains a risk on return arising from potential perceived anti-regime political opinion. As with other grounds, this point was not developed any further. As the judge pointed out, there was no evidence that the appellant had any pre-flight political profile or that his *sur place* activities were known to the authorities. We are satisfied that the judge did not err in pointing out that he can delete his Facebook account prior to return. Given the limited extent to which this issue was advanced both before the First-tier Tribunal and before the Upper Tribunal, no error of law is identified in the judge's treatment of this issue.

17. In all the circumstances, for the reasons summarised above, we are satisfied that the of the decision of the First-tier Tribunal did not involve the making of any material error of law. It follows that the appeal must be dismissed.

Notice of Decision

The appellant's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands as made.

We make no order as to costs.

DMW Pickup

Judge of the Upper Tribunal
Immigration and Asylum Chamber
Sitting in Retirement

30 January 2024