



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/02827/2020

THE IMMIGRATION ACTS

**Heard at Manchester
On 11 February 2022**

**Decision & Reasons Promulgated
On 25 March 2022**

Before

**UPPER TRIBUNAL JUDGE HANSON
UPPER TRIBUNAL JUDGE BRUCE**

Between

BEHROOZ MOHAMMADI
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Holmes instructed by WTB Solicitors LLP

For the Respondent: Mr A McVeety, a Senior Home Office Presenting Officer.

DECISION AND REASONS

- 1.** The appellant appeals with permission a decision of First-tier Tribunal Judge Lang ('the Judge') promulgated on 5 July 2021 .

Background

- 2.** The appellant is a citizen of Iran of Kurdish ethnicity.
- 3.** The appellant claims to have formed a relationship with a woman called Kobra whose family agreed she should marry another man who

had threatened the appellant and “warned him off”. The appellant also claimed to be a supporter of the KDPI and to have distributed leaflets for this organisation in his village and posted information on Facebook. The appellant claimed that he will be arrested on return for supporting the KDPI and/or at risk due to his adulterous relationship with Kobra.

4. The Judge sets out findings of fact, having considered the oral and documentary evidence and submissions made by the parties, from [30] of the decision under challenge. The Judge noted there was no dispute in relation to the appellant’s nationality or ethnicity.
5. Concerning the alleged relationship with Kobra; the Judge finds that the appellant had failed, in the absence of corroborative evidence, to show that his version of events surrounding the renewed contact between him and Kobra is credible. The Judge finds his version between the asylum interview and evidence given at the hearing differs in key details and did not find it credible that the appellant would go and visit Kobra and participate in such risky behaviour as he claims after so long [36]. We find no error of law material to this aspect of the decision made out before us.
6. The Judge finds the appellant’s credibility damaged pursuant to Section 8 of the 2004 Act on the basis he travelled through other safe countries before coming to the UK but failed to claim asylum [37]. Whilst the appellant claims the Judge failed to consider whether there was a reasonable opportunity to claim asylum in either Italy or France and a failure by the Judge to consider the appellant’s evidence as to why no such claims were made in the asylum interview and at the hearing, we are satisfied the Judge considered that part of the evidence with the required degree of anxious scrutiny and clearly rejected the appellant’s claim. We do not find, having considered the evidence for ourselves, that this is a finding outside the range of those available to the Judge. No legal error material to this finding is made out.
7. In relation to his alleged support of the KDPI and Facebook activities the Judge writes between [38-42]:

38. I now turn to the Appellant’s claim that he is a supporter of the KDPI. The Appellant is illiterate. He confirmed in his oral evidence at the hearing that he can neither read nor write in English or Sorani. Despite this, he claims to have distributed leaflets around his village, putting himself and his villagers in danger, in support of the KDPI between 2010 and 2013 - leaflets could not read. He then claims his activities in support of the KDPI stopped between 2013 and 2017. In 2017 he claims his activities in support restarted, for no particular reason, and he set up a Facebook account to spread word of Kurdish groups, and yet has posted very little to that account since 2017. Even when safely in the UK, with regular and easy access to Facebook, he did not post any KDPI supporting materials. He claims to have lost his password to his Facebook account but has not provided any evidence of this or any explanation as to why, if he had lost his password, he did not simply set up a new Facebook account which is easily done. In any event the Appellant cannot read or write so how has he been about to learn to post on Facebook? How was he able to compose Facebook posts or

consider the content of posts or repost? He was unable to give any explanation other than people helped him. I have no evidence before me either in the form of witness statements or evidence at the hearing from anybody in the UK who helped him post on Facebook. He claims Kurdish communities he has met in UK helped him, but I have no details of them, or letters from them in support of this assertion, and no one came to the hearing to give evidence on his behalf.

39. Even on the lower standard of proof I find his version of events that led to his departure from Iran implausible. I coupled with this his journey to UK, and considering s.8 considerations, and his alleged Kurdish support activities which he has failed to satisfy me he was able to do, despite asserting that he did. I find his account not plausible, lacking in credibility and I have absolutely no evidence other than his witness statement in support of it. I reject it in its entirety.
 40. I do not accept the Appellant's assertion that he is at risk due to the activities he undertook whilst in the UK. I have very few Facebook posts, the credibility of which I have already doubted, together with one photo of him allegedly attending a demonstration and holding a placard. I accept the Respondent's submission that whilst some weight can be placed on the photograph, it is limited and insufficient to demonstrate any meaningful support to the KPI or political activity sur plas.
 41. There is no evidence at all, save for his assertion, that he was of any interest to the authorities before he left.
 42. In summary I reject the submission of the Appellant's representative that the Appellant's evidence about his fear of persecution was credible. I found that it was not. I find no other risk factors in this case which would bring the Appellant to the attention of the Iranian authorities on return.
- 8.** The appellant sought permission to appeal on four grounds, alleging the Judge had made a mistake of fact, failed to give adequate reasons, undertaken a deficient section 8 assessment, and failed to assess risk owing to Facebook and political activities in the UK.
 - 9.** Permission to appeal was granted by another judge of the First-tier Tribunal. The operative part of the grant is in the following terms:
 2. Ground 1 asserts that the judge, in finding that the appellant had not posted any KDPI supporting materials whilst in the UK, failed to have regard to material in the Appellant's Supplementary Bundle of such posts and other political activity. Whilst the judge had regard to the oral evidence of the appellant that he could neither read nor write and made of the findings concerning the appellant's credibility, such evidence is capable of supporting the appellant's claim that he is a supporter of the KDPI in the UK and is potentially relevant to sur place activity. There is thus evidence of the failure to take account of a material matter and is an arguable error of law.
 - 10.** The Secretary of State filed a Rule 24-response dated 16 November 2021 which partly concedes the appeal; the operative part of which is in the following terms:
 2. The respondent accepts that it appears that the judge did not refer to the evidence in the supplementary bundle with respect to the

appellant's sur place activity and that the assessment of that part of the appellant's claim is therefore flawed such that it amounts to an error of law.

3. It is not accepted however that the assessment of the appellant's credibility with respect to what happened in Iran is flawed, the determination shows that the judge carefully assess the appellant's evidence on that point and gave sound reasons for rejecting his account. The challenged that part of the determination is essentially a disagreement.
4. The Tribunal is invited to set aside that part of the determination relating to the appellant's sur place activity and set the case down for a hearing in the Upper Tribunal.

Error of law

- 11.** As noted above, there are aspects of the appellant's challenge that we do not accept establishes material error of law.
- 12.** The concession by the Secretary of State is properly made for although the Judge refers to having considered all the evidence provided the comment at [38] that "the appellant had not posted any KDPI supporting materials" illustrates a failure to consider with the required degree of anxious scrutiny (or at all) the content of the appellants supplementary bundle which contained over 30 pages of overtly political materials posted by the appellant whilst he was in the United Kingdom. Failure to consider the evidence properly and to factor such evidence into the factual matrix is a material legal error in this appeal.
- 13.** The Judge rejected the entirety of the appellant's account but that cannot be said to be a sustainable finding when the Judge did not consider all the evidence properly.
- 14.** We do not find the Judge materially erred at [34] where he records the appellants claim that the agent of persecution he fears as a result of the relationship with Kobra was a member of Ettela'at which Mr Holmes claimed was never the assertion made by the appellant. It is clear from looking at the evidence that was before the Judge that a number of statements were made by the appellant in his screening and asylum interview and in his oral evidence that clearly indicated that the person concerned was connected to, and had power and influence with, the security services. The core finding concerning the profile of the individual concerned is a finding within the range of those available to the Judge and the semantics of whether a person was a 'member', 'supporter', or 'connected with' that organisation does not undermine the Judge's findings in relation to the risk that person posed to the appellant. No legal error is made out in relation to this issue.
- 15.** We set aside the Judge's findings relating to the appellant's connection with the KDPI and related activities and findings in relation to the assessment of risk due to the appellant's Facebook posts and sur place political activities. Those issues will have to be considered afresh, considering both the evidence currently available, any new

evidence the parties may wish to rely upon, and the recent country guidance case of XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 00023 (IAC).

- 16.** Having found legal error which denied the appellant a fair hearing and proper consideration of the merits of the appeal, we find it appropriate in all the circumstances, and in accordance with the Presidential Guidance, to remit the appeal to the First-tier Tribunal sitting at Manchester to be heard afresh by a judge other than Judge Lang in relation to the issues upon which we have found material legal error has been made.

Decision

- 17. The Judge materially erred in law. We set the decision aside. This appeal shall be remitted to the First-tier Tribunal sitting at Manchester to be heard by a judge other than Judge Lang in relation to those matters on which it has been found Judge Lang materially erred in law.**

Anonymity.

- 18.** The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

We make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated 14 February 2022