IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002920

First-tier Tribunal No: PA/56136/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 16 October 2024

Before

UPPER TRIBUNAL JUDGE HOFFMAN

Between

OM
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr O Sobowale of Counsel, instructed by Jackson Lees Group
For the Respondent: Mrs R Arif, Senior Home Office Presenting Officer

Heard remotely at Field House on 11 October 2024

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

Introduction

1. The appellant appeals with permission the decision of First-tier Tribunal Judge Power ("the judge") promulgated on 1 May 2024 dismissing his appeal against the respondent's decision dated 22 August 2023 refusing his protection claim.

Background

2. The appellant is a citizen of Iran of Kurdish ethnicity. He entered the UK clandestinely on 29 November 2020 and claimed asylum on 29 November 2020 on the basis that he feared persecution on account of his imputed political opinion, namely his support for Kurdish rights. The appellant also claimed to be at risk on the basis of sur place activities in the UK opposing the Iranian regime. His application was refused by the respondent on 22 August 2023 with a right of appeal.

3. The appellant's appeal was heard by the judge on 23 April 2024 and dismissed in the decision dated 1 May 2024. The appellant was subsequently granted permission to appeal by Upper Tribunal Judge Keith on 9 August 2024 on the following grounds:

> (1) The judge failed to properly apply binding country guidance, in particular by failing to properly assess the "hair-trigger" approach of the Iranian authorities to those suspected of having participated in pro-Kurdish activities in the UK.
> (2) The judge erred by requiring the appellant to meet an impossible evidential burden with regards to his Facebook activity.
> (3) The judge erred by imposing too high or demanding a standard of proof in determining whether the appellant's sur place activities had come to the attention of the Iranian authorities.
> (4) The judge gave inadequate reasons as to why the appellant does not hold a genuine loyalty to the Kurdish cause or the anti-Iranian authority cause more generally.

Findings – Error of Law

4. At the hearing, Mr Sobowale focused his submissions on Grounds 3 and 1 in that order. While he did not make any oral arguments in relation to Grounds 2 and 4, he said that he continued to rely on what was said in the grounds of appeal. I therefore deal with the grounds in the order that Mr Sobowale presented them.

Ground 3: Imposition of too high or demanding standard of proof in determining whether the appellant's sur place activities came to the attention of the authorities

5. The appellant argues that, at [26], the judge imposed too high or demanding a standard of proof in requiring the appellant to prove that his sur place activities had come to the attention of the Iranian authorities.

6. At [25], the judge noted that the respondent did not challenge the appellant's claim to have attended 17 demonstrations against the Iranian authorities in the UK. The judge was satisfied that these had taken place between December 2020 and November 2023. At [26] and [27], the judge considers the appellant's evidence about whether his activities had come to the attention of the Iranian authorities. The judge noted at [26] that part of this evidence is a photograph of someone looking out of a window of what appears to be the Iranian Embassy holding a phone, although the judge found that there was no evidence to show that the appellant was present when that photograph was taken. At [27], the judge referred to "a screenshot of what appears to be a video taken by the appellant of someone with a camera" and that the appellant claimed that he was personally being filmed. However, the judge found that it was impossible to

identify the person filming the appellant. The judge concluded that there was no evidence to show that the footage had captured the appellant or that it had been broadcast. At [28], the judge found that he was not satisfied that the appellant had come to the attention of the Iranian authorities as claimed. The judge explained that while the appellant has attended demonstrations outside of the embassy, he was there "with many other people" and that there was "nothing which marks the appellant out as a leader or organiser of the demonstrations"; he was, the judge said, just "a member of the crowd". Furthermore, while there were photographs of the appellant holding up pictures as he posed for the camera, the judge found that there was no evidence to show that the appellant remained at the demonstrations "for longer than a few minutes whilst these photographs were taken. There is no evidence that the appellant attracted publicity as a result of his attendance at the demonstrations".

7. I remind myself that it is not the role of an appellate court or tribunal to come to an independent conclusion as a result of its own consideration of the evidence: see Volpi v Volpi [2022] EWCA Civ 464, at [66]. The question for this tribunal is whether the judge was rationally entitled to reach the findings that he did about whether the appellant's sur place activities had brought him to the attention of the Iranian authorities, applying the lower standard of proof applicable in protection cases. Having read the decision as a whole, I am satisfied that the judge did not apply too high or demanding a standard of proof. That the judge was aware of the correct standard of proof is made clear at [12] and [13]. Furthermore, I am satisfied that the judge was rationally entitled to make the findings that he did at [26] to [28].

8. This ground does not therefore demonstrate a material error of law.

Ground 1: Failure to consider the "hair-trigger" approach

9. The appellant argues that the judge failed to refer to paras (8) and (10) of the headnote to HB (Kurds) Iran CG [2018] UKUT 00430 (IAC) at [35]. In particular, para (10) of the headnote says,

> "(10) The Iranian authorities demonstrate what could be described as a 'hair-trigger' approach to those suspected of or perceived to be involved in Kurdish political activities or support for Kurdish rights. By 'hair-trigger' it means that the threshold for suspicion is low and the reaction of the authorities is reasonably likely to be extreme."

10. It argued that, regardless of the appellant's motives, the judge made a material error of law by failing to assess whether the appellant's sur place activities in the UK are likely to be perceived as political by the Iranian authorities and, if so, whether he faces a real risk of harm on account of their hair-trigger approach to perceived Kurdish dissidents.

11. While it is correct the judge has not set out all of the paragraphs to the headnote of HB, including para (10), the judge does say at [35] that he notes "in particular" the passages that he does quote, which are paras (2), (4), (5), (7) and (9). As a member of a specialist tribunal, I am satisfied that the judge would likely have been aware of all of the paragraphs in the headnote of the case to which he refers. Furthermore, it is clear from reading the paragraphs from the headnote that the judge does reproduce at [35] that he was aware that even low-level political involvement, or activity that is perceived as such, could put the appellant

at risk of persecution or treatment contrary to Article 3 ECHR on return to Iran. Having made the findings at [28] that the appellant was unlikely to have come to the attention of the Iranian authorities by protesting outside of its embassy, and at [32] that the appellant had failed to demonstrate that his Facebook posts had brought him to the regime's attention, I am satisfied that the judge was rationally entitled to conclude at [36] that there was insufficient evidence before the tribunal to demonstrate that the appellant would be of adverse interest to the Iranian authorities on return. In the circumstances, I am not satisfied that the absence of an express reference to the Iranian regime's "hair-trigger" response amounts to a material error of law because the judge's conclusion would very likely have been the same in any event.

Ground 2: Imposition of an impossible evidential burden with regards to the appellant's Facebook activity

12. During the hearing before the First-tier Tribunal, the appellant's representative sought leave to show the judge and the presenting officer the first page of the appellant's Facebook account as displayed on his mobile phone, which the judge allowed. The presenting officer submitted that this was not an adequate substitute for the appellant disclosing a full download of the information from his Facebook account. At [30], the judge held that "in the absence of download information, I am not satisfied that it is evidence that the appellant's Facebook account is live and publicly displayed on an ongoing basis".

13. The appellant argues that the judge's finding is "hard to reconcile given that the [appellant] at the hearing provided proof that his Facebook account was live and publicly displayed" and, furthermore, that "it is unclear how any appellant is able to evidence his Facebook account being displayed on an ongoing basis".

14. There is no merit to this ground. In XX (PJAK – sur place activities – Facebook) Iran CG [2022] UKUT 00023 (IAC), which the judge correctly cited at [30] and several paragraphs thereafter, the Upper Tribunal found that without full disclosure of a person's Facebook account in electronic format using the "Download Your Information" function, excerpts of a person's account may have very limited evidential value. It is difficult to see how the appellant momentarily showing the home page of his Facebook account to the judge and presenting officer at the hearing can be said to be an adequate substitution for that. The judge was therefore rationally entitled at [31] to take into account that the appellant had not utilised the Download Your Information function and to consider the weight to be attached to the Facebook evidence in that light.

Ground 4: Giving inadequate reasons why the appellant does not hold genuine loyalty to the Kurdish cause or anti-authority cause more generally

15. At [38], the judge concludes that he is "not satisfied that the images of the appellant, posing with various banners and pictures, denote a genuine interest in or loyalty to the Komala Party or an anti-Iranian authority cause more generally". The appellant argues that the judge has given inadequate reasons for reaching that finding. He claims at para 17 of his grounds of appeal that "Almost all Kurds arguably have a case to hold a genuine political view that they are ill-treated in Iran and would wish to promote change". That may be correct. However, the question for the judge, applying the lower standard of proof, was whether the appellant's political activities in Iran or the UK had brought him to the attention of the Iranian authorities so as to give rise to a real risk of harm on return. [38] must

therefore be read in the context of the judge's findings at [19] and [24] that the appellant had not worked for the Komala Party in Iran; at [28] that his attendance at demonstrations in the UK were unlikely to have brought him to the attention of the Iranian authorities; and at [32] that the appellant had failed to provide sufficient evidence to prove that he is active on social media. I am therefore satisfied that the judge did give adequate reasons for finding that the appellant was not at risk on return to Iran on account of his claimed political profile.

Notice of Decision

There is no material error of law in Judge Power's decision.

The appeal is dismissed.

M R Hoffman

Judge of the Upper Tribunal
Immigration and Asylum Chamber

15th October 2024