



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

Appeal Number: PA/03886/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 1 April 2019**

**Decision & Reasons Promulgated
On 10 April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

**MR M A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Sowerby, counsel instructed by Freedom Solicitors
For the Respondent: Ms K Pal, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iran born on 15 January 1989. He arrived in the United Kingdom on 29 September 2017 and claimed asylum the following day, on the basis that he had been involved with the Kurdistan Democratic Party-Iran (KDP-I) and had distributed leaflets for the party at the request of his uncle. His application for asylum was refused in a decision dated 10 March 2018 and he appealed against that decision. His appeal was heard on 24 April 2018 when the Appellant gave evidence, both as to his reasons for claiming asylum and also as to his activities since he arrived in the UK, both through Facebook and through attending

demonstrations in support of the KDP in London which had been published on YouTube.

2. In a Decision and Reasons promulgated on 30 April 2018, the judge dismissed the appeal, finding the Appellant's account of his reasons for leaving Iran not to be credible, and also rejecting his claim based on his *sur place* activities in the UK.
3. Permission to appeal was sought, in time, on two grounds: firstly, it was asserted the judge had erred in his assessment of the credibility of the Appellant's claim and secondly, that the judge had erred in dismissing the Appellant's *sur place* activities as low-level and self-serving, absent consideration of whether such activities would put the Appellant at risk on return to Iran. It was submitted the judge had failed to take account of the relevant country guidance *cf AB and Others* (internet activity – state of evidence) Iran [2015] UKUT 00257 (IAC), in particular at [467] to [472].
4. Permission to appeal was granted in respect of the second ground only by First-tier Tribunal Judge Grant in a decision dated 9 July 2018 on the basis it was arguable that the judge may have erred in law in his assessment of the Facebook evidence. A renewed application for permission to appeal in respect of the first ground of appeal was refused by Upper Tribunal Judge King in a decision dated 30 July 2018.

Hearing

5. At the hearing before the Upper Tribunal, Mr Sowerby on behalf of the Appellant drew attention to the fact that the Appellant submitted substantial evidence at page 40 of his bundle onwards of attending KDP-I demonstrations in the UK, and also a plethora of Facebook excerpts at page 50 onwards, criticising the Iranian Government. Some of these are in English and the Appellant's name is clearly visible: for example pages 52, 53, 55 onwards and 86. He also drew attention to pages 47 to 49, which are stills of video posts on YouTube where the Appellant is predominant in that footage and this related to a demonstration outside the Iranian Embassy on 3 November 2017. He submitted that at [7.6] the judge gives no or no proper reasons for not giving weight to the video and documentary evidence. Whilst there was a reference in that paragraph to reasons having already been provided, it is not clear what reasons these were. Mr Sowerby submitted that the finding was also contrary to the decision of the Upper Tribunal in BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC) and monitoring does clearly take place in Iran. Mr Sowerby submitted that the judge further erred at [7.7] in failing to give adequate reasons for rejecting the Appellant's claim and had further failed to apply the relevant jurisprudence *cf Danian* [1999] EWCA Civ 3000; YB (Eritrea) [2008] EWCA Civ 360 and BA (Iran) (op cit).
6. Whilst it was the Appellant's case that he is a genuine political activist, Mr Sowerby submitted that even if he was not, he would be at risk as a result of his activity *cf. AB* [2015] UKUT 00257 (IAC) at [457] which makes it

absolutely clear that blogging and Facebook activities are common amongst Iranian activists and the authorities are unhappy about this. The Appellant could not be expected to lie upon return to Iran and there would be a pinch point: [464] through to [471] refer. The Appellant left Iran illegally so he would need to be documented by the Iranian Embassy in the UK, and it is clear from the decision in SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC) at [23] that as a failed asylum seeker he would be questioned on return. Mr Sowerby further sought to rely on the decision in HB (Kurds) Iran CG [2018] UKUT 00430 (IAC) which was promulgated after the judge's decision but sees a clear development in the case law, particularly with reference to Kurds from Iran at [87], [108], [114] to [116].

7. In her submissions, Ms Pal stated she was opposing the appeal, that the judge did not accept the Appellant was a witness of truth, nor that the Facebook entries would come to the attention of the authorities. She submitted the Appellant would not be at risk at the pinch point on return to Iran. Ms Pal submitted the judge had done just enough in finding that the Appellant would not be at risk on return to Iran and he was also low-level in terms of his involvement with the photographic evidence. She submitted it is unlikely if the videos were to be viewed on return that he would be picked up as someone who opposed the Iranian Government.
8. The judge also considered at [7.10] the content of the Facebook reports and at [7.11] the Appellant's credibility and the issue of a returnee who left illegally at [7.13]. The judge found at [7.14] that given he did not accept the Appellant was wanted by the authorities and his illegal exit would not be a significant risk factor *cf.* SSH (op cit). She submitted there were no material errors of law in the decision and the findings of the First-tier Tribunal should stand.

Findings and Reasons in respect of the error of law

9. I found a material error of law in the judge's assessment of the Appellant's refugee *sur place* activities. The judge held as follows in this respect:-

"7.6 The appellant has engaged in activities in the United Kingdom organised by the Kurdistan Democratic Party in the United Kingdom, but for the reasons mentioned above, beyond confirming that the appellant has sought out the Kurdish Democratic Party in the United Kingdom, and that he may have applied for membership and attended events that the party has organised in the United Kingdom, I can give no weight to the video and documentary evidence.

7.7 There is a risk that economic migrants claim asylum using Facebook and attendance at rallies in an opportunistic manner to bolster their desire to enter or remain in the United Kingdom. I am not satisfied that the reach of the appellant's Facebook entries will have come to the attention of the Iranian authorities. I attach little weight to the

photographic and video images provided. I do not doubt that the appellant attended outside the Iranian embassy on 3 November 2017 and that glimpses of him appear in the videos. However, I am satisfied that any involvement on these occasions was at a low level and mainly for the self-serving embroidering of his claims that he is politically active to lay the ground for an attempt to support his asylum claim."

10. I find that the judge has failed to provide proper or adequate reasons for rejecting the Appellant's claim in this respect. Whilst there is reference at [7.6] to "*reasons mentioned above*" it is not apparent from the previous paragraphs what these reasons are. There was clear evidence before him that the Appellant is a "strong supporter" of the KDP-Iran in the United Kingdom [7.5.](g) refers and that he had attended at least one demonstration, photographs of which had been published on YouTube showing the Appellant and that he had made multiple references to the KDP-I on Facebook.
11. It is well-established that even an opportunistic claim for asylum may succeed if it would give rise to a well-founded fear of persecution on return: *cf Danian* [2000] Imm AR 3000 per Lord Justice Brooke. In the specific context of returnees to Iran, the Upper Tribunal held in *AB* (internet activity - state of evidence) Iran [2015] UKUT 00257 (IAC) at [472] that "*It is not relevant if a person had used the internet in an opportunistic way. The authorities are not concerned with a person's motivation.*" It is clear that the judge gave no consideration to whether or not the Appellant would be at risk of persecution on account of his activities in the United Kingdom, which have been disseminated over the internet, despite rejecting his claim in respect of events in Iran.
12. I find in light of the subsequent country guidance decision in *HB* (Kurds - Iran) (op cit) that the context in which the Appellant's case requires consideration has changed and the evidence before the Upper Tribunal showed a clear deterioration which would also render unsafe the judge's findings.
13. I announced my decision at the hearing and said that having sought the views of the parties invited submissions so that I could remake the decision solely in respect of whether the Appellant would be at risk on return due to his *sur place* activities, the basis of his claim as to why he left Iran having been rejected and upheld.
14. Ms Pal submitted that, while she accepted there were pictures of the Appellant holding a flag and attending demonstrations, she submitted these were not sufficient to engage the attention of the Iranian authorities on return. There were photographs of the Appellant at demonstrations, however his actions were not inflammatory or sufficiently so for the Iranian authorities to target him on return. The Appellant is low profile and his activities in the UK at a low-level and unlikely to engage the attention of

the authorities. She invited me to dismiss the appeal on both asylum and human rights grounds.

15. In his submissions, Mr Sowerby sought to rely on an additional bundle of evidence which he sought to adduce pursuant to Rule 15, in particular the transcript and translation of the Appellant's postings on Facebook at page 44 onwards and [64]-[65] of BA (Iran) (op cit). He reminded me that the Appellant would be returned as an undocumented returnee and would not be expected to lie and that, in light of the decision in HB (Kurds-Iran) (op cit) at [116] and that in SSH (Iran) (op cit) he would be detained. Mr Sowerby submitted that the decision in HB paints a bleak picture and that following what is said at [98](9) the Appellant would be perceived to be political, even on account of low-level activity. He has consistently called the Iranian state a terrorist state and this would attract the adverse attention of the authorities.
16. I reserved my decision, which I now give with my reasons.

Findings and reasons in respect of the substantive appeal

17. I re-determine the appeal on the basis of the following facts, which have been accepted by the First tier Tribunal:
 - (i) the Appellant is a national of Iran or Kurdish origin;
 - (ii) he left Iran illegally;
 - (iii) there is not a reasonable degree of likelihood that the reasons he has provided for leaving Iran are true;
 - (iv) he is a "strong supporter of the KDP-Iran in the United Kingdom, he regularly attends party events and takes place in demonstrations against the Islamic Republic of Iran in the UK";
 - (v) he attended a demonstration outside the Iranian Embassy in London on 3 November 2017 at which videos and photographs were taken, showing the Appellant and these have been posted on YouTube;
 - (vi) the Appellant's Facebook account contains many references to his support for the KDP, some of which are in Kurdish and some in English.
18. The further evidence submitted to the Upper Tribunal pursuant to rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 contains a witness statement from the Appellant dated 12 March 2019, in which he stated that he attended demonstrations on 12 July 2018 outside the Austrian Embassy to commemorate the assassination of Dr Ghassemlou; on 28 July 2018 outside the Houses of Parliament to protest the treatment of political prisoners in Iran and to demand the cessation of the execution of Ramin Hossein Panahi; on 15 September 2018 outside the Consular section of the Iranian Embassy in London to condemn the attacks against the KDP headquarters in Koye in Iraq; on 12 December 2018 in Birmingham to commemorate Peshmerga Day; on 8 March 2019 outside

the Iranian Embassy to protest the treatment of women in Iran on International Women's Day. He states that he has posted photographs of his attendance at the demonstrations on his Facebook account and has appended copies of those photographs to his statement, at P5-P43. Translations into English of some of the Kurdish language posts are at P44-P46. The post on 15 September 2018 reads: "15/09/2018 in front of the Iranian Embassy in London to condemn the terrorist Republic of Iran for attacking the Democratic Party of Kurdistan's headquarters in Iraq. Martyrs of the leadership committee of Democratic Party of Kurdistan following the terrorist attack by the dirty Regime of Mullahs on 8th September."

19. I find in light of the evidence that the Appellant is a supporter of the KDP-I in the United Kingdom and has attended demonstrations, both specifically in respect of the KDP-I and more generally in respect of his opposition to the Iranian regime. I find he has disseminated his political views and activities via social media, on Facebook.
20. In AB (internet activity – state of evidence) Iran [2015] UKUT 00257 (IAC) the Upper Tribunal considered whether the use of social media and internet activity placed returnees to Iran at risk of persecution on return. Whilst concluding that there was insufficient evidence to issue country guidance, the decision was reported for the Upper Tribunal's findings on the evidence at that time. It was concluded *inter alia* at [466]-[472] that:

466. ... Some monitoring of activities outside Iran is possible and it occurs. It is not possible to determine what circumstances, if any, enhance or dilute the risk although a high degree of activity is not necessary to attract persecution.

467. The mere fact of being in the United Kingdom for a prolonged period does not lead to persecution. However it may lead to scrutiny and there is clear evidence that some people are asked about their internet activity and particularly for their Facebook password. The act of returning someone creates a "pinch point" so that a person is brought into direct contact with the authorities in Iran who have both the time and inclination to interrogate them. We think it likely that they will be asked about their internet activity and likely if they have any internet activity for that to be exposed and if it is less than flattering of the government to lead to at the very least a real risk of persecution.

469. The capability to monitor outside Iran is not very different from the capability to monitor inside Iran. The Iranian authorities clearly have the capacity to restrict access to social internet-based media. Overall it is very difficult to make any sensible findings about anything that converts a technical possibility of something being discovered into a real risk of it being discovered.

470. The main concern is the pinch point of return. A person who was returning to Iran after a reasonably short period of time on

an ordinary passport having left Iran illegally would almost certainly not attract any particular attention at all and for the small number of people who would be returning on an ordinary passport having left lawfully we do not think that there would be any risk to them at all.

471. However, as might more frequently be the case, where a person's leave to remain had lapsed and who might be travelling on a special passport, there would be enhanced interest. The more active they had been the more likely the authorities' interest could lead to persecution.

472. The mere fact that a person, if extremely discrete, blogged in the United Kingdom would not mean they would necessarily come to the attention of the authorities in Iran. However, if there was a lapse of discretion they could face hostile interrogation on return which might expose them to risk. The more active a person had been on the internet the greater the risk. It is not relevant if a person had used the internet in an opportunistic way. The authorities are not concerned with a person's motivation. However in cases in which they have taken an interest claiming asylum is viewed negatively. This may not of itself be sufficient to lead to persecution but it may enhance the risk."

21. In HB (Kurds) Iran CG [2018] UKUT 00430 (IAC) a country guidance decision of the Upper Tribunal promulgated on 20 December 2018, the Upper Tribunal held *inter alia*:

"(1) SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 308 (IAC) remains valid country guidance in terms of the country guidance offered in the headnote. For the avoidance of doubt, that decision is not authority for any proposition in relation to the risk on return for refused Kurdish asylum-seekers on account of their Kurdish ethnicity alone.

(2) Kurds in Iran face discrimination. However, the evidence does not support a contention that such discrimination is, in general, at such a level as to amount to persecution or Article 3 ill-treatment.

(3) Since 2016 the Iranian authorities have become increasingly suspicious of, and sensitive to, Kurdish political activity. Those of Kurdish ethnicity are thus regarded with even greater suspicion than hitherto and are reasonably likely to be subjected to heightened scrutiny on return to Iran.

(4) However, the mere fact of being a returnee of Kurdish ethnicity with or without a valid passport, and even if combined with illegal exit, does not create a risk of persecution or Article 3 ill-treatment.

(5) Kurdish ethnicity is nevertheless a risk factor which, when combined with other factors, may create a real risk of persecution or Article 3 ill-treatment. Being a risk factor it means that Kurdish ethnicity is a factor of particular significance when assessing risk. Those "other factors" will include the matters identified in paragraphs (6)-(9) below...

(7) Kurds involved in Kurdish political groups or activity are at risk of arrest, prolonged detention and physical abuse by the Iranian authorities. Even Kurds expressing peaceful dissent or who speak out about Kurdish rights also face a real risk of persecution or Article 3 ill-treatment.

(8) Activities that can be perceived to be political by the Iranian authorities include social welfare and charitable activities on behalf of Kurds. Indeed, involvement with any organised activity on behalf of or in support of Kurds can be perceived as political and thus involve a risk of adverse attention by the Iranian authorities with the consequent risk of persecution or Article 3 ill-treatment.

(9) Even 'low-level' political activity, or activity that is perceived to be political, such as, by way of example only, mere possession of leaflets espousing or supporting Kurdish rights, if discovered, involves the same risk of persecution or Article 3 ill-treatment. Each case however, depends on its own facts and an assessment will need to be made as to the nature of the material possessed and how it would be likely to be viewed by the Iranian authorities in the context of the foregoing guidance.

(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."

22. I have also taken into consideration the updated background country evidence, in particular that postdating the country guidance decision. Much of this information, however, is based on sources pre-dating the country guidance decision in *HB (Kurds)* and I find is consistent with that decision. A report from the Office of the UN High Commissioner for Human Rights dated 27 February 2019 at pages 55-57 provides at 56 that Kurdish political parties are banned in the country and their members and sympathisers are wanted by the Iranian military intelligence services and in case of arrest they will be tortured, mistreated, jailed or executed; in 2018 more than 9 Kurdish prisoners in Iranian prisons lost their lives through torture; in 2017 at least 112 Kurdish citizens were executed and more than 69 people in 2018.
23. I find that there is a real risk that the Appellant's support for the KDP-I in the United Kingdom and via social media, particularly Facebook, which he

has been carrying out for the last 18 months, may have become known to the Iranian authorities either through monitoring those attending demonstrations or monitoring the internet and Facebook. In these circumstances, given that he would be returned to Iran as a failed asylum seeker and a Kurd who has espoused support for the KDP-I, I find in light of the country guidance decision in *HB (Kurds)* that he would be at risk of persecution on the basis of his ethnicity and perceived political opinion and he would face arrest, detention and ill-treatment contrary to Article 3 of ECHR.

Notice of Decision

The appeal is allowed on asylum grounds.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Rebecca Chapman

Date 7 April 2019

Deputy Upper Tribunal Judge Chapman