IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004537

First-tier Tribunal No: PA/59338/20243
LP/04911/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 2 January 2025

Before

UPPER TRIBUNAL JUDGE O'BRIEN
DEPUTY UPPER TRIBUNAL JUDGE MERRIGAN

Between

AK
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms M Peters, Counsel, instructed by Barnes, Harrild & Dyer Solicitors
For the Respondent: Ms S McKenzie, Senior Home Office Presenting Officer

Heard at Field House on 4 December 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

Anonymity

1. We have decided to maintain the anonymity order originally made in these proceedings by the First-tier Tribunal because the underlying claim involves international protection issues in that AK states that he fears serious harm on return to Iran. In reaching this decision, we are mindful of the fundamental principle of open justice, but are satisfied, taking AK's case at its highest for these purposes, that the potential grave risks outweigh the rights of the public to know his identity.

Introduction

2. The appellant is a Kurdish citizen of Iran. He appeals under the provisions of the Nationality, Immigration and Asylum Act 2002 against the decision ("the decision") of First Tier Tribunal Judge Moan ("the judge") promulgated on 1 August 2024.

3. As the point we are asked to consider is narrow, the background may be set out briefly. The appellant maintains – although the judge did not believe – that he was engaged in kolbar activities whilst in Iran, that his father was arrested for such activities, and that the Iranian authorities also attempted to arrest him. In any event, the appellant left Iran illegally and arrived in the UK in 2021, where he made a protection claim on 4 December 2021. That claim was refused on 24 October 2023.

4. It was common ground that, after leaving Iran, the appellant had attended demonstrations in London and written messages concerning the Iranian regime that would, if seen by the Iranian authorities, potentially place the appellant in danger were he to return to Iran.

5. When the matter came before Judge Moan, she was assisted by a bundle that contained an activity log numbering some 134 pages of the appellant's Facebook account, together with some images showing the appellant at demonstrations in London, and translated messages critical of the Iranian authorities. It also contained the short statement of the appellant dated 5 March 2024, whom she heard oral evidence from. We further note that the bundle contained version 4.0 (February 2022) of the *Country Policy and Information Note Iran: Smugglers*. All this is before us today.

6. In her reasons from [33] to the end of the judgment, the judge started by finding *"I did not find the Appellant's account of the events in Iran to be credible and I did not find the appellant to be a generally credible witness".* We summarise the rest of her findings.

    a. The appellant was not a supporter of the KPDI [34], [40].
    b. The appellant has no present profile with the Iranian authorities [35], [42].
    c. Notwithstanding that, the sur place activities were *"significant".* He had posted photographs through Facebook of himself at demonstrations carrying the Kurdish flag; and written derogatory comments concerning the Iranian regime. His Facebook page is public and he has 2600 friends [36]. He had not however posted on social media in Iran [45].
    d. His return to Iran would be a *"pinch point"* at which his open Facebook profile would be discovered [37].

e. Applying XX (PJAK – sur place activities – Facebook_ Iran CG [2022] UKUT 00023 (IAC): *"the timely closure of the Facebook account is likely to neutralise the risk to him"*, which action he can take when he chooses notwithstanding his stating he would not delete the account [38], [40], [41].
f. His Facebook friends are in reality a *"network of allies"* and, for the appellant at least, *"the Facebook profile is self-serving for the appellant's protection claim"* [39].

Grounds of Appeal

7. The appellant's grounds of appeal dated 15 August 2024. Permission to appeal was granted by First-tier Tribunal Judge Dempster on 2 October 2024.

8. Judge Dempster referred to those grounds as *"discursive"*. She noted that the appellant had not complained at the judge finding his sur place activities were contrived. That finding has not been challenged; nor has the finding that the Iranian authorities do not know about his kolbar activities. The grounds focus on the submission that, having found the sur place activities to be *"significant"*, there were inadequate reasons to justify the judge's finding that, contrived or not, the appellant had no present profile with the Iranian authorities. This specific point was the scope of the appellant's case before us.

Submissions

9. We heard submissions on behalf of Ms Peters for the appellant and Ms McKenzie for the respondent.

10. Ms Peters drew our attention to the appellant's skeleton dated 15 August 2024, though she stated that she intended to reframe those submissions. Ms Peters made clear from the outset that she is making a reasons challenge against the judge's decision; and that her position overall is that, as the judge's reasons from [33] to the end of the judgment are both individually and collectively inadequate to support the conclusions she reached, they amount to an error of law. She also queried whether there might be an error of law at [38] of the decision, arguing that where the judge writes that *"the timely closure of the Facebook account is likely to neutralise the risk to him"* she misapplied the balance of probabilities standard, rather than applying the correct, lower standard.

11. Against this, Ms McKenzie said that the grounds disclose no more than a disagreement with the decision, not an error of law. She states that the judge set out at [11] of the decision that the burden of proof is on the appellant and that it is a reasonable degree of likelihood; and that there is therefore also no error here.

12. Ms Peters further submitted that the judge's reasoning at [40] is speculative: the judge has found at [36] the sur place activity to be "*significant*": having done so, she is not entitled on the reasons provided to conclude, even where the appellant's use of his Facebook account is self-serving, that the posts do not raise a real risk of persecution and/or Article 3 ill-treatment. Ms Peters argued that, given there will be a pinch point were the appellant to return to Iran as identified by the judge, he will then (a) be identified by the Iranian authorities for the activities recorded by Facebook which they have already monitored; or,

if not (b) as the appellant will not delete his Facebook account, he will be newly identified. She refers to the headnote of HB (Kurds) Iran CG [2018] UKUT 430 (IAC):

> *"(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."*
>
> "(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."*

13. She draws particular attention to the photographs showing the appellant at demonstrations, quoting BA (Iran) [2011] UKUT 36 at paragraph 65:

> *"We are persuaded that the Iranian authorities attempt to identify persons participating in demonstrations outside the Iranian embassy in London."*

14. In response, Ms McKenzie observes that there have been later decisions on deleting Facebook posts, including that of XX (PJAK – sur place activities – Facebook) Iran CG, which was before the judge and which specifically states that the Iranian authorities lack the capacity to monitor all Facebook accounts. The judge at [35] explained adequately why the appellant would not be someone whom the Iranian authorities would target for monitoring. Going forward, while the appellant stated that he would not hide his activities from the Iranian authorities, the judge was entitled to find that he would do so: having ruled his evidence incredible, and that finding not being challenged.

Decision

15. We say from the outset that we do not consider that the judge misapplied the standard of proof when making her findings. We agree with Ms McKenzie that the judge set out the correct standard very clearly at [11] of her decision, and we do not think that an error may be read into the particular phrasing of [38]. Ms Peters has not been able to show any other instance where the judge could be said to have fallen into such an error.

16. In considering whether the judge's reasons are sufficient, we reproduce headnote 6 of XX (PJAK – sur place activities – Facebook) Iran CG in full:

> *"The timely closure of an account neutralises the risk consequential on having had a "critical" Facebook account, provided that someone's Facebook account was not specifically monitored prior to closure."*

17. We also reproduce paragraph 87 of the same decision in full:

> *"While we accept Mr Jaffey's submission that the Iranian government may have the motivation and past record in other endeavours, the evidence fails to show it is reasonably likely that the Iranian authorities are able to monitor, on a large scale, Facebook accounts, in the sense described by Dr Clayton, of the automated extraction of data. More*

> *focussed, ad hoc searches will necessarily be more labour-intensive and are therefore confined to individuals who are of significant adverse interest. We accept Mr Thomann's submission that the risk that an individual is targeted will be a nuanced one. Whose Facebook accounts will be targeted, before they are deleted, will depend on a person's existing profile and where they fit onto a "social graph;" and the extent to which they or their social network may have their Facebook material accessed."*

18. The judge decided that the appellant is able to delete the Facebook account whenever he chooses. She was also entitled to take notice of XX (PJAK – sur place activities – Facebook) Iran CG for guidance that the Iranian authorities lack the capability to monitor every Facebook account. The question therefore becomes whether the account was already being specifically monitored, or would be at some point up until and including the appellant's return to Iran. Here, we turn to headnote 1 of BA (Demonstrators in Britain: Risk on Return) Iran CG [2011] UKUT 36 (IAC):

> *"Given the large numbers of those who demonstrate here and the publicity which demonstrators receive, for example on Facebook, combined with the inability of the Iranian Government to monitor all returnees who have been involved in demonstrations here, regard must be had to the level of involvement of the individual here as well as any political activity which the individual might have been involved in Iran before seeking asylum in Britain."*

19. While BA (Demonstrators in Britain: Risk on Return) Iran CG was decided some 13 years ago, it remains authority for the principle that, even applying the lower burden of proof and resolving doubts in the appellant's favour, the court still must be satisfied that there are substantial grounds for believing that the appellant, if returned to Iran, would face a real risk of persecution or Article 3 ill-treatment. In finding at [37] that the appellant would be at a real risk of persecution were the Facebook posts discovered, the judge did not fall into the error of asserting, contra HB (Kurds) Iran CG, that low-level political activity would incur a commensurately low-level response from the Iranian authorities. Correctly, the judge instead conducted an evidential exercise and concluded that there were no such grounds he would be at risk. She recited at [12] of her decision the factors set out in BA (Demonstrators in Britain: Risk on Return) Iran CG as to the risk of identification. She gave ample reasons for her conclusion that the appellant would not be discovered. She concluded at [39], having already found the appellant to be an unreliable witness, that at least most of his Facebook "friends" were made up of *"allies each supporting one another for the purpose of protection claims"*; and she found at [40] that the appellant only used a single social media platform for anti-government posts. She found that the appellant was only an *"attender"* at protests, rather than an active participant who might draw particular attention [41]. This entitled the judge to reach the conclusion that the appellant's Facebook posts had not given him a *"significant political profile"* [42], and nor would the messages he sent to his Facebook "friends". She also found that the appellant's KDPI support was *"transient"* [41], indeed that *"he is not event a supporter"* [40] and his opposition to the Iranian government was not such that would morally compel him to alert the Iranian authorities to his purported political sympathies, nor prevent him deleting his Facebook account [41]. Having justified why the appellant could delete his account when he wished, the argument that (relying

on paragraph 84 of XX (PJAK – sur place activities – Facebook) Iran CG) limited caches of data remain for a temporary period falls away: the appellant is able to delete his account immediately. The judge was thereby entitled to conclude that he would not become burdened with a political profile putting him at risk on returning to Iran.

20. Therefore, we cannot see any tension in the judge finding that the sur place activity is "*significant*" – an assessment that neither party before us sought to challenge – and also finding the Iranian authorities are and will remain unaware of it.

21. Nor do we see any force in Ms Peters's submission that the judge misapplied the country guidance. Considering FA (Iran) [2024] EWCA Civ 149, we agree with the judge at [12] that it summarises existing country guidance rather than giving guidance to the risk to returnees. FA (Iran) at paragraph 70 is clear that the gap in reasoning in the First-tier Tribunal's decision in that case turned on what that Facebook account would show if examined. It has not been argued before us that the Facebook material Judge Moan considered was unrepresentative of the appellant's account. We agree with the judge that she was not, in the circumstances, materially assisted by FA (Iran).

22. It follows that we do not find that the judge's decision involved the making of an error of law. Moreover, in our view, on the facts of this matter any assessment of the risks of return to the appellant must have led to the same conclusion as the analysis of the appellant's protection claim undertaken by Judge Moan.

Notice of Decision

The decision did not involve an error of law. It follows that the appeal must be dismissed.

D. Merrigan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 December 2024