Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12778/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3rd June 2019	**On 20th June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

MR R.A.H.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Spurling, Counsel
For the Respondent: Mr Tarlow, Senior Home Office Presenting Officer

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
An anonymity direction was made by the First-tier Tribunal. As a protection claim, it is appropriate to continue that direction.

DECISION AND REASONS

1. The Appellant is a national of Iran born 7th October 1988. He is of Kurdish ethnicity. He appeals with permission against the decision of a First-tier

Tribunal (Judge Graves) dismissing his appeal against the Respondent's refusal to grant his protection claim.

2. The Appellant arrived in the UK on 9th February 2010 clandestinely by lorry. He claimed asylum the same day, citing various grounds including claimed membership of the KDPI and exiting Iran illegally. Suffice to say for the purposes of this decision, his initial claim to asylum was rejected by the Respondent as not credible. The Appellant's subsequent appeal against that refusal was dismissed and by June 2010 it appears the Appellant became an overstayer.

3. On 29th June 2018 the Appellant submitted a fresh claim for protection, the central plank of which was that he had engaged in sur place activity, primarily in the form of significant quantities of public Facebook posts challenging the Iranian regime. The Respondent rejected the claim and the subsequent appeal came before the First-tier Tribunal. The FtT heard the appeal on 4th December 2018 but, having been alerted to the fact that the publication of the **CG** case in **HB (Kurds) Iran CG [2018] UKUT 00430 (IAC)** was imminent, did not promulgate the decision until 20th February 2019. Following publication of **HB** the FtTJ invited written submissions from the parties and in [52 – 55] of her decision reviewed her findings in the light of it. Nevertheless even though the judge reviewed **HB**, she made findings that whilst she accepted that the Iranian government operate a "hair trigger" (low threshold/high risk) approach to returning asylum seekers who are Kurdish, that on the particular facts and evidence before her, the Appellant had not discharged the burden of proof to establish he would be at risk on return. She dismissed the appeal.

Onward Appeal

4. Permission to appeal was sought on one ground. The grant of permission which is set out below succinctly sets out the argument before me

> "The sole ground of application relates to the Appellant's internet activity and whether or not this would bring him to the attention of the authorities. The Judge may in fact be right that the Appellant would not have left a trail of evidence that identifies, and puts at risk, the Appellant and his family. However, what is arguable is whether or not the Appellant would be required to disclose his previous blogging activity when interrogated at the airport. The Judge's findings that he would not appears to be contrary to the country guidance as set out in **AB and Others (internet activity – state of evidence) Iran [2015] UKUT 0257** and **HB (Kurds) Iran CG UKUT 00430** as set out in the grounds. Permission to appeal is granted."

No Rule 24 response was served by the Respondent

5. Thus the matter comes before me to determine if the decision of the FtT discloses such error of law that it must be set aside and remade.

Error of Law Hearing/Remaking the Decision

6. Before me Mr Spurling appeared for the Appellant, Mr Tarlow for the Respondent. At the outset of the proceedings Mr Tarlow sought to address me on two points. He indicated that having had discussions with Mr Spurling it was accepted by the Respondent that the FtTJ's decision disclosed a material error and accordingly he would not seek to defend the decision. He said that if I was satisfied after having heard from Mr Spurling that the decision contained a material error requiring it to be set aside, then it was the view of both parties that the decision could be remade by me in that there was no challenge to the evidence provided in the form of numerous pages displaying shared Facebook posts.

7. Mr Spurling addressed me in the following terms. He drew my attention to [55] of the FtTJ's decision. He asked me to look at [55] which was set out in the grounds in full. In [55], Mr Spurling submitted, the FtTJ had discounted the argument which was put before her that even if the Appellant said when interrogated that he had set up a fake social media identity and sent some posts, that would nevertheless place him at risk. The FtTJ's reasoning for discounting this point is contained in the following extract:

> "He has plainly lied about various documents he has been issued with and has set up at least three social media accounts in different identities, and pursued an asylum claim in a date of birth he now says is not his own. He is resourceful and capable of manipulating evidence to suit his ends and I do not believe that he would have left a trail of evidence that would lead to him and his family and place their lives at risk. I find that he would equally not be required to alert the authorities to any previous blogging activities. I therefore find that while the Iranian government operates a hair trigger approach to returning asylum seekers who are Kurdish, that on the particular facts and evidence before me, that the appellant has not discharged the burden of proof to establish he would be at risk on return."

8. Mr Spurling submitted that this finding was plainly wrong. It is contrary to the approach established in both **AB** and **HB** which makes it 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 on return as [464 - 471] of **AB** refers. It is not in dispute that the Appellant left Iran illegally so he would need to be documented by the Iranian Embassy in the UK.

9. Drawing on [114 - 116] of **HB**, Mr Spurling continued that a returnee without a passport is likely to be questioned on return. There is a likelihood that such a person would be asked whether they had a Facebook page and it would be checked. They would be asked to log onto their Facebook and email accounts. Looking at the content of the Appellant's Facebook account, he would undoubtedly be perceived to be political and anti-regime. He has consistently called the Iranian state "a terrorist state" and expressed support for Kurdish activism. The

Respondent does not challenge the evidence that the Facebook posts are highly critical of the Iranian regime. The fact that the Appellant's claim is opportunistic is not likely to lessen the risk because the Iranian authorities are not concerned so much with what people's motivation for criticising the regime are; they are extremely sensitive to the criticism itself. The decision should be set aside and remade allowing the appeal.

10. I find I am satisfied that there is force in Mr Spurling's submissions and note that Mr Tarlow did not seek to defend the FtTJ's decision. I find therefore that the FtTJ erred in making the finding that she did to the effect that the Appellant would not be required to alert the authorities to any previous blogging activities. Indeed, I find to the contrary that he would be someone at heightened risk. I set aside the decision and remake it.

Remaking the Decision

11. I have viewed the Facebook material which the Appellant relies upon and which was before the FtT. It is undoubtedly highly critical of the authorities in Iran accusing them of repression towards the Kurdish population and of lying in general. I take into consideration the updated background evidence set out in **HB** which informs that the authorities demonstrate what could be described as a "hair trigger" approach (low threshold/high risk) to those who are perceived as critical of the regime. Consequently I find that there is a real risk that the Appellant's support for Kurdish rights via social media particularly Facebook posts, albeit opportunistic, may have become known to the Iranian authorities through monitoring the internet and Facebook. Given that the Appellant would be returned to Iran as a failed asylum seeker and a Kurd who will be perceived as someone who is highly critical of the regime and who has espoused support for Kurdish rights, I find in light of **HB** that he would be at risk of persecution on the basis of his ethnicity and perceived political opinion. He would be at risk of facing arrest, detention and ill-treatment contrary to Article 3 ECHR.

Notice of Decision

The decision of the FtT promulgated on 20th February 2019 is set aside for material error. I hereby remake the decision. The Appellant's appeal against the Respondent's decision refusing his protection claim is allowed.

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 C E Roberts Date 17 June 2019

Deputy Upper Tribunal Judge Roberts