



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10294/2019 (V)

THE IMMIGRATION ACTS

Heard by Remote Skype at Field House
On 3rd November 2020

Decision & Reasons Promulgated
On 14th December 2020

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

HR
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Rutherford, instructed by Halliday Reeves Law Firm
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iran of Kurdish ethnic origin and was granted permission to appeal the decision of First-tier Tribunal Judge Broe, who in a decision promulgated on 30th January 2020 dismissed the appellant's appeal against the Secretary of State's decision to refuse his application for leave to remain on

protection and human rights grounds. The appeal related to the appellant's claimed involvement in smuggling and the distribution of anti-government propaganda as well as posts on Facebook.

2. The grounds for permission to appeal asserted the judge erred in law at paragraphs 36 to 41 by failing to apply correctly, if at all, the findings of **HB (Kurds) Iran CG [2018] UKUT 00430**. It was submitted that the judge erred in finding that the appellant's Facebook posts would not come to the attention of the authorities. Rather than applying the findings in **HB(Kurds) Iran CG** to the applicant's Facebook evidence, the judge relied instead on the finding in **AB and Others (internet activity - state of evidence) Iran [2015] UKUT 00257**. Applying the findings in **HB(Kurds) Iran CG**, which is a country guidance case, it could be seen that much of the judge's findings were unsustainable despite his assertion that the findings in **HB(Kurds) Iran CG** had been adopted.
3. It could be seen that for someone who would be returned to Iran without a passport the likelihood is that the appellant's Facebook profile would be viewed by the authorities as part of their investigation into him. Whether his posts were private was immaterial as he would be forced to show his account. From the Facebook posts submitted it was the appellant in the profile picture despite the profile being named H H. It could be seen from the imagery despite the lack of any translation that the posts are likely to be inflammatory. They contain the KDPI logo and Kolbar (smugglers) news. The assertion that the applicant could avoid persecution by deleting his Facebook posts was contrary to **HJ (Iran) [2010] UKSC 31** principles. The applicant could not be expected to hide his political opinions to avoid persecution.
4. Initially the application for permission was refused by First-tier Tribunal Judge Saffer, who stated that the grounds did not engage with the evidence-based findings of fact that the Facebook post was not in the appellant's name and therefore no risk that the Iranian authorities would detect it.
5. The grounds were renewed, stating that the findings in **HB (Kurds) Iran CG [2018] UKUT 00430 (IAC)** would mean that the appellant as part of the screening process on return would be forced to provide details of his Facebook account. Although not in his name, H H rather than H R, the profile picture was clearly that of the appellant. It would therefore be clear to the Iranian authorities that the Facebook profile was that of the appellant when he was forced to show them at the point of return his Facebook profile. The imagery contained in those posts was very similar to the imagery cited on **HB (Iran) Iran CG**.
6. Permission to appeal was granted by Upper Tribunal Judge Keith on the basis that Judge Broe arguably failed to consider paragraph 114 of **HB (Iran) Iran CG** in relation to questioning about Facebook, instead adopting analysis from paragraphs 38 to 40 which suggested that Facebook activity may not be investigated or discovered (permission was granted on all grounds).

Submissions

7. Neither party had submitted further documentation. At the hearing Ms Rutherford relied on the grounds of appeal. She accepted that there was no challenge to the findings of fact, but the challenge was on the authorities' perception of the Facebook entries by the appellant on his return. The judge had stated at paragraph 36 that the appellant would not come to the attention of the authorities but in the light of **HB** the pinch point would be that the appellant did not have a passport and that he had said he left illegally. At the pinch point there was a real possibility that the Facebook posts would come to the attention of the authorities.
8. Ms Rutherford when questioned about the credibility findings on the appellant's political claims stated that he would not be expected to lie on return, and she referred to the 'Danian' point.
9. Mr Clarke in response stated that the political claim was found not to be credible and the judge in the relevant paragraphs at 36 and 37 found the appellant could delete the entries in Facebook. There was nothing unlawful if he did not delete his Facebook and he should not be permitted to rely on a deliberate lie. The appellant was intending to rely on non-genuine documents to place himself at risk. On his political profile the appellant was not at risk on return.

Analysis

10. As held in **YB (Eritrea) v SSHD** [2008] EWCA Civ 360 (the 'Danian' point), even if an opportunistic claim for asylum is made, there is still a need to evaluate the risk which arises as the result of political activities whilst in this country.
11. On a careful reading, the Judge Broe did evaluate that risk. As can be gleaned from the decision the judge made the following findings. He accepted that the appellant was Iranian of Kurdish ethnic origin but rejected the remainder of the appellant's account and made comprehensive adverse credibility findings against him, not least because he had given contradictory and inconsistent accounts. Those findings were not challenged. For example, the judge reasoned "I do not find it credible that he would take the risk of flagging down a strange vehicle when in possession of political material". In relation to his asylum claim in Italy, the judge found that "this is not the behaviour of a person in genuine need of protection and that his credibility is further undermined" and the judge at paragraphs 36 and 37 found the following

"36. When he gave notice of appeal the appellant said that he had engaged in sur place activities in the form of Facebook posts supportive of the KDP. He provided copies in his bundle. These are undated and untranslated. They are in the name of H H and the entries are private. The appellant's evidence was that he did not understand how to use Facebook which he used to watch video recordings. I can see no reason to conclude that they would come to the attention of the Iranian authorities or that the appellant could be identified from them. I am satisfied that the appellant, probably with help, created these pages with a view to

bolstering his claim. No credit attaches to him for that. The appellant spoke of his faith in interview but says that does not form the basis of a protection claim.

37. In summary the Appellant is an Iranian citizen of Kurdish ethnic origin. I accept that he may have been involved in smuggling but not that he has as a consequence come to the attention of the authorities. I do not accept that he was involved in an incident with border guards. I do not accept that he was involved in the distribution of political leaflets or that he came to the attention of the authorities. I do not accept that the Iranian authorities would have any knowledge of the Facebook entries. It is open to the appellant to delete them in any event. It is against that background that I have considered what risk he might face on return to Iran'.

12. The Judge cited **HB (Kurds) Iran CG [2018] UKUT 00430** and also cited **AB and Others (internet activity – state of evidence) Iran [2015] UKUT 0257** and was clearly aware of and applied both authorities.
13. The grounds of appeal specifically stated that the appellant would be detained because he had no passport. However, at paragraph 10 the judge found that the appellant stated in his screening interview specifically that he would be able to “provide his passport and vaccination certificate”. There was no challenge to those factual findings. The appellant’s account was comprehensively dismissed on credibility grounds.
14. It was open to the judge to find, which he did, that a risk could arise at what is described as the “pinch point” which occurs when a person is returning to Iran but the authority **HB(Kurds) Iran CG** refers to Iranian nationals returned without their own passports who would be questioned and could be asked to provide information enabling the authorities to gain access to their Facebook page.
15. At paragraph 114 to 116 in **HB (Kurds) Iran CG** the Upper Tribunal concluded as follows:

“114. However, we noted at [97] above that it is not disputed that a returnee without a passport is likely to be questioned on return, confirmed in the expert evidence before us and recognised in existing current country guidance, for example, SSH and HR. Ms Enayat’s evidence was that it is part of the routine process to look at an internet profile, Facebook and emails of a returnee. A person would be asked whether they had a Facebook page and that would be checked. When the person returns they will be asked to log onto their Facebook and email accounts. That is also the effect of her evidence given in AB and Others which was accepted by the Tribunal in that case (see [457]).

115. Mr Metcalfe accepted that the material posted by the appellant on Facebook, if it became known to the authorities, would expose him to prosecution with a risk of imprisonment and that this would result in a real risk of ill-treatment. It was also accepted that the appellant’s Facebook page is currently visible to the public at large.

116. *We are satisfied that the content of the appellant's Facebook page would become known to the authorities on return as part of the process of investigation of his background. That is the effect of the expert and background evidence before us. It is then, no step at all to the conclusion that this would involve a real risk of persecution and Article 3 ill-treatment in his case, by reason of detention and ill-treatment and likely prosecution. His Facebook posts would reveal not only his support for Kurdish rights but also his having insulted the Iranian regime and leading figures in it. This is reasonably likely to be regarded not only as having 'crossed the line' in terms of political views or activity, but also in terms of religious dissent."*

16. **HB (Kurds) Iran CG** did not hold that illegal exit combined even without a valid passport would create a risk of persecution or Article 3 ill-treatment and having dismissed the appellant's credibility in relation to his account, it is not maintained that he even left illegally. In sum, the appellant had access to a passport and thus paragraph 114 of **HB (Kurds) Iran CG**, referring as it does to a returnee *without* a passport being likely to be questioned on return, does not assist this appellant. It was not the appellant's case that his passport had expired or that he had even left Iran without a passport.
17. The judge clearly considered the appellant's "sur place activities in the form of Facebook posts supportive of the KDP". It was open to the judge to find that the posts were undated and untranslated and further that they were in the name of someone other than the appellant and that the entries were private. The judge was entitled to conclude that there was "no reason to conclude that they would come to the attention of the Iranian authorities or that the appellant could be identified from them".
18. In paragraph 36 the judge states that he was satisfied that the appellant, probably with help, because the appellant had stated that he was not familiar with Facebook, "created these pages with a view to bolstering his claim" and that "the appellant spoke of his faith in interview but says that does not form the basis of a protection claim".
19. In **HB (Kurds) Iran CG** there were clearly translations of the documents but moreover, in this instance, albeit that the appellant maintains his reliance on sur place activities, he would not be expected to lie on return to Iran because the judge found the appellant was merely bolstering his claim and was not credible. As pointed out in **RT (Zimbabwe)** [2012] UKSC 38 an appellant is not expected to lie but, this appellant would not be expected to lie, but merely tell the truth. The appellant has a different name from that on his Facebook and it was open to the judge to find that this would not alert the authorities. (The photograph is almost indistinguishable and identifying an appellant from a photograph on Facebook was not a finding in **HB**). The judge was also entitled to rely on the fact that the posts relied upon and what was written was untranslated. The judge specifically stated that he did not accept that the appellant was involved in the distribution of political

leaflets or that he had come to the attention of the authorities. In the circumstances, the **Danian** point as Ms Rutherford relied on would not arise because it was open to the appellant to delete entries which the judge found he had, with help, created to bolster his claim. The appellant would be expected to tell the truth on return and not rely, as Mr Clarke pointed out, on lying to the authorities or provide documents which were not genuine.

20. As the judge cogently found, it is open to the appellant to delete those posts because they do not represent his genuine beliefs. It was against that background that the judge found that the Iranian authorities would not have any knowledge of the Facebook entries. This is not a case where an appellant, in a cynical sur place claim, posts information on the internet which cannot be retracted. As the judge found, these posts were private and can be removed.
21. As such, as the judge stated at the close of paragraph 37, “it is against that background that I have considered what risk he might face on return to Iran”. That background included the fact that the appellant had a passport and was able to delete entries and posts on a Facebook account which was not even in his name. The decision accordingly does not offend the principles in **HJ (Iran) [2010] UKSC 31**.
22. I therefore find no material error of law in the decision and the decision of the First-tier Tribunal will stand.

Notice of Decision

The appeal remains dismissed.

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 *Helen Rimington* Date 4th December 2020

Upper Tribunal Judge Rimington