



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13228/2018

THE IMMIGRATION ACT

Heard at Field House
On 6th December 2019

Decision & Reasons Promulgated
On 15th January 2020

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

IA
[Anonymity direction made]

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Harris counsel, instructed by Barnes, Harald & Dyer
Solicitors

For the Respondent: Mr Clarke Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the appellant against the decision of First-tier Tribunal Judge G J Ferguson promulgated on the 12th March 2019 whereby the judge dismissed the appellant's appeal against the decision of the respondent to refuse the appellant's protection claim.

2. I have considered whether or not it is appropriate to make an anonymity direction. Having considered all the circumstances I make an anonymity direction.
3. This matter previously appeared before me on 16 July 2019 to determine whether or not there was an error of law in the decision of the First-tier Tribunal.
4. The appellant's case at that stage be considered in 2 distinct parts, the one relating to his activities prior to leaving Iran and his activities in the United Kingdom involving posting materials on internet media sites namely Facebook.
5. In respect of the first part of his claim I ruled that the judge did not make any material error of law and that the judge was entitled to conclude that the appellant had fabricated his account of having been a supporter of the KDPI. The conclusion being that the appellant had not been involved in activities that brought him to the attention of the authorities in Iran prior to his leaving Iran and therefore he would not be at risk by reason of such on return to Iran.
6. With regard to the 2nd issue in reliance upon the case of HB (Kurds) Iran CG 2018 UKUT 430 I ruled that the judge had failed to consider the pinch point question, namely whether on return to Iran at the airport the appellant, a Kurd who had been out of the country for some time and who did not have a passport, would be questioned including questioning whether he had a Facebook page and posted materials adverse to the government. The issue being whether that Facebook activity if it came to light would expose the appellant to the risk of mistreatment for an imputed political opinion.
7. Consistent with the matters set out in paragraphs 99 to 114 of the case of HB individuals that are returned to Iran through the airport without a passport are likely to be stopped and questioned by the authorities. The questioning would include an examination whether or not an individual had a Facebook account and whether there were any postings on that account. At that point the present postings may come to the attention of the authorities and the question therefore arose whether at that stage the appellant would be at risk of being subjected to mistreatment for a perceived political opinion.
8. As set out in paragraph 15 of the previous decision the judge had examined the evidence and concluded that the postings by the appellant of some 12 postings over a period of a year would not come to the attention of the Iranian authorities prior to the appellant returning to Iran. As such prior to the appellant's return to Iran the authorities would not know the appellant's Facebook page. It was also noted that the appellant's Facebook settings were on a public setting and that the appellant only had 10 friends. None of the posts related to the appellant himself.
9. I draw attention to the headnote in the case of HB:-

- (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.*
- (6) *A period of residence in the KRI by a Kurdish returnee is reasonably likely to result in additional questioning by the authorities on return. However, this is a factor that will be highly fact-specific and the degree of interest that such residence will excite will depend, non-exhaustively, on matters such as the length of residence in the KRI, what the person concerned was doing there and why they left.*
- (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.*
10. In that respect I note the nature of the materials posted by the individual appellant in the case of HB set out in paragraph 112. In the case of HB it was acknowledged that the materials on Facebook would, if they come to the attention of the Iranian authorities, expose the individual to risk of prosecution and thereafter risk of ill-treatment.
11. In the present case the facebook postings are set out in the appellant's bundle at Section A pages 9 to 19 together with further posting served in the current proceedings. The postings are supportive of Kurdish political groups and are critical of the government and its treatment of the Kurds. Given the nature of the materials if they were to come to the attention of the Iranian authorities I find that they would expose the appellant to a risk of serious mistreatment for an imputed political opinion.
12. The issue being as set out in HB paragraph 116 whether or not the appellant's Facebook page would become known to the authorities on return as part of the investigation process of his background. Clearly in the case of HB it was considered that the materials would come to the attention of the authorities and that by reason thereof the appellant would be at risk. HB is a country guidance case.
13. The respondent seeks to rely upon the case of LKIK v SSHD PA/03758/2016. Firstly it has to be noted that the case is not a country guidance case. I did admit the case and at the previous hearing before me directed that the appellant's representative and the respondent's representative submit skeleton arguments dealing with the issues raised.
14. In LKIK before Upper Tribunal Judge Hanson there was expert evidence on the impact of social media and means by which one can avoid the contents social media page become known to others and by which posts and even accounts can be deleted. A series of questions were posed for the expert. Those questions were :-
- i) Can a Facebook account still be viewed after it has been deleted? If so, in what circumstances and for how long?
 - ii) Can a Facebook post be viewed after it has been deleted? If so, in what circumstances and for how long?
 - iii) If the information on the Facebook account has been stored at that point/s in the past as part of a filtering/ data collection process, what

happens to that information if the Facebook account/post is subsequently deleted?

- iv) If a person A comments on/likes/shares person B's post, can person A be identified from person B's post, even if person A deletes their own facebook account?
 - v) If person A's post is shared by person B, what happens to the shared post the person A deletes it?
 - vi) Can person A's Facebook posts be copied/screenprinted by person B- does that mean person A can never delete the screenprinted copy?
 - vii) Can the Facebook friends of a person A see everything person A posts /comments on/likes? How are the Facebook friends of person A's Facebook friends notified that person A has posted something?
 - viii) Can the Facebook friends of person A see everything person A posts/comments on/likes? How are the Facebook friends of person A's Facebook friends notified that person a has posted something.
 - ix) You can see public post? How can public post be search for?
15. The case identifies that accounts can deleted and that once the account has been deleted the whole of the content would not be accessible, the records of posts would not be accessible. The conclusion is that it would not be possible to access such or reconstruct such.
16. The conclusion with regard to question 2 is that once a Facebook post or copy of it is deleted it cannot be viewed.
17. In respect of question 3 save and except where a particular individual has been identified and monitored by the Iranian authorities it is highly unlikely that they would be able to monitor or obtain comprehensive copies of all Facebook content that has been generated or access such globally or even in their own specific region access such. The expert report acknowledged that the Iranian state has and operates a sophisticated Internet filtering, inspection and monitoring capability. However even in the light of that, the conclusion set out was maintained.
18. Once identified by the Iranian authorities such specifically identified individuals or groups could have their Facebook pages accessed if they are public and their online activities inspected in real-time and all such activity preserved.
19. Thereafter consideration was given as to whether individuals were entitled to a Facebook account and whether the requirement to delete such infringed a fundamental right. It was concluded that there was no right to a Facebook

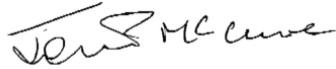
account least of all an account created and generated for the sole purpose of presenting a false picture of one's political views in order to fabricate a false asylum claim. Where an individual was not a genuine political activist and did not hold political views the individual could have no arguable defence to the expectation that he should delete his account. The materials on the account did not reflect his genuinely held political views and as such were not an integral part of a person's political freedom.

20. As identified in the case of LKIK once the account is deleted, there would be no possibility of recovering the posts that were in the account.
21. LKIK also concluded that it was highly unlikely that any government organisation could have comprehensive copies of all Facebook content that had been generated or accessed globally given the sheer scale of the information and that would apply even to specific regions. However it would be possible for state actor such as the Iranian system to specifically target groups and trace friends of the groups or anyone linked with the group who posted a comment and to retain such information.
22. In the circumstances where, as here, an appellant does not have genuinely held political views, the appellant can be expected to delete his account and it would be inaccessible to the Iranian authorities.
23. Given the previous findings with regard to the appellant, the appellant would not in the past have been of interest to the authorities and there would be no interest in the appellant on return. The appellant would not have been targeted and would not be an individual whose account would have been accessed or of interest to the authorities. There would be no reason for him as such or his name to have been specifically sought by the Iranian authorities or for him to have been identified as part of the group of interest to the Iranian authorities. In that respect I do not find that he would have come to the attention of the Iranian authorities or that they would have been targeting or seeking to trace or check his activity.
24. I do not find that the Iranian authorities would have become aware of the posts that he has made. I do not find that the Iranian authorities would be aware of his activities involvement on the Internet. I do not find that he would be of any interest to the Iranian authorities on return to Iran. Whilst therefore on return he may be questioned there would be no record of his posts and as such I do not find that the Iranian authorities would have any interest in him. I therefore find that the appellant would not be at risk of anything other than being questioned. I do not find that we he would be at risk of any mistreatment.
25. Whilst the original Tribunal Judge's decision failed to consider the pinch point, I have considered that issue and find that the appellant will not be at risk. I do not find that the authorities would have any interest in the appellant on return to Iran. I therefore dismiss the appellant's appeal.

Notice of Decision

26. The original decision failed to consider a material point. I therefore remake the decision by substituting a decision to dismiss the appeal on all grounds.

Signed

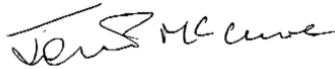


Deputy Upper Tribunal Judge McClure

Date 13th January 2020

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 the appellant or any member of the appellant's family. This direction applies both to the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings



Signed

Date 13th January 2020

Deputy Upper Tribunal Judge McClure