Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/00827/2020**

THE IMMIGRATION ACTS

Heard at Field House Face to Face	**Decision & Reasons Promulgated**
On 11th November 2021	**On 24th November 2021**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

PHS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer
For the Respondent: Mr M Moriarty, instructed by Rashid & Rashid Solicitors

DECISION AND REASONS

1. The appellant is the Secretary of State but for the purposes of this appeal I shall hereinafter refer to the parties as they were described in the First-tier Tribunal, that is Mr PHS as the appellant and the Secretary of State as the respondent. The Secretary of State appeals, with permission, against the decision of First-tier Tribunal Judge Burnett who on 7th June 2021 promulgated a decision allowing the appellant's appeal against the Secretary of State's decision dated 22nd January 2020 to deport the appellant pursuant to the Immigration Act 1971 and the UK Borders Act 2007.

2. The appellant is a citizen of Iran born on 23rd December 1998. He appears to have left Iran some time in 2015 travelling through Turkey, Italy and France before arriving in the UK illegally. He claimed asylum on 15th September 2016 on the basis that he was at risk on return to Iran because his father was an active member of the Kurdish Democratic Party, and he assisted his father with party activities and the distribution of leaflets. The appellant also claimed he practised Christianity in secret. His appeal was dismissed, however, by First-tier Tribunal Judge Brewer in 2017 who rejected the account and made an adverse credibility finding against the appellant.

3. A medico legal report dated 23rd January 2019 and submitted to the Secretary of State set out that the appellant had symptoms of adjustment disorder, mixed anxiety and depressive reaction, and symptoms of PTSD and a history of self-harm and suicide attempts.

4. The Secretary of State set out in her application for permission to appeal that the appellant was a foreign criminal subject to a deportation order and on 18th July 2018 he was convicted of driving with no insurance, driving other than in accordance with a licence, resisting or obstructing arrest, possession with intent to supply cocaine and possessing an offensive weapon in a public place. He was sentenced on 29th November 2018 to a total of three years' detention in a young offenders' institution. I note, First-tier Tribunal Burnet remarked that the respondent did not suggest or argue Section 72 was applicable in this case and with which the judge agreed. As the judge found, there was no evidence to show that the appellant was a danger to the public or he was likely to reoffend and that he was remorseful in respect of his past behaviour.

5. The Secretary of State submitted in her grounds for permission to appeal, that the appellant had made further submissions relying on the same information of that which had been previously rejected but also relied in his new claim for asylum that he would be at risk because of his Facebook activity in the United Kingdom. In relation to the material relied upon by the appellant it was submitted by the Presenting Officer before the First-tier Tribunal that there was some confusion as to the evidence and some posts were from a deleted account and some were from a new account created in September 2020.

6. The grounds continued that at paragraph 65 the judge concluded that the appellant's posts were not ones which came into a category where there would be a large following or interest but in spite of the limited audience of the appellant's posts and where the appellant had the choice in Facebook settings to limit that audience to his friends, the judge on his construction of **HB (Kurds) Iran CG [2018] UKUT 00430** concluded the appellant would have become known to the authorities in Iran. It was submitted that the judge had not given sufficient reasons and had not conducted a sufficient analysis as to why the appellant with his low Facebook profile, as noted by the judge, and who found previously not to be credible in his political and all other claims, would become known to the authorities.

7. It was also submitted that the judge at paragraph 68 referred to **HB** where an expert had stated that a person would be asked to log on to his Facebook account. As the appellant had closed his earlier account, it was open for him to close his current account, particularly when the posted material did not represent a genuinely held political opinion.

8. It was noted that the issue of Facebook posts was understood to be a significant matter to be considered in an impending Iranian country guidance case before the Upper Tribunal and if an arguable error was established in the instant case the judge may wish to list it behind the impending country guidance case.

9. At the hearing before me, Mr Tufan essentially relied on the Secretary of State's application for permission. There was no response under Rule 24 but Mr Moriarty helpfully referred me to the relevant authorities. It was clear from the judge's decision in particular at paragraph 63, that he did not accept the appellant's evidence in respect of his past claimed political activities and concentrated on the appellant's activities in the UK. It was quite clear that the judge had directed himself appropriately in accordance with **Devaseelan v SSHD** [2002] UKIAT 00702 and Mr Tufan agreed with that.

10. In relation to the appellant's sur place activities, Mr Moriarty pointed to paragraphs 64 and 65 and 66 where the judge found:

> *"64. The appellant explained the nature of his political activity on Facebook whilst in the UK. The appellant provided evidence of the posts he has made and that a number are open public posts which anyone can see. Some of the posts are highly critical of the Iranian regime and demonstrate a support for Kurdish rights.*
>
> *65. The appellant has 500 friends and some of his posts have had hundreds of likes. I have considered this material carefully and note that popular channels and posts attract hundreds of thousands of likes and are shared many times. The appellant's posts are not in that category.*
>
> *66. In this context I have considered carefully whether the posts would have come to the attention of the Iranian authorities and whether they might come to the attention of the Iranian authorities in the future if the appellant were returned".*

11. Mr Moriaty also pointed to the fact that the judge had appropriately directed himself in accordance with **HB (Kurds) Iran CG** and **AB and Others (internet activity – state of evidence) Iran** [2015] UKUT 257. Mr Moriaty accepted the latter was not a country guidance case.

12. He pointed out that in **HB** the Tribunal identified the expert evidence which was accepted, and I was invited to look at Annex B of that country guidance where Ms Enayat's (the expert on Iran) evidence was recorded. Paragraph 114 of **HB** made clear that Ms Enayat's evidence was largely accepted. At paragraph 9 of Annex B of **HB** it was identified that whilst an appellant's participation in, for example,

demonstrations is opportunistic the evidence suggests that this was not likely to be a major influence on the perception of the regime.

13. The judge specifically at paragraph 8 stated that he had taken into account paragraph 114 of **HB** and considered the appellant's particular social media profile. **HB** found that a returnee without a passport (as this appellant) is likely to be questioned on return and that had been confirmed in the expert evidence before them and recognised in existing current country guidance. Paragraph 114 of **HB** states as follows:

> *"Ms Enayat's evidence was that it was 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 on to 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])".*

14. Finally the First-tier Tribunal judge stated this:

> *"69. I find that the appellant's social media profile would become known to the Iranian authorities as part of the process of investigation of his background. 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. I conclude that this would lead to a real risk of persecution of the appellant. I have also borne in mind the appellant's mental health condition and his destructive behaviour which he displays when he is in a pressurised situation. This would put the appellant at even greater risk at the point of return to Iran. On this basis I find that the appellant is at risk of persecution if he is returned to Iran".*

Analysis

15. It was entirely open to the judge to find that the appellant's social media profile would become known to the Iranian authorities as part of the process of investigation of his background on his return. The judge directed himself properly in accordance with **HB** and the evidence which was accepted therein. In particular, Mr Moriarty took me to **AB** paragraph 218 which, albeit not a country guidance case, confirmed by way of the expert's evidence that it was possible that an appellant could deactivate and delete a Facebook account but could still be detected from deactivated accounts. This was the evidence given in relation to a particular individual on return to Iran and recorded in **AB**

> *'She deactivated and then deleted her Facebook account about two months before she was due to return and changed her email address. It made no difference. On her return to Iran in August 2013 she was arrested and detained. She was then confronted with printed copies of her Facebook posts and threatened again that she must cooperate or be imprisoned.*

16. At 464 the Tribunal in **AB** had this to say

> *'We do not find it at all relevant if a person had used the internet in an opportunistic way. We are aware of examples in some countries where there is clear evidence that the authorities are scornful of people who try to create a claim by being rude overseas. There is no evidence remotely similar to that in this case. The touchiness of the Iranian authorities does not seem to be in the least concerned with the motives of the person making a claim but if it is interested it makes the situation worse, not better because seeking asylum is being rude about the government of Iran and whilst that may not of itself be sufficient to lead to persecution it is a point in that direction.*

17. At paragraph 42 of **HB** the Tribunal confirmed that it had no hesitation in accepting the expertise of country expert Anna Enayat. At paragraph 45 the Tribunal described the evidence of Ms Enayat when she referred to the '*seriously increased tensions in the predominantly Kurdish western provinces in a manner which will mean that Kurds returned to Iran will now be subjected to heightened suspicion and scrutiny*'. This increased tension emanated from the fighting in the Syrian war which had raised national consciousness amongst Kurds and the resumption in 2016 of armed activities by Kurdish national parties. '*In addition, Kurds in the abortive independence referendum in the KRI (Kurdistan Region of Iraq) mobilised the population in Kurdish cities of Iran...There was therefore heightened security activity*'.

18. Acknowledging **AB** is not a country guidance, it is nonetheless a reported case and paragraph 457 of **AB** states as follows:

> *"457. We accept the evidence that some people who have expected no trouble have found trouble and that does concern us. We also accept the evidence that very few people seem to be returned unwillingly and this makes it very difficult to predict with any degree of confidence what fate, if any, awaits them. There is clear evidence that some people are asked about their internet activity and particularly for their Facebook password. We can think of no reason whatsoever to doubt this evidence. It is absolutely clear that blogging and activities on Facebook are very common amongst Iranian citizens and it is very clear that the Iranian authorities are exceedingly twitchy about them. We cannot see why a person who would attract the authorities sufficiently to be interrogated and asked to give account of his conduct outside of Iran would not be asked what he had done on the internet. Such a person could not be expected to lie, partly because that is how the law is developed and partly because, as is illustrated in one of the examples given above, it is often quite easy to check up and expose such a person. We find that the act of returning someone creates a 'pinch point' so that returnees are 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 a real risk of persecution".*

19. The judge was entitled to accept that the appellant, as obviously Kurdish Iranian and having posted anti-Iranian regime posts of Facebook, may be interrogated on return, and the posts may come to light. The standard of proof is that of the lower standard in asylum claims. The appellant, I agree, could not be obliged to close his legal Facebook account and would not be expected to lie. In the context of the evident

surveillance and nervousness of the Iranian regime, I accept therefore that it was entirely open to the judge to find that the appellant may be detained on arrival in Iran, questioned and would be at risk owing to the existence of previous or existing Facebook posts. Indeed should he shut down his accounts, lie about them and be presented with evidence of the same from accounts he thought he may have deleted that could pose even more serious problems for him. I therefore find no error in the judge's decision which was adequately reasoned. Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge, **Shizad (sufficiency of reasons: set aside)** [2013] UKUT 00085 (IAC).

20. It was identified that the judge had allowed the appeal under the Refugee Convention but refused the appeal on the basis of the Human Rights Act. It was agreed by both Mr Tufan and Mr Moriarty that the correct conclusion on the basis of finding under the Refugee Convention is that the matter should also be allowed under Article 3. I therefore find an error in that respect only and set aside the decision solely in respect of the final conclusions of the judge that the appeal was dismissed under Article 3 and I therefore direct that the appeal is allowed under Article 3 as well as the Refugee Convention.

21. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007) and remake the decision under section 12(2) (b) (ii) of the TCE 2007 with regards the finding under Article 3.

22. PHS's appeal is therefore allowed under the Refugee Convention and under Article 3.

23. An anonymity direction is made.

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 their 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 19th November 2021

Upper Tribunal Judge Rimington