Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/00066/2021
PA/52948/2020 (UI-2020-000002)

THE IMMIGRATION ACTS

Heard at : Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On : 5 April 2022	**On : 8 June 2022**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

NA
(Anonymity Order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Wood, instructed by Immigration Advice Service
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision refusing his asylum and human rights claim.

2. The appellant is a citizen of Iran of Kurdish ethnicity, born on 13 November 1999. He claims to have left Iran at the end of February 2019 and to have travelled through various countries before entering the UK clandestinely in a lorry. He was encountered by immigration enforcement officers on 29 May 2019

and was served with removal papers as an illegal entrant. He claimed asylum on 29 May 2019 and his claim was refused on 4 December 2020.

3. The appellant's asylum claim was made on the basis that he feared the Iranian government owing to his previous involvement with the PJAK party, which was an illegal party, and because of his political activities in the UK. He claimed to have started working for the PJAK around six months before he left Iran when his father's friend visited his house and talked to him about the party. He declined a request to distribute papers to the cities for the PJAK but he agreed to store papers for them instead. He stored them in an orchard near to his home as he was afraid of keeping them in his house. He was introduced by his father's friend to a man called B who worked for the PJAK and he was instructed to keep papers for B before delivering them to him. He did that once a month for six months, and twice on one occasion. His father's friend told him that B had been caught whilst distributing leaflets and had been arrested and detained and he advised him to leave the country which he did. His father's friend called him ten days after he fled Iran to inform him that the authorities had been to his home looking for him and had taken his father. The appellant claimed further that he had been politically active in the UK and had attended a demonstration outside the Iranian Embassy in London to protest against the execution of political opponents in Iran. He also claimed to have made posts on Facebook opposing the Iranian regime.

4. The respondent accepted the appellant's nationality and ethnicity but rejected his account of his problems in Iran due to working for the PJAK and did not accept that he left Iran illegally or that he was politically active in the UK. The respondent considered that the appellant had failed to give a consistent account of how he became a supporter of the PJAK, that he had failed to demonstrate a reasonable level of knowledge of the party and of the papers he was storing, that he had failed to give a proper account of why he was storing the papers for his father's friend rather than the papers being passed directly to B, that he had given an inconsistent account of when his problems in Iran began and that he had given an inconsistent account of how he became aware that his father had been taken. The respondent did not accept that the appellant's activities in the UK, attending a demonstration and posting on Facebook, had raised his profile and considered that he would not be at risk on return to Iran. The respondent considered further that the appellant's removal to that country would not involve a breach of Article 3 or 8 of the ECHR.

5. The appellant appealed against that decision and his appeal was heard by First-tier Tribunal Judge Alis on 16 November 2021. Judge Alis did not accept the appellant's account of the events in Iran and rejected his claim in that respect. With regard to his activities in the UK, the judge accepted that the appellant had posted on Facebook and that he had attended nine demonstrations outside the Iranian Embassy, but considered that his Facebook posts were mainly re-posts. The judge noted that Facebook's website made it clear that if an account was deleted, everything including the profile, photographs, posts and videos was permanently deleted. He considered that if the appellant deleted his Facebook account there would be no risk to him unless the posts had already

been viewed by the Iranian authorities. The judge considered that the appellant's activities were not undertaken due to genuinely held beliefs and that he had attended the demonstrations to bolster his claim. The judge considered that the appellant's role at the demonstrations was such that it would not have brought him to the adverse attention of the Iranian authorities. He could be expected to delete his Facebook account. He would have no adverse profile on return to Iran and would not be at risk on return. The judge accordingly dismissed the appeal on all grounds.

6. The appellant sought permission to appeal the decision to the Upper Tribunal on three grounds: that it was irrational of the judge to assume that the appellant's social media would be removed from the internet; that there had been procedural unfairness in the judge engaging in post-hearing research in regard to the technical details of a Facebook account; and that the judge had failed to consider the likely questioning the appellant would face on return to Iran and the consequences of his honest answers about his attendance at nine demonstrations against the Iranian regime.

7. Permission was granted in the First-tier Tribunal on all grounds. In a rule 24 response, the respondent opposed the appeal and submitted that the judge was entitled to find that the deletion of the Facebook account would remove everything. The respondent accepted that the judge had conducted post-hearing activity in relation to the Facebook account but submitted that it was not material and that any further assessment should be made with consideration of the recent country guidance in XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 23.

8. The matter then came before me for a hearing.

9. Mr Wood submitted that the error of law accepted by the respondent was material as the appellant had been deprived of an opportunity to respond to the judge's post-hearing research about deleting a Facebook account. The respondent had raised the matter and the burden of proof therefore lay upon the respondent to produce evidence to show that deleting a Facebook account would not leave a footprint. The judge had, furthermore, made inconsistent findings at [81] and [82], finding at [81] that the appellant's beliefs were genuine, but then at [82] that his activities were not genuine. Mr Wood submitted further that even if the appellant's Facebook activity was not a matter which the Iranian authorities would consider, his attendance at nine demonstrations was significant and, in accordance with the relevant country guidance in HB (Kurds) Iran CG [2018] UKUT 430, he would be at risk on that basis.

10. In response Mr Tan submitted that XX addressed the question of deletion of a Facebook account and, whilst the guidance was not available at the time of the hearing before the judge, the materials considered in that case were available. The assumption made by the judge at [67], that all traces of a Facebook account would be removed if the account was deleted, had been shown in XX to be correct, and the judge was therefore justified in saying that

the appellant had failed to rebut such an assumption. In any event, on the procedural unfairness point, the appellant had now had plenty of opportunity to respond to the point. Mr Tan submitted that there was nothing irrational in the judge's finding at [81]. It was clear that the judge found that the appellant had put forward a disingenuous claim in regard to his political beliefs. The judge's decision was in accordance with BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 and that case remained good law.

11. Mr Wood, in response, reiterated the points previously made.

Discussion

12. The first ground raises issues of procedural unfairness in the judge conducting his own post-hearing research on the technical features relating to a Facebook account and the issue of the deletion of a Facebook account, at [67] of his decision. The respondent, in her rule 24 response, conceded that the judge had erred in that respect, but submitted that it was not a material error which required the decision to be set aside. Clearly it was not the role of a judge to conduct post-hearing research given that such conduct would very likely deprive the parties of an opportunity to respond. However in the circumstances in this case I cannot see how that gave rise to procedural unfairness when the deletion of a Facebook account was a matter that had been raised at the hearing and was before the Tribunal. Mr Wood's grounds refer to the matter having previously been raised by the respondent and it seems to me that rather than the respondent bearing the burden of proving the matter, it was for the appellant to demonstrate to the Tribunal that the posts remained to be viewed despite the account having been deleted. He had not presented any evidence to support his claim.

13. In any event the point appears to be moot since it has since been the subject of detailed assessment and guidance in the case of XX. Although the decision in XX post-dated the hearing before the judge, Mr Bates properly submitted that it was based upon materials which were already available in the public domain and it confirmed the assumptions made by the judge. The judge's findings on the risks to the appellant as a result of his Facebook postings were made in the light of his previous rejection of the appellant's claim to have had involvement in political activities in Iran, a matter which was not challenged in the grounds. The judge found that the appellant had had no previous social media profile and no previous political profile, that he had never been of any interest to the Iranian authorities and that he would not be of any interest on the basis of any previous activities and that he had no genuine political beliefs. On that last point it is clear from a reading of [82] and [83] that that was the judge's finding at [81] and that he had merely omitted the word "not" in the last line.

14. On the basis of such findings the judge was properly entitled to find that the appellant could be expected to close his Facebook account in order to neutralise any risks that it could have invoked at the "pinch-point" of return to Iran. There was no evidence before the judge to indicate that deletion of the account would leave a footprint that would give rise to an adverse interest in

him by the Iranian authorities, when there had been no previous interest and neither has such evidence been produced currently to show that the appellant was prejudiced by the judge's assumptions made at [67]. On the basis of the guidance in XX the appellant would clearly not be able to show that he was at risk on return to Iran as a result of such activities. A re-making of the decision would therefore achieve nothing more for the appellant, given that the decision reached by the judge was entirely consistent with the findings in XX. Accordingly there is no merit in the first two grounds.

15. Likewise, I find there to be no merit in the third ground. The judge's decision, that the appellant's attendance at nine demonstrations would not have led to any adverse interest giving rise to a risk on return to Iran, was one which was fully and properly considered and reasoned in line with the relevant country guidance. The judge gave careful consideration to the matter from [72], applying the country guidance in BA and HB which addressed the risk arising from attending demonstrations and involvement in other political activities in the UK. He considered the appellant's profile and his role in the demonstrations and he considered the questioning on the "pinch point" of arrival in Iran as addressed in AB and Others (internet activity – state of evidence) Iran [2015] UKUT 257 and PS (Christianity - risk) Iran CG [2020] UKUT 46. The judge's assessment was a detailed and comprehensive one and the conclusion that he reached was entirely open to him on the evidence before him. Ground three seems to me to be little more than an attempt to re-argue the matter and does not, in my view, identify any error of law on the part of the judge.

16. For all of these reasons I uphold the judge's decision. The findings and conclusions that he reached were based upon a full and detailed assessment of the evidence in the light of the country guidance and the country information. He provided clear and cogent reasons for reaching the conclusions that he did and the grounds of challenge are not made out.

DECISION

17. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Anonymity

The anonymity direction made by the First-tier Tribunal is maintained.

Signed: S Kebede Dated: 8 April 2022
Upper Tribunal Judge Kebede