Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/08240/2018**

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On the 18 March 2022	**On the 19 April 2022**

Before

UPPER TRIBUNAL JUDGE LANE

Between

EK Appellant

(ANONYMITY DIRECTION MADE)

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Mair
For the Respondent: Mr Diwnycz, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iran who was born in 1993. He arrived in the United Kingdom as a minor in 2010. He claimed asylum and, although he was granted discretionary leave to remain which expired in October 2011, his asylum application was refused and a subsequent appeal dismissed (Judge Wilson: decision promulgated on 28 February 2011). The appellant made further submissions and, following proceedings for judicial review,

the respondent considered those submissions under paragraph 353 of HC 395 (as amended) and refused international protection by a decision dated 20 June 2018. The appellant appealed to the First-tier Tribunal (Judge Bannerman) which, in a decision promulgated on 31 October 2018, dismissed his appeal. The appellant then appealed to the Upper Tribunal (Deputy Upper Tribunal Judge Alis) which, having found an error of law in and set aside the First-tier Tribunal's decision, dismissed the appeal by a decision dated 7 March 2019. The appellant appealed to the Court of Appeal and, following a consent order dated 5 December 2019, the Court of Appeal allowed the appeal and remitted the case back to a differently composed panel of the Upper Tribunal. The appeal now comes before me at Bradford on 18 March 2022, the significant delay in the determination of the appeal at least in part a consequence of the Covid pandemic.

2. The appellant attended the hearing and adopted his written statements as his evidence in chief. He was not cross examined.

3. In reaching my determination of this appeal, I have had regard to all the evidence which has been adduced by the parties throughout these proceedings, including that relating to the appellant's Facebook activities. I admit the evidence in the appellant's fourth application under Rule 15(2A)(a) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

4. The Court of Appeal consent order makes it clear that the decision of Deputy Upper Tribunal Judge Alis was wrong in law for the reasons asserted in Ground 2 of the grounds of appeal. That ground argues that the Upper Tribunal had erred by failing to make a sufficient finding on the Claimant's *(sic)* political opinion. The ground [12] states that 'while the First-tier Tribunal and Upper Tribunal <u>are entitled to their findings that the appellant's account of political activity in Iran was false and his motivation for setting up a Facebook account was to bolster a claim</u>' [my emphasis] it did not follow that the appellant did not genuinely object to the Iranian government's treatment of Kurds. The paragraph concludes, 'the findings of both Tribunals were limited to the claimant's political activism when, in fact, it is his ethnicity and (genuine or imputed) political opinion that constitute the Convention reason in this case.'

5. It is plain from the passage of the grounds quoted above that the appellant did not seek to challenge the previous Tribunals' findings that his account of political activity in Iran had been untrue and that his reasons for setting up a Facebook account had been to 'to bolster a claim.'

6. I find that this position, unambiguously adopted by the appellant, should, taken with the opinion of Judge Wilson (not successfully challenged by the appellant) that the appellant was not a witness of truth, be given weight in my assessment of the credibility of the appellant's evidence and the issues in this appeal. One of the core issues is how, if faced with removal, the appellant will act as regards his Facebook account. I am not concerned with what the appellant might or could do with his account; I need, taking into account all relevant evidence, to make a finding of fact as to what this appellant will or will not do.

7. Ms Mair, who appeared for the appellant, had helpfully provided a supplementary skeleton argument which addresses the country guidance case of *XX (PJAK - sur place activities - Facebook) Iran CG [2022]* UKUT 23 (IAC), which has been promulgated since the Court of Appeal consent order. The headnote at [6] reads:

> *The timely closure of an account neutralises the risk consequential on having had a "critical" Facebook account, provided that someone's Facebook account was not specifically monitored prior to closure.*

Ms Mair submitted that the appellant's Facebook account remains active as at the date of the Upper Tribunal hearing and that the appellant has now been active on Facebook since July 2105. The appellant currently has 432 Facebook friends and his posts and re-posts have been of mainly of 'overtly pro-Kurdish, anti-regime' material. The appellant's attendance at a demonstration in January 2022 had appeared on the site and had been shared by another Facebook user who has 3,800 friends. Ms Mair submitted (i) That the appellant would not delete his Facebook account because it expressed his genuinely held views on the oppression of Kurdish people by the Iranian government (ii) Even if he did delete it, his posts and re-posts would remain visible through the Facebook accounts of friends. (iii) The appellant's 'real world' activities such as attendance at demonstrations would expose him to risk as identified in *BA (Demonstrators in Britain – risk on return) Iran CG [2011]* UKUT 36 (IAC). At [65] of *BA* the Tribunal found:

> As regards the relevance of these factors to the instant case, of especial relevance is identification risk. We are persuaded that the Iranian authorities attempt to identify persons participating in demonstrations outside the Iranian Embassy in London. The practice of filming demonstrations supports that. The evidence suggests that there may well have been persons in the crowd to assist in the process. There is insufficient evidence to establish that the regime has facial recognition technology in use in the UK, but it seems clear that the Iranian security apparatus attempts to match names to faces of demonstrators from photographs. We believe that the information gathered here is available in Iran. While it may well be that an appellant's participation in demonstrations is opportunistic, the evidence suggests that this is not likely to be a major influence on the perception of the regime. Although, expressing dissent itself will be sufficient to result in a person having in the eyes of the regime a significant political profile, we consider that the nature of the level of the sur place activity will clearly heighten the determination of the Iranian authorities to identify the demonstrator while in Britain and to identify him on return. That, combined with the factors which might trigger enquiry would lead to an increased likelihood of questioning and of ill treatment on return.

8. The respondent has not challenged the appellant's claim that he attended a demonstration in January 2022. The appellant had previously attended demonstrations in 2017 and 2018. I find, by reference to all the evidence and the matters identified at [6] above, that the appellant, as is probably the case with all Iranian Kurds, harbours resentment towards the Iranian government for its treatment of his people. However, I do not find that any views the appellant may hold or wish to express as an Iranian Kurd are

such as to engage the principles of *HJ (Iran) [2010] UKSC 31*; in particular, I find that the appellant would not express any hostility towards the Iranian state or resentment in any way which would be likely to expose him to a real risk on return.

9. The Upper Tribunal at [65] of *BA* wrote:

> As regards identification of risk back in Iran, it would appear that the ability of the Iranian regime to identify all returnees who have attended demonstrations, particularly given the number of those who do, on return, remains limited by the lack of facial recognition technology and the haphazard nature of the checks at the airport. The expert frankly admitted that it was extremely difficult to estimate the risk to identified participants in protests against the Iranian government. Mr Basharat Ali's careful submission was not that all of those returning, or returned from the United Kingdom, would be subject to mistreatment. We conclude therefore that for the infrequent demonstrator who plays no particular role in demonstrations and whose participation is not highlighted in the media there is not a real risk of identification and therefore not a real risk of consequent ill-treatment, on return.

The appellant has no significant profile of any kind which might suggest that the Iranian government would make any effort to identify him at demonstrations in the United Kingdom or on return to Iran. The 'media' referred to in *BA* would appear to be print and broadcast media rather than social; the appellant does not claim to have appeared in print or on television. There is no evidence that the appellant's Facebook photographs of his attendance have come to the attention of the Iranian authorities or that those authorities would go to the significant trouble of attempting to identify the appellant in the United Kingdom and then set up records by which he might be readily identified and then interrogated on return.

10. The question remains as to what the appellant will do as regards his Facebook account. I reject Ms Mair's submission that because he has repeatedly stated that he will not delete his Facebook account (in witness statements in 2018, 2019 and 2022) I should find that he will not delete the account; it does not follow that, just because the appellant's repeats an intention that the Tribunal should find as a fact that it is sincerely held. Rather, it is important to consider the appellant's assertion in the light of all the relevant evidence, including those matters discussed at [6] above. I find as a fact that the appellant will delete his Facebook account as soon as he learns that he is required to apply for an emergency travel document prior to his removal. I find that the appellant's Facebook account has not been and will not be prior to his removal monitored by the Iranian authorities. That finding engages the guidance of *XX* (see [7] above) and any risk to which the appellant may have been exposed by holding the account will be 'neutralised.'

11. Ms Mair advanced a further submission which she candidly acknowledged to be 'unattractive'. She submitted that the appellant could not be expected to lie if asked about his *sur place* activities on return to Iran. If he did lie, he would do so because of a fear of persecution. The principles of *HJ (Iran)* would thereby be engaged notwithstanding that the appellant

may have cynically undertaken his activities because political opinion would be imputed to him by the Iranian state. Her skeleton argument asserts [8] that this scenario differs from the observation in *XX* at [129]:

> In deciding the issue of risk on return involving a Facebook account, a decision maker may legitimately consider whether a person will close a Facebook account and not volunteer the fact of a previously closed Facebook account, prior to application for an ETD: HJ (Iran) v SSHD [2011] AC 596. Decision makers are allowed to consider first, what a person will do to mitigate a risk of persecution, and second, the reason for their actions. It is difficult to see circumstances in which the deletion of a Facebook account could equate to persecution, as there is no fundamental right protected by the Refugee Convention to have access to a particular social media platform, as opposed to the right to political neutrality. Whether such an inquiry is too speculative needs to be considered on a case-by-case basis.

12. I reject the submission. I find as a fact that the appellant will lie if asked about Facebook on return and, whilst he might do so in order to avoid persecution, by lying he would not in any way engage any sincerely held opinion at the core of his personality. Moreover, it makes no sense to say that the Iranian state would ever impute any opposition political views to the appellant if he had deleted his Facebook account and had readily denied *sur place* activities in the United Kingdom. The imputation of political opinion will, absent any innate characteristics, for example, ethnicity, generally follow the expression of such opinions, not precede it. I do not find that the appellant's Kurdish ethnicity alone will lead the Iranian authorities to impute political opinions to the him of a kind which would lead those authorities to ill-treat him. Indeed, given the manner in which I have found the appellant will behave prior to and on return, I find that he will be of no interest whatever to the authorities. I find that there is no evidence to indicate that the Iranian authorities employ surveillance systems which enable them to trace the source of social media posts which may have been liked or re-posted across multiple accounts hundreds or even thousands of times. Ms Mair may be correct to submit that an individual's posts remain in the public domain after his account has been deleted but she did not explain how the Iranian authorities would effectively monitor material which had been so widely disseminated. In the absence of evidence, it is reasonable to assume that the original author of a post (and a person re-posting his material) will be more difficult to identify the more widely his material appears on the accounts of others.

13. In the light of my analysis, I find that the appellant has failed to prove that there are substantial grounds for believing that he would be at real risk of harm contrary to the Refugee Convention or Article 3 ECHR if he is returned to Iran. His appeal is, therefore, dismissed.

Notice of Decision

The appellant's appeal against the decision of the Secretary of State dated 20 June 2018 is dismissed.

Signed
Date 2 April 2022
Upper Tribunal Judge Lane

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.