



**IN THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM  
CHAMBER**

Case No: UI-2023-003036

First-tier Tribunal No: PA/53158/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

**On 19<sup>th</sup> of March 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JARVIS**

**Between**

**KM (Iran)  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF THE STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms R. Sepulveda, legal representative for Fountain Solicitors

For the Respondent: Mr M. Parvar, Senior Home Office Presenting Officer

**Heard at Field House on 5 March 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify him. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

## **Introduction**

1. This is the decision of the Upper Tribunal in respect of the Appellant's appeal against the Respondent's decision to refuse his asylum and international protection claim, decided on 28 July 2022.
2. This should be read in conjunction with the Upper Tribunal's earlier decision that First-tier Tribunal Judge Khurram ("the Judge") materially erred in the determination dated 19 June 2023.

## **Relevant background**

3. In my earlier decision dated 20 November 2023, I concluded that the Judge had materially erred in their assessment of the Appellant's risk of persecution/serious harm on return to Iran having failed to refer to or apply the Upper Tribunal's Country Guidance decision in HB (Kurds) Iran (illegal exit: failed asylum seeker) CG [2018] UKUT 430 (IAC), ("HB").
4. At §46 of the decision, I preserved the following conclusions reached by the Judge:
  - a. The Appellant comes from a nonpolitical Kurdish family in Iran.
  - b. He has attended a number of anti-Iranian regime and pro-Kurdish rights demonstrations in the United Kingdom.
  - c. The Appellant has been highly critical of the Iranian authorities in public Facebook posts albeit that his political expressions in the United Kingdom are not based on a genuine interest in pro-Kurdish rights or pro-Kurdish politics.

## **The error of law hearing**

5. The error of law hearing was conducted in a hybrid format upon the Appellant's request. Both representatives were content to proceed on the basis of submissions only; I did however have those submissions interpreted for the Appellant in Kurdish Sorani.
6. In his submissions, Mr Parvar emphasised that the decision of HB did not establish that all Iranian Kurds would be at risk on return to Iran and that the Appellant was an opportunist with no particular pro-Kurdish political interests himself.
7. Mr Parvar also submitted that the Appellant was not a leader or speaker at any of the demonstrations at which he attended in the UK and was effectively one face amongst many.
8. Mr Parvar did accept in his submissions that it is reasonably likely that the Iranian authorities will ask the Appellant questions about his views of the

Iranian government based on the Tribunal's decision in HB, but he also asserted that the Appellant would be expected not to lie and would therefore tell the authorities that he had made a false claim for asylum. He added that, applying XX (PJAK, sur place activities, Facebook) Iran (CG) [2022] UKUT 23 (IAC), there was also no breach of the Refugee Convention by expecting the Appellant to delete his Facebook account in good time before his removal.

9. In her submissions, Ms Sepulveda contended that the Appellant would certainly be questioned by the Iranian authorities on the basis that he had left Iran illegally without documentation. She also emphasised that the Upper Tribunal in HB (at headnote 3) had identified Kurdish ethnicity as being an enhanced factor relevant to a greater level of suspicion from the authorities towards a returnee.
10. She also pointed to §114 of HB and submitted that it was reasonably likely that the Appellant would be asked about his Facebook profile. Ms Sepulveda went on to assert that the only reason that the Appellant would have for denying his sur place activity in the UK and the deletion of his Facebook account when questioned about this by the Iranian authorities would be that of seeking to avoid persecution.
11. Ms Sepulveda therefore submitted that the Appellant would reasonably likely face a risk of persecution on the basis of an imputed political opinion.

### **Findings and reasons**

12. As I have already laid out, the issue before the Upper Tribunal is a narrow one: will the Appellant face a real risk of persecution/serious harm on return to Iran because of his attendance at 8 to 9 demonstrations protesting against the Iranian government outside the Iranian embassy in London and/or because of his public Facebook profile on which he has posted and reposted content which is highly critical of the current Iranian regime?
13. I should start by recording that there was no dispute between the representatives that a person who mendaciously involves themselves in sur place political activities could nonetheless still qualify under the Refugee Convention.
14. I therefore consider what is reasonably likely to happen if the Appellant was to be returned to Iran as a person who, as is accepted by the Respondent, left Iran illegally without any documentation.
15. Both representatives addressed me on the Upper Tribunal's decision in HB (Kurds) Iran CG [2018] UKUT 430 (IAC) which concluded:

*“(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."*

16. It is therefore evident that the Iranian authorities have a particularly low tolerance for Kurds associated with any activities associated with Kurdish political rights or social issues. This is also explained by the Upper Tribunal at §§92-94:

*“92. What emerges from the background and expert evidence is an extreme sensitivity on the part of the Iranian state to activities that are, or are perceived to be, anti-regime. Ms Enayat’s evidence was that even being in possession of a Kurdish flag or a leaflet would put someone in trouble with the authorities. Although there was criticism of her evidence on behalf of the Respondent in that respect (a single leaflet), her evidence chimes with what appears at para 11.1.2 of the CIG (on Kurds and Kurdish political groups) in the quotation from a Landinfo report of February 2013:*

*“The Landinfo report further noted that; ‘if an individual were caught with a leaflet, he would most likely be arrested and tortured as well as forced to confess to being a member of whatever group could have been behind such a publication. He or she would go through a five minute trial and the outcome such a trial could vary from many years imprisonment to a mild sentence. It is impossible to say’.”*

*93. This example of low level activity having the potential to create a risk of ill-treatment is nothing new therefore. It can hardly be said that the human rights situation in Iran in general has improved in recent years and, as we have seen, recent events have created an environment of greater suspicion of Kurds and Kurdish activities. In addition, the example of the mere carrying of a leaflet or Kurdish flag is entirely consistent with the background material put before us, for example “Even those who express peaceful dissent or who speak out about Kurdish rights”, “there is no tolerance on the Iranian regime’s side for any kind of activities with connection to the Kurdish political parties and any affiliation with one of these parties would be reason for arrest”.*

*94. The evidence before us makes it clear that 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 and are reasonably likely to be subjected to heightened scrutiny. We accept what Ms Enayat says at [53] of her report, namely that “it is quite evident that the increased militancy of the Kurdish parties coupled with the IS attack of July 2017 will mean greatly enhanced suspicions of any Kurdish returnees”. Professor Joffé’s evidence was to like effect.”*

17. Applying the preserved facts, I make the following findings:

- a. It is reasonably likely that the Appellant will be subject to questioning by the Iranian authorities on return. This was accepted by Mr Parvar, and I consider that concession to be correct in light of what is said in HB and the fact that the Appellant left Iran illegally without a passport.
- b. The Appellant is not expected to lie and, again looking at the evidence before me and the guidance in HB, I find that it is reasonably likely

that he will be asked about his asylum claim in the UK and if not, it is reasonably likely that he will, in any event, be asked if he has been involved in Kurdish political activities in the UK once his ethnicity becomes known.

- c. I also find that it is reasonably likely that on being told that the Appellant had been involved in a number of demonstrations in London outside the embassy in which he held leaflets and/or banners criticising the Iranian regime and showing support for the Kurdistan Democratic Party (Iran), the Iranian authorities are highly likely to treat him with significant suspicion even if he was to explain that it had been found that he had lied about his interest in Kurdish politics.
- d. With reference to HB, I find that the hair-trigger reaction arising from the Iranian authorities' extreme suspicion of Kurdish returnees would occur in this case and that it is highly unlikely that the Iranian authorities would take any consolation from the fact that the Appellant had been found to have acted mendaciously by the authorities in the UK.
- e. I therefore find that even if the Appellant does delete his Facebook account in advance of being returned, there is still nonetheless a real risk of him facing mistreatment on the basis of answers which he can be expected to give during questioning.

### **Notice of Decision**

The Refugee Convention appeal is allowed.  
The Article 3 ECHR appeal is allowed.

***I P Jarvis***

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

13 March 2024

