



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/01236/2020

**THE IMMIGRATION ACTS**

**Decision Under Rule 34 Without a  
hearing  
On 30<sup>th</sup> September 2020**

**Decision & Reasons  
Promulgated  
On 06<sup>th</sup> October 2020**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**SM  
(Anonymity Direction Made)**

Appellant

**and**

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

Respondent

**DECISION AND REASONS (P)**

1. The appellant, a national of Iran, appealed against the respondent's decision of 24<sup>th</sup> January 2020 to refuse his claim for asylum and humanitarian protection. First-tier Tribunal Judge Forster dismissed the appeal for the reasons set out in a decision promulgated on 1<sup>st</sup> March 2020. Permission to appeal was granted by First-tier Tribunal Judge O'Garro on 30<sup>th</sup> May 2020.
2. Directions were made by Upper Tribunal Judge Kopieczek on 6<sup>th</sup> July 2020 setting out his provisional view that in light of the need to take

precautions against the spread of Covid-19, it would be appropriate to determine whether the making of the First-tier Tribunal's decision involved the making of an error on a point of law, without a hearing. He made directions for the parties to file and serve further submissions and, if a party considers that a hearing is necessary, for the party to submit reasons for that view no later than 21 days after the notice was sent to the parties. The Directions made by Upper Tribunal Judge Kopieczek were sent to the parties on 9<sup>th</sup> July 2020.

3. By email on 16<sup>th</sup> July 2020, the respondent sent to the Upper Tribunal, the respondent's rule 24 response. The appellant's representatives were copied in to that email. In the respondent's response, the respondent accepts Judge Forster made a material error of law in his decision. The respondent accepts that at paragraph [30] of the decision, Judge Forster properly noted that the appellant's Kurdish ethnicity is a factor which must be considered together with other factors personal to his position. Judge Foster stated the Iranian authorities are reasonably likely to be suspicious of the appellant because he is a Kurd and subject him to heightened scrutiny on return to Iraq (*sic*). The judge noted that on return from the UK, the appellant will be questioned about his activities in the UK, and although there is evidence that the appellant was engaged in some political activity in the UK, that will not have brought him to the attention of the authorities. The respondent accepts Judge Forster has not adequately addressed why the appellant would not be at risk upon return because of his social media posts. The respondent notes the challenge to the decision is limited to the risk upon return, and in the circumstances, submits it may be appropriate for the decision to be remade in the Upper Tribunal.
4. The appellant does not appear to have made any written submissions in support of the grounds of appeal, or filed any response to the rule 24 response received from the respondent.

5. Rule 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008 provides that the Upper Tribunal may make any decision without a hearing, and the Tribunal must have regard to any view expressed by a party when deciding whether to hold a hearing to consider any matter, and the form of any such hearing. The directions issued by Upper Tribunal Judge Kopieczek provided the parties with an opportunity to set out their view as to whether a hearing is necessary and for the party to submit reasons for that view. Neither the appellant nor the respondent has expressed a view as to whether a hearing is necessary, in order for the Tribunal to determine whether the decision of Judge Forster is infected by a material error of law.
6. In light of the concession made by the respondent and the view I have taken on the error of law, I am satisfied that it is in accordance with the overriding objective and the interests of justice for there to be a timely determination of the question whether there is an error of law in the decision of the FtT. Taking into account the position adopted by the respondent, it is entirely appropriate for the error of law decision to be determined on the papers, to secure the proper administration of justice. There is in my judgement, no prejudice to the appellant in my proceeding in this way.
7. The appellant advances two grounds of appeal. First, Judge Forster failed to make clear factual findings on material evidence. The appellant claims that although there is reference at paragraphs [19] to [25] of the decision to evidence of political activities that the appellant has been involved in since arriving in the UK, Judge Forster failed to make clear factual finding that the appellant holds a Facebook account clearly attributed to him with anti-Iranian government material. Second, the judge failed to properly apply or consider the relevant country guidance decisions in his analysis of the risk upon return.

8. The respondent concedes the decision of Judge Forster should be set aside, and in the circumstances I need say nothing more about the grounds of appeal. The respondent accepts the Judge did not adequately reason why he would not be at risk upon return, because of his Facebook posts. I accept the decision of the FtT is infected by an error of law and that the appropriate course is for the decision of First-tier Tribunal Judge Forster to be set aside.
9. As to disposal, I note Judge Forster made a number of adverse credibility findings against the appellant and the appellant claims there is no clear finding that the appellant holds a Facebook account on which anti-government messages have been posted. I have carefully considered what is said at paragraph [20] of the decision of Judge Forster regarding the appellant's Facebook account. Although it might be implicit from what is said in that paragraph that Judge Forster accepted the appellant does have a Facebook account in his name that has been set up since coming to the UK on which anti-government messages have been posted, the judge finds that the appellant's explanation that he has done this now, because he is in a free country, is not credible. What was required, is a clear finding as to whether the appellant has a Facebook account, and the nature of the material posted on it. Why the appellant has set up an account may not be entirely relevant if there is a possibility that the appellant's actions may have come to the attention of the Iranian authorities and put him at risk upon return.
10. As findings of fact will be necessary and the nature and extent of any judicial fact-finding necessary will be extensive, in my judgment, the appropriate course is for the appeal to be remitted to the First-tier Tribunal for hearing afresh.
11. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

### **Notice of Decision**

12. The appeal is allowed and the decision of FtT Judge Forster promulgated on 1<sup>st</sup> March 2020 is set aside.
13. The appeal is remitted to the FtT for a fresh hearing of the appeal with no findings preserved.

Signed **V. Mandalia**  
September 2020

Date: 30<sup>th</sup>

**Upper Tribunal Judge Mandalia**