



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/04845/2019

**THE IMMIGRATION ACTS**

Remote Hearing by Skype for Business  
On 6<sup>th</sup> April 2021

Decision & Reasons Promulgated  
On 21<sup>st</sup> April 2021

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

M S M  
(Anonymity Direction Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr M Azmi, instructed by Braitch R B Solicitors

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal)**

**Rules 2008**

*An anonymity direction was made by the First-tier Tribunal ("the FtT"). As the appeal raises matters regarding a claim for international protection, it is appropriate for an anonymity direction to be made. 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 his 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.*

### **Remote Hearing**

1. The hearing before me on 6<sup>th</sup> April 2021 was a Skype video conference hearing held during the Covid-19 pandemic. Neither party objected to a remote hearing. The appellant was able to join the hearing remotely but was unable to switch his 'video' function on. I sat at the Birmingham Civil Justice Centre. I was addressed by the representatives in exactly the same way as I would have been if the parties had attended the hearing together. I was satisfied: that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate. I was satisfied that it was in the interests of justice and in accordance with the overriding objective to proceed with a remote hearing because of the present need to take precautions against the spread of Covid-19, and to avoid delay. I was satisfied that a remote hearing would ensure the matter is dealt with fairly and justly in a way that is proportionate to the importance of the case, the complexity of the issues that arise, and the anticipated costs and resources of the parties. No other technical problems were reported to me by the parties representatives during the course of the hearing. At the end of the hearing I was satisfied that both parties had been able to participate fully in the proceedings.

### **Introduction**

2. The appellant is a national of Iran. He arrived in the UK on 28<sup>th</sup> February 2017 and claimed asylum. He claimed to have fled Iran about six days prior to his arrival in the UK, but it transpired that the appellant had been fingerprinted previously in Hungary on 2<sup>nd</sup> October 2015 and in Italy on 4<sup>th</sup> November 2016. The appellant's claim was refused by the respondent for reasons set out in a decision dated 10<sup>th</sup> May 2019.
3. The respondent accepts the appellant is a national of Iran of Kurdish ethnicity. The respondent accepted the appellant was a supporter of the KDP but rejected the

appellant's claim that he had carried out any activities on behalf of the KDP and his claim that he had come to the adverse attention of the authorities in Iran.

4. The appellant's appeal against the respondent's decision was dismissed by First-tier Tribunal Judge Parkes for reasons set out in a decision promulgated on 24<sup>th</sup> August 2020. At paragraphs [29] to [37] of his decision, Judge Parkes considered appellant's claim that he is also now at risk on return because of his sur place activities, including posts on his Facebook account, and attendance at demonstrations outside the Iranian Embassy. He noted, at [29], that there is evidence of the appellant posting matters on Facebook relating to Kurdish politics and affairs. He also noted "*.. The appellant was inconsistent about whether the account he now uses is a new account or a reactivated account from when he first arrived in the UK...*". At paragraph [32], Judge Parkes found the appellant's sur place activities are not motivated by any genuine commitment to the Kurdish cause but have been created to assist in his efforts to remain in the UK. He noted, at [33], that nevertheless, the question remains whether those actions will place the appellant at risk from the Iranian authorities on return. He noted the appellant's family members in Iran appear to remain of no interest to the authorities despite the 'hair-trigger approach' adopted by the authorities, and that reinforces the view that whatever the appellant has done, is not known to the government or relevant agencies in Iran.
5. Having concluded that the appellant did nothing in Iran that could have been conceived as support for the KDP or Kurdish affairs in Iran, and he has not come to the adverse attention of the authorities previously, Judge Parkes went on to find that there is nothing that the appellant has done outside Iran that has made him of any interest on return, and the deletion of posts on Facebook account is entirely reasonable given that they have only been created to bolster his claim. At paragraph [38], he concluded:

*"In summary the appellant has not given a credible account of his actions in Iran, his journey to the UK, he has not explained why he sought to conceal the true details of his journey and his actions in the UK have no bona fides. The appellant is not in need of*

international protection on any basis and can be safely returned to Iran and return to his home area.”

### The appeal before me

6. The appellant sought permission to appeal on two grounds. First, the appellant claims Judge Parkes erred in his analysis of the risk upon return and failed to have proper regard to the country guidance set out in HB (Kurds) Iran CG [2018] UKUT 00430 (IAC). In particular, it is said Judge Parkes failed to have regard to the fact that the appellant and his family fled Iran when the appellant was 2/3 years old and had previously lived as refugees in Iraq before returning to Iran. The appellant claims the previous residence in the IKR is a risk factor that is likely to result in the appellant being questioned upon arrival in Iran. Furthermore, the appellant claims Judge Parkes failed to consider the appellant attendance at demonstrations in the UK protesting against the ill-treatment of Kurds, which again, is relevant to the real likelihood of the appellant being questioned by the authorities on return. Second, the appellant claims Judge Parkes erred in his assessment of the appellant’s credibility and his consideration of the appellant’s account of events in Iran.
7. Permission to appeal was granted by Upper Tribunal Judge Blundell on 6<sup>th</sup> November 2020 on the first ground only, relating to the application of the relevant country guidance and the judge’s analysis of the risk upon return.
8. Before me, Mr Azmi adopted the appellant’s grounds of appeal. He submits the appellant had lived in the IKR from the age of 2/3 until he was about 10 years old (*in approximately 1996*) and taken together, there are a number of factors that place the appellant at risk upon return. The appellant is accepted to be of Kurdish ethnicity, and a supporter of the KDPI. He has previously lived in the IKR and has attended demonstrations in the UK. He has engaged in social media activity, with posts on his Facebook account that include photographs of his attendance at demonstrations outside the Iranian Embassy. Mr Azmi submits these are all relevant to the profile of the appellant, and the risk to which he will be exposed on return to Iran where it is likely he will be interviewed.

9. In reply, Mr Whitwell submits Judge Parkes was plainly aware of the relevant country guidance and referred in his decision, numerous times, to the 'hair trigger' approach of the Iranian authorities that is referred to in HB (Iran). Mr Whitwell refers to paragraph [86] of the decision of the Upper Tribunal in HB (Iran) in which it was accepted that the appellant was likely to face additional questioning by reason of having lived in the IKR, however, the Tribunal went on to confirm that 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. Mr Whitwell submits that although the appellant had previously lived in the IKR, he was there as a child between the ages of 3 and 10, with his family. There was no evidence of the family having encountered any problems in Iran following their return. As Judge Parkes noted, the appellant's mother and maternal uncle remain in Iran and there is no evidence to show that they have been targeted by the authorities. The fact of the appellant's previous residence in the IKR as a child is likely to excite little, if any interest at all.
10. Mr Whitwell submits Judge Parkes found that the appellant's sur place activities in the UK are not motivated by any genuine commitment to the Kurdish cause and have been created to assist in his efforts to remain in the UK. He submits Judge Parkes was careful to find, at [34], that the appellant "*.. has created an impression of activism but has been careful that it is not known to the authorities and in circumstances that there is no danger that it will become known to them..*".

### Discussion

11. The respondent accepts the appellant is a supporter of the KDP but rejected the appellant's claim that he worked for the KDP and had come to the adverse interest of the authorities in Iran. At paragraph [28] of his decision, Judge Parkes said:

"28. ... I do not believe that the appellant took part in leafleting for the KDP, I reject the claim that when doing so he was seen and then informed on and his friend later arrested causing the appellant to flee Iran. The Home Office accepted that the appellant was a supporter of the KDP but on the evidence available it appears to have been at the

lowest level possible, more like someone who supports a football club but never goes to matches, home or away, and vaguely follows the results and the teams place in the table.”

12. All that the appellant was left with, are his activities since leaving Iran. That is, his attendance at demonstrations outside the Iranian Embassy and what is posted on a Facebook account that does not bare his full name.
13. The issue in the appeal before the FtT was what would await the appellant on return to Iran in light of the findings made by Judge Parkes regarding the appellant’s sur place activities in the UK. Judge Parkes referred to the country guidance and the ‘hair-trigger’ approach to those suspected or perceived to be involved in Kurdish activities or support for Kurdish rights. Judge Parkes undoubtedly had the country guidance in mind when reaching his decision.
14. It is uncontroversial that a returnee without a passport is likely to be questioned on return to Iran. In HB, the Tribunal heard oral evidence from two expert witnesses, Anna Enayat and Professor Emile Joffé. It declined to give guidance to the effect that a risk of persecution arises where an individual is involved in the making, re-posting or otherwise publicising critical, insulting satirical etc comments about Islam, Islamic religious figures, the Qur’an, Iran’s policies or regime members, online on social media networks whether in Iran or abroad; *see* [81]. At paragraph [82], the Upper Tribunal said:
 

“However, we consider that such proposed guidance is way outside the scope of the case before us and in any event is far too widely drawn. Although there was evidence before us regarding the potential risk for those whose internet activity/social media use may attract the adverse attention of the authorities, that was not a matter which the parties or experts engaged with in relation to the giving of country guidance in terms, for example, of the ability of the Iranian state to monitor such activity. Indeed, in oral evidence Ms Enayat said that she had not been asked to deal with the question of social media in her instructions (although she had given evidence on the issue in AB and Others). We also take the view that such a consideration is likely to require some technical evidence and such was not before us. Social media use is, however, relevant to this particular appellant’s appeal and we consider it in that context.”
15. The contents of the Facebook posts in HB are referred to in paragraphs [111] to [112] of the decision:- *“In general, as revealed in the posts that have been translated, they*

*express support for the Kurdish political cause and express opposition to the Iranian regime. They consist of shared posts from individuals and from, for example, the Democratic Party of Iranian Kurdistan(PDKI) Scotland and one from Denmark”.*

16. At paragraphs [113] to [116], the Upper Tribunal said:

“113. Mr Metcalfe submitted that there is insufficient evidence that the Iranian authorities would necessarily be aware of that material and that the evidence did not establish that the Iranian authorities routinely inspect the internet profiles of failed asylum seekers.

114. However, we noted at [97] above that it is not disputed that a returnee without a passport is likely to be questioned on return, confirmed in the expert evidence before us and recognised in existing current country guidance, for example, SSH and HR. Ms Enayat’s evidence was that it is 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 onto 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]).

115. Mr Metcalfe accepted that the material posted by the appellant on Facebook, if it became known to the authorities, would expose him to prosecution with a risk of imprisonment and that this would result in a real risk of ill-treatment. It was also accepted that the appellant’s Facebook page is currently visible to the public at large.

116. We are satisfied that the content of the appellant’s Facebook page would become known to the authorities on return as part of the process of investigation of his background. That is the effect of the expert and background evidence before us. It is then, no step at all to the conclusion that this would involve a real risk of persecution and Article 3 ill-treatment in his case, by reason of detention and ill-treatment and likely prosecution. 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. This is reasonably likely to be regarded not only as having ‘crossed the line’ in terms of political views or activity, but also in terms of religious dissent.”

17. The ultimate question is whether the behaviour of the appellant, no matter how cynical or manufactured, would result in a risk of persecution on return; if so then he may establish his right to protection. Having established the particular behaviour, the next question to be asked is whether that behaviour does place the appellant at risk.

18. The country guidance establishes that on return, it is part of the routine process to look at an internet profile, Facebook and emails of a returnee. Judge Parkes noted at paragraphs [29] that the appellant was inconsistent about whether the Facebook

account he now uses is a new account or a reactivated account from when he first arrived in the UK.

19. At paragraphs [34] to [36], Judge Parkes said:

“34. As the appellant would be aware of the attitude of the authorities and the danger to family members if he did something that was not approved it strongly suggests that the appellant has created an impression of activism but has been careful that it is not known to the authorities and in circumstances that there is no danger that it will become known to them.

35. It is well known that posts on Facebook can be altered as required with the settings made public or private as desired. Screenshots are only evidence of the state of the account and its postings at the moment the screenshot is taken, and the profile can be altered immediately afterwards.

36. The Home Office question whether the Facebook account relied on is the appellant’s given the name used as different from the appellant’s. Assuming that it is the appellant’s account there is no evidence that it is known the (*sic*) or that there is a reasonable degree of likelihood that it will be. Given the appellant’s lack of bona fides and with his actions lacking any genuine conviction it would be entirely reasonable for the appellant to remove the posts that might be of interest to the authorities if, on his return, they wish to see his Facebook page.”

20. Judge Parkes found the appellant is a supporter of the KDP at the lowest possible level and rejected the appellant’s account of events in Iran. In Iran, the appellant had not been involved in any political opposition to the Iranian government and although the family had lived in the IKR previously as refugees, they had been able to return to Iran without any apparent difficulty.

21. It is in my judgment clear that when the decision is read as a whole, Judge Parkes considered the appellant’s evidence regarding his attendance at demonstrations outside the Iranian Embassy, as part of his consideration of the appellant’s sur place activities. The evidence of the appellant’s attendance at the demonstrations was rooted in the photographs posted on the Facebook account relied upon by the appellant, which referred to his attendance at demonstrations. At paragraph [30] of his decision Judge Parkes referred to the evidence before the Tribunal regarding the appellant’s attendance at demonstrations. There is nothing in the decision that begins to suggest that Judge Parkes rejected the appellant’s claim that he had attended demonstrations. The relevant Country guidance indicates some



surveillance at demonstrations but there is nothing to suggest that on the findings made, the appellant's own profile would place him at risk.

22. There was evidence before the First-tier Tribunal that the appellant has attended demonstrations outside the Iranian Embassy and had made a number of posts on a Facebook account, but it was not clear whether that is a new account or a reactivated account from when the appellant first entered the UK. What is not in dispute is that the Facebook account now being used is not in the full name of the appellant. If the Facebook account is a new account, the appellant would no doubt disclose his previous account upon which I can only assume there are no adverse posts. If the appellant has simply reactivated his previous Facebook account, it is, as Judge Parkes noted, entirely reasonable for the appellant to remove the posts that might be of interest to the authorities, if, on his return, they will wish to see his Facebook page. The conclusions reached by the judge must be considered in the context of his finding, at [34], that the appellant has created an impression of activism but has been careful that it is not known to the authorities and in circumstances that there is no danger that it will become known to them.
23. At paragraph [37] of his decision, Judge Parkes referred to the guidance set out in HJ (Iran) [2010] UKSC 31, which plainly requires an individual and fact-specific inquiry. He said:
- “... As I found above the appellant did nothing in Iran that could have been conceived as support for the KDP or Kurdish affairs in Iran and would not have come to the attention of the authorities or be of any interest to them. There is nothing that the appellant has done outside Iran that have made him of any interest on return and the deletion of posts on a Facebook account is entirely reasonable given that they have only been created to bolster his claim.”
24. The appellant will not have to lie if asked if he is opposed to the Iranian government; he is not. If he chooses to say he is opposed to the government, that itself is a lie and a matter for him. On the findings made by Judge Parkes, the appellant has no reason to inform the Iranian authorities that he has been involved in anti-government activities because any social media activity and attendance at demonstrations is not predicated upon any genuine political involvement. To

assert otherwise would be inaccurate. At its highest, the appellant is a supporter of the KDP at the lowest possible level, but he is not an individual that has engaged in even 'low-level' political activity or activity that is perceived to be political.

25. All that remains is the appellant's claim that he has previously lived in the IKR with his family. I accept Judge Parkes does not expressly refer to the appellant's previous residence in the IKR, but that in my judgement is immaterial. As the Tribunal noted in HB (Iran), 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. Here, the appellant will legitimately be able to confirm that his family lived in the IKR previously as refugees and returned to Iran in or about 1996. He will be able to confirm to the authorities that the family had lived in Iran since 1996 without incident and that his mother and uncle continue to do so, without incident.
26. The Facebook posts as described, and the appellant's evidence regarding the demonstrations attended, together with the lack of other political activity were all considered by Judge Parkes, who, in the context of the appellant's overall lack of political engagement on anything other than in the loosest sense, reached a conclusion that was open to him. Judge Parkes was not satisfied that the appellant has been involved in any political opposition based on a genuine belief such as would put him at risk upon return. On return, when questioned, the appellant has no reason to inform the Iranian authorities that he has been involved in anti-government activities because his attendance at the demonstrations was not predicated upon any genuine political involvement. For him to assert otherwise, would be inaccurate.
27. On a proper application of the country guidance set out in HB (Kurds) it is clear that those of Kurdish ethnicity are reasonably likely to be subjected to heightened

scrutiny on return to Iran. 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. I accept as Mr Azmi submits, Kurdish ethnicity is nevertheless a risk factor which, when combined with other factors, may create a real risk. Even low-level activity perceived to be political, such as, possession of leaflets supporting Kurdish rights involves a risk of persecution, but each case depends on its own facts. Judge Parkes carefully assessed the likelihood of the appellant's activities bringing him to the adverse attention of the authorities. He rejected the appellant's underlying account of events in Iran and found that the appellant would not be identified as someone of adverse interest because of his sur place activities. It was open to him to reach that decision for the reasons he has given.

28. Judge Parkes carefully considered the evidence of the sur place activities relied upon by the appellant in the context of the relevant jurisprudence and concluded, in line with country guidance, that the activities of the appellant would not lead to his identification as someone suspected or perceived to be genuinely involved in Kurdish activities or support for Kurdish rights. That was a conclusion the judge was entitled to come to, on the evidence before him.
29. Although the decision could have been better expressed, an appellate court should resist the temptation to subvert the principle that they should not substitute their own analysis and discretion for that of the Judge by a narrow textual analysis which enables it to claim that the Judge misdirected themselves. It is not a counsel of perfection. An appeal to the Upper Tribunal is not an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits.
30. A fact-sensitive analysis of the risk upon return was required. In my judgement, Judge Parkes clearly had in mind the "pinch point" at which the appellant will be brought into direct contact with the authorities in Iran and is likely to be questioned. It is clear that the more active a person has been, the more likely the

authorities interest could lead to persecution. The findings made by Judge Parkes were findings that were properly open to him on the evidence before the FtT. The findings cannot be said to be perverse, irrational or findings that were not supported by the evidence. Having carefully considered the decision of the FtT, I am quite satisfied that the appeal was dismissed after the judge had carefully considered all the evidence before him and upon a proper application of the country guidance.

31. It follows that in my judgment, there is no material error of law in the decision of Judge Parkes and I dismiss the appeal.

### **Decision**

32. The appeal is dismissed. The decision of First-tier Tribunal Judge Parkes promulgated on 24<sup>th</sup> August 2020 shall stand.
33. I make an anonymity direction.

Signed *V. Mandalia*  
Upper Tribunal Judge Mandalia

Date: 12<sup>th</sup> April 2021