



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

Appeal Number: PA/04845/2019

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice
Centre
On 7 January 2020**

**Decision & Reasons Promulgated
On 20 January 2020**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MR M M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Azimi, Counsel, instructed by Braitch RB Solicitors

For the Respondent: Mrs H Aboni, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant, a national of Iran, has permission to challenge the decision of Judge Hatton of the First-tier Tribunal sent on 1 August 2019 dismissing his appeal against the decision made by the respondent on 10 May 2019 to refuse his protection claim.
2. The appellant's grounds were essentially twofold, it being submitted that the judge fell into legal error in:

- (1) failing to factor in when assessing the risk profile of the appellant the fact that the respondent had accepted that he was a KDP supporter; and
 - (2) failing to consider the likely risk arising out of the appellant's accepted Facebook posts and also his sur place activities.
3. I received well-formulated submissions from both representatives.
4. It will assist in analysing the grounds to recall the applicable country guidance, in particular the case of HB (Kurds) Iran CG [2018] UKUT 00430 which the judge stated he took into account. Its headnote states:
- (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.*

5. It is pertinent to recall the guidance set out in HB because it underlines the importance of judges making careful findings as to the political profile of Kurdish appellants. In this regard, there is nothing to indicate that the judge, in seeking to apply HB and in particular paragraphs 3, 7 and 9 of the above headnote, took into account the conclusions of the respondent on the appellant's status as a KDP supporter. The respondent had stated in paragraphs 31-38 as follows:

- "31. You have claimed that you are a supporter of the KDP (AIR 78) and as such this part of your claim shall now be considered.
- 32. In response to your claim of supporting KDP, you were asked 'For what reasons did you begin to support the KDP?' to this you explained 'I would like, like this country, my language to have a country as well, for that reason I worked for them' (AIR 79). You have provided an emotive account into the reasons why you supported the KDP. As a result, your account is deemed as credible.

In addition to this you were asked 'can you tell me what the KDP's policies are?' To this you replied 'For success for Kurds' (AIR 81). External evidence found at <https://dckurd.org/2018/07/25/democratic-party-of-kurdistan-iran-kdpi/> illustrates that 'The party defines itself as a democratic

socialist organization with economic, social and political policy predicated on a belief of human equality and freedom, advocating a federal model of governance in Iran. The account you have provided is consistent with external evidence and therefore deemed as credible.

33. You were asked 'Was there any recruitment process to become a supporter?' to this you explained 'As a friend I worked for Kurdalati (Kurdish Nationalism) (AIR 88). **Country Information: Iran: Kurds and Kurdish political groups: January 2019: 6.2.2** outlines '...Concerning the organization of members of KDPI in Iran, KDPI's representative in Paris informed the delegation that there are three categories of persons affiliated with KDPI: members, sympathizers and 'friends'. Your account is consistent with country information and therefore deemed as credible.
34. You were asked 'I am trying to establish your thought process, you said you thought about it for 6 months, what was the final reason why you decided to help? to this you responded 'When I was thinking about it, in Iran we are not free, it is not like here. We need to be free.' (AIR 118). You have provided an emotional account when questioned about why you thought to help the KDP. Your account is therefore deemed as credible.
35. You were also asked 'Did you have any sort of membership card?' to which you replied 'no' (AIR 87). **Country Information: Iran: Kurds and Kurdish political groups: January 2019: 6.3.1** states '...Mohammad Nazif Qadiri (KDPI) stated that KDPI normally does not issue ID cards and certainly not to members in Iran. Your response is externally consistent with country information and as a result, found as credible.
36. You were additionally asked 'Do you know when the party was founded' to this you responded 'about 73 years ago' (AIR 82). External evidence found at <https://thekurdishproject.org/history-and-culture/kurdish-democracy/kdp-kurdistan-democratic-party/> illustrates 'The Kurdish Democratic Party (KDP) is the oldest Kurdish political party in Iraqi Kurdistan. It was founded in 1946 in the Kurdish region of Iran. Your response is consistent with external evidence and therefore deemed as credible.
37. You were also asked 'Where is the KDP's headquarters?' to this you replied 'Koya' (AIR 85). External evidence found at <https://www.reuters.com/article/us-mideast-crisis-iraq-iran/iran-attacks-iranian-kurdish-opposition-group-base-in-iraq-idUSKCN1LOOKZ> illustrates 'The Democratic Party of Iranian Kurdistan (PDKI), an armed opposition group fighting for greater autonomy for Iran's Kurdish community, tweeted pictures and video of explosions, as well as of the wounded, at its headquarters in Koya, in Iraq's semi-autonomous Kurdistan

region'. Your response is consistent with external evidence and therefore deemed as credible.

38. Consideration has been given to the responses you have provided at interview. In addition to this external evidence and country information have also been considered with regards to the responses you have given. You have also provided a detailed and emotive account when questioned about your reasons and motivations into why you supported the KDP political party. As a result, it is accepted that you were a supporter of the KDP".
6. When one turns to consider the judge's treatment of the appellant's KDP involvement, it appears to be premised on the basis that he had failed to demonstrate that he had *any* involvement with the KDP whatever: see paragraphs 32-47 in particular. If that were the case, then he at least needed to explain why he was going behind the concession made by the respondent. If, on the other hand, the judge meant to accept the appellant was a KDP supporter, then he needed to explain what significance he attached to that fact in light of the guidance given in HB. Of course, even applying HB, acceptance that the appellant was a KDP supporter did not necessarily mean that the appellant would have succeeded in his appeal. It was the respondent's position at least that despite being a KDP supporter "it is not accepted that you ever came to the attention of the Iranian authorities or that they have any adverse interest in yourself, nor that you worked for the KDP". But the judge simply arrived at the conclusion that the appellant would not be of adverse interest to the Iranian authorities without considering the significance or otherwise of his KDP support.
 7. The judge's error in relation to ground (1) interacts with his further error in his treatment of the appellant's Facebook activity and his involvement in demonstrations in London. As regards the appellant's Facebook activity, the judge found:
 - "80. On consideration of the above documents, I find that the Appellant has created and shared posts of a political nature on Facebook, relating to the regime in Iran.
 81. In so finding, I note that by his own admission, the Appellant has a relatively modest number of Facebook friends, and that the documentary evidence provided of the Appellant's political activity on Facebook relates to a very limited and recent period of time i.e. June 2019.
 82. On the above basis, I consider it exceedingly unlikely that anyone other than the Appellant's Facebook friends would be aware of his posts. Even if someone other than one of the Appellant's Facebook friends were to see his Facebook page, this would not enable them to trace, identify or otherwise target the Appellant.
 83. As the documentation provided by the Appellant relates to Facebook posts made in June 2019, there is nothing to suggest that the Appellant is a prolific poster of political material. The

Appellant has around three hundred Facebook friends by his own admission, and his online presence is therefore marginal, at best.

84. In considering the country guidance case of ***HB (Kurds) Iran CG [2018] UKUT 00430 (IAC)***, I accept that Facebook content would put an Iranian citizen at risk of persecution if discovered by the Iranian authorities. I find there is no real risk of discovery in the Appellant's case, by virtue of my above observations".

8. As regards the appellant's involvement in demonstrations, the judge found at 85-87:

"85. I am additionally satisfied on the photographic evidence provided from the Appellant's Facebook account, that the Appellant has taken part in demonstrations against the Iranian regime in this country, although by his own admission, he has attended no more than three [Appellant's Bundle, p.4, para.47].

86. In so finding, I note there are very few people in the photographs provided. I further note that none of the photographs appear to show the presence of any police, security personnel, loud-hailers, cameras, video recording equipment, members of the press, or any representative of the Iranian authorities.

87. Accordingly, I find that the demonstrations in which the Appellant has participated have been low key in nature. On this basis, I find that the Appellant's participation in these demonstrations has not subjected him to a real risk of coming to the adverse attention of the Iranian authorities".

9. There are a number of difficulties with these findings.

10. Firstly, in relation to the appellant's Facebook activity, the judge does not appear to have engaged with the Tribunal's assessment of the Facebook activity of the appellant in the HB case. At paragraphs 113-116, It wrote:

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.

11. Given these paragraphs, the judge was required to provide more by way of explanation as to why he rejected the likelihood of the appellant's Facebook activities being discovered by the Iranian authorities, when relatively similar Facebook activity by the appellant in HB, was considered to raise a real risk of discovery.
12. Secondly, in relation to the appellant's involvement in demonstrations, there is nothing to indicate the basis of the judge's assessment that these activities would not make it more likely than otherwise that the Iranian authorities would question the appellant on return.
13. A further difficulty is that there is nothing to indicate that the judge considered cumulatively the fact that there was sur place activity of two different types: online (via Facebook) and in person (in attendance at demonstrations). There was also the additional fact that the respondent had accepted the appellant was a KDP supporter when in Iran. If the Iranian authorities did come to know of his past KDP support and/or his Facebook and/or his demonstration activities through questioning, then, even if they considered his activities low profile, this might still result in adverse treatment – see HB at paragraph 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.”
14. An additional difficulty is that the judge made no specific finding as to whether or not the appellant should be considered as someone who had exited Iran illegally. He could not, therefore, discount that the appellant had exited illegally. Yet the only treatment of this as a possible factor was at paragraph 89 where the judge simply stated that “even if” the appellant had exited illegally he would not be at risk (but that was on the basis that he was merely a returnee of Kurdish ethnicity).

15. For the above reasons I set aside the decision of the judge for material error of law.
16. **I conclude that the case should be remitted to the FtT (not before Judge Hatton).**
17. Mr Azimi submitted that I should preserve the positive findings made by the judge regarding his involvement in demonstrations and his Facebook activity. I am not prepared to do so. It would amount to picking and choosing. Subject to one proviso, the case requires assessment of the appellant's account as a whole and needs to be heard de novo. The proviso concerns the respondent's acceptance that the appellant was a KDP supporter. Given that Mrs Aboni did not seek before me to resile from that position, I consider that the next Tribunal should treat that as an accepted fact.
18. An anonymity direction is made.

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

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.

Signed

Date: 15 January 2020



Dr H H Storey
Judge of the Upper Tribunal