



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005276

First-tier Tribunal No: PA/00342/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 18th of January 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

Mr AA
(ANONYMITY ORDER MADE)

Appellant

v

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K. Wood, IAS

For the Respondent: Mr A. Tan, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 7 December 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant is a national of Iraq whose appeal came before the Upper Tribunal for an error of law hearing on 23 August 2023.
2. In a decision and reasons promulgated on 3 October 2023, I found that the First-tier Tribunal Judge had erred at [17] in finding there was no evidence that the authorities in the KRI monitor facebook and the hearing was adjourned to consider one sole issue, which was the risk to the Appellant on return, as a consequence of his *sur place* political activities, including the use of social media.

Hearing

3. At the hearing before the Upper Tribunal, Mr Wood, on behalf of the Appellant, confirmed that he was not seeking to call any oral evidence and would proceed on the basis of submissions only. He sought to rely on a bundle of evidence submitted three days prior to the hearing rather than the five working days, for which there had been provision and made a Rule 15(2A) application seeking to adduce this evidence. There was no objection from Mr Tan in relation not admitting this evidence so given that it would assist all parties, I agreed to admit the evidence two days late.
4. Mr Wood submitted that, firstly, the Appellant is genuine and sincere. He sought to rely on the Appellant's witness statement at page 203 of the consolidated bundle. As to his attendance at demonstrations in London outside the Iraqi Embassy, he submitted there was nothing implausible or incredible about that.
5. The Appellant has attended various demonstrations and there are photographs of the Appellant attending demonstrations in 2021 and 2022. At page 382, there is a photograph of the Appellant attending a remembrance demonstration on 5 May 2022, which is consistent with his political opinion and the original evidence before the First-tier Tribunal at page 372 of the bundle, in the form of social media Facebook posts. Mr Wood submitted that this was consistent with the Appellant's views, stated intentions and aims and issues in relation to freedom in the IKR. Consequently, his first submission was that the Appellant's activities were genuine. He submitted that if that is established, the next point to consider would be whether, if the Appellant were to be returned to the IKR, he would continue his political opinion and whether, if so, there would be a risk to him of persecution.
6. Mr Wood sought to rely on page 460 of the consolidated bundle, which contains an index of key passages to the bundle. That includes reference to the fact that the IKR authorities harass and intimidate activists who profess their opinions via social media and the internet. At page 461 there was reference to false accounts being used online by various actors to intimidate and spread false information and also to journalists and activists.
7. Mr Wood submitted, in relation to detention conditions within Iraq and the IKR, if there was a real risk the Appellant would be detained then there would be a real risk of a breach of Article 3 of ECHR. Mr Wood submitted that the evidence the Appellant had before the First-tier Tribunal was quite thin, but there was, in the light of the additional evidence, a greater wealth of evidence about the monitoring of online activities and activists, see for example page 464, which refers to civil society activists' pages being monitored and them having issues as a result of posting on Facebook.

8. Mr Wood submitted there was a real risk for the Appellant, as a consequence of his activities over a number of years and his imputed political opinion.
9. In his submissions, Mr Tan submitted that a large part of the Appellant's claim relies on evidence of monitoring by the authorities in the IKR, but that this was a broad concept in that there was a spectrum of activities, at one end widescale monitoring, proactive online searches, but then further down the spectrum you have authorities searching one lead or another. Mr Tan submitted the evidence falls short of widespread monitoring and more towards interest being shown by the authorities where people's activities have been brought to their attention in the first place.
10. Mr Tan submitted there were three sources of objective evidence in the bundle. Firstly, the Home Office CPIN "*Opposition to the government in the IKR*" issued in July 2023, which at section 3.1.2 sets out in the context of protests in the IKR those who are not at risk and those who are at an elevated risk, see for example at 14.1.1 and 14.1.2 which concerns people such as journalists and bloggers and those who have their own websites setting out their own views. He submitted, even at its highest, the Appellant's case does not fall within those categories and that a person with little to no profile online, such as just a Facebook page, would present a vast, significant task for any widescale monitoring.
11. Secondly, Mr Tan referred to the US State Department Report, which he submitted finds that people with little or no profile would not be monitored without the authorities having been informed about them in the first place.
12. Thirdly, Mr Tan sought to rely on the Freedom House report, October 2023, Section B1, which refers to state blocking or filtering of content and blocking access to various websites and Section B2, which considers the issue of forcing content and draft regulations to remove online content. He submitted that it was unclear what the Ministry of Interior could do based on people reporting to the authorities and the focus there was on journalists and news outlets being made to take down content. Mr Tan submitted it was reasonable to assume that the authorities were informed as to the content in the first place, in order to take down that material. Section C3 of the same report focusses on journalists, activists and those with a significant number of followers and C5 of the report, which relates to state surveillance, states that Iraqi state authorities generally lack electronic devices and access, which means it is unlikely they have the means to monitor the activities of suspected political opponents and activists.
13. Mr Tan concluded that, at best, the Appellant's activities could be looked into and pursued but there was a significant gap between that and showing that the authorities had the ability to monitor people on a widespread or widescale basis. Mr Tan submitted in this Appellant's case there was a selection of facebook posts in the material from 2021 but this was more of a snapshot. The facebook page was not in his full name. He was not prolific. Some posts were only shared with friends on the Facebook platform, which can be seen by the symbol of two heads.
14. Mr Tan sought to rely on XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 00023 (IAC) as guidance on social media at (5) to (9) of the headnote. The Upper Tribunal there found that posts can be uploaded and removed on the same day. The ability to view material can be opened and closed at will and there is a clear limit to what can be applied to Facebook. He submitted little weight could be applied to this material. Mr Tan submitted this

also has to be considered in the context of the findings made by the First-tier Tribunal Judge, which have been preserved. The Appellant did not claim to have had any affiliation or activity before he left Iraq, nor had he joined any political organisation since he left. There was no indication that he was affiliated to any online organisations. Essentially there was very little evidence on this particular point and all the Appellant had done was attend a few demonstrations.

15. In his first witness statement, the Appellant referred broadly to a view that there was an absence of journalists in Kurdistan. Mr Tan submitted it was fairly remarkable that he did not hold or propagate that view whilst in Iraq. Mr Tan submitted that the evidence shows that since the Appellant was refused asylum in May 2020 that his *sur place* activities began in October of that year, yet the Appellant had arrived in the UK in March 2019 but had only made a *sur place* claim after he had been refused asylum, which he submitted did not demonstrate genuine political belief. Mr Tan further submitted in relation to the Facebook posts that they lacked any level of engagement.
16. There is no way of knowing who the Appellant was engaging with or where those people are and he submitted this was relevant to a point made in *XX (PJAK)* that there was nothing to show what might excite the attention or attract the attention of the authorities and there was nothing in the Appellant's evidence to show that his specific activities and views had come to the attention of the authorities in the IKR. He sought to rely on [73] to [81] of *XX (PJAK)*. He submitted that, in any event, given the Appellant's full name did not appear on Facebook, how would the authorities be able to target him or search for him or identify him?
17. In relation to his attendance at demonstrations, the Appellant is simply a participant not an organiser and in relation to risk on return Mr Tan submitted that there is a distinct difference between how the authorities treat returnees: see *SMO & KSP* (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC).
18. Mr Tan submitted there was no evidence of extensive interrogation on return and no reason why this Appellant would be identified and be at risk on account of his *sur place* activities.
19. In reply, Mr Wood submitted that in *WAS* (Pakistan) [2023] EWCA Civ 894 the Court of Appeal urged caution in taking an adverse view of an Appellant's account just on the basis of general adverse credibility findings and it was necessary to be cautious, given that credibility is not a seamless role.
20. Mr Wood submitted that there was no evidence as to the point that the Appellant did not seek to express his view with regard to dissatisfaction with the authorities in the IKR. There was background evidence as to the repercussions if he had undertaken such an activity.
21. Mr Wood submitted that, if the Upper Tribunal found that the Appellant's activity was genuine, the question is what he does and why does he do it. Mr Wood submitted the Appellant fears that he would be subjected to detention and mistreatment by the authorities. Mr Wood highlighted page 462 of the consolidated bundle the extract from the Freedom House report, which sets out that the Iraqi IKR authorities had obtained Pegasus spyware software in 2021, which they use and surveillance evidence was also obtained in order to monitor

individuals such as this Appellant. Mr Wood warned against relying on the absence of political party membership given that this led the original Tribunal Judge into error in finding against the Appellant on this basis. Mr Wood submitted it matters not whether the Appellant is a particular actor. The background evidence shows he would be at risk on return.

22. Mr Wood further sought to rely on the Home Office CPIN October 2023, but noted in relation to the possession of the INID card that the First-tier Tribunal Judge's findings were preserved, that the Appellant was in contact with his family and could obtain an INID through them. However, he sought to rely on paragraph 5.1.3 where Dr Fatah found that as a returnee, the Appellant's personal information would be cross-checked with the security services and there is a pinch point given that the Appellant would be scrutinised on return and that would give rise to a real risk of persecution.
23. I reserved my decision, which I now give with my reasons.

Decision and reasons

24. Regrettably there was no updating statement by the Appellant, who was not called to give evidence. His most recent social media posting appears to have been on 19 August 2023 [AB 187] which provides: *"Again, through PDK and PUK, killing, cutting, stealing, and mafia is continuing, now this person was killed in Rania."* There are photographs of the Appellant attending a demonstration at AB 189 although it is unclear when this was. The date of 22 January 2023 appears elsewhere on the same facebook page. The Appellant's statement of 2 December 2020 provides: *"While I have been in the U.K, I have attended a demonstration in London, outside the Iraqi embassy. This was on 1st October 2020. The demonstration was about Kurdish freedom. There is no freedom for us in Kurdistan, they are always catching journalists and killing people. I wanted to attend this demonstration about freedom and equality because it is what I believe in. I have also posted on my Facebook, things that are critical about the Kurdish authorities, the current leader of the KDP, and the authorities in general. I fear that the authorities of both the PUK and the KDP will target me for having done this."*
25. In the absence of any further evidence I accept that the Appellant has attended demonstrations and continues to post on facebook although not with great frequency based on the evidence before me and I accept Mr Tan's submission that the Appellant is not prolific.
26. I also accept that those who are identified by the authorities as a suspected political opponent as a consequence of their online activities eg journalists and activists are at risk of routine arrest and detention: see the Freedom House report 4.10.23 at page 42. There is also reference in the same report at page 45 to activists and journalists having been killed for their online content in recent years. The United States State Department Report for 2022 dated 20.3.23 states that amongst the significant human rights issues taking place in Iraq include credible reports of: unlawful or arbitrary killings, including extrajudicial killings by the government; forced disappearances by the government; torture and cruel, inhuman, and degrading treatment or punishment by the government; harsh and life-threatening prison conditions; arbitrary arrest and detention (page 143) and at page 145 that certain units of the KRG internal security services operate with impunity.

27. Despite the fact that XX (PJAK) concerns Iran not Iraq, I have taken account of the sections intended to be of general application which provide as follows at [5]-[9]:

“Guidance on Facebook more generally

5) There are several barriers to monitoring, as opposed to ad hoc searches of someone's Facebook material. There is no evidence before us that the Facebook website itself has been "hacked," whether by the Iranian or any other government. The effectiveness of website "crawler" software, such as Google, is limited, when interacting with Facebook. Someone's name and some details may crop up on a Google search, if they still have a live Facebook account, or one that has only very recently been closed; and provided that their Facebook settings or those of their friends or groups with whom they have interactions, have public settings. Without the person's password, those seeking to monitor Facebook accounts cannot "scrape" them in the same unautomated way as other websites allow automated data extraction. A person's email account or computer may be compromised, but it does not necessarily follow that their Facebook password account has been accessed.

6) 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.

Guidance on social media evidence generally

7) Social media evidence is often limited to production of printed photographs, without full disclosure in electronic format. Production of a small part of a Facebook or social media account, for example, photocopied photographs, may be of very limited evidential value in a protection claim, when such a wealth of wider information, including a person's locations of access to Facebook and full timeline of social media activities, readily available on the "Download Your Information" function of Facebook in a matter of moments, has not been disclosed.

8) It is easy for an apparent printout or electronic excerpt of an internet page to be manipulated by changing the page source data. For the same reason, where a decision maker does not have access to an actual account, purported printouts from such an account may also have very limited evidential value.

9) 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.”

28. I do not find this guidance of particular assistance given that Mr Tan did not dispute the genuineness of the Appellant's facebook account and no issue arose

in respect of the fact that it remains operational and has not been closed. Mr Tan drew attention to [73]-[81] of the decision in XX (PJAK):

“Facebook accounts: their characteristics, publicity and permanence

73. Facebook accounts are free to use, funded by targeted advertising and the monetary value of personal data that its users choose to share on, and with, Facebook. It numbers billions of the world's population amongst its users (see §49 above). People over specified ages, depending on the country in which a user is based, can register on the site and create a personal profile of themselves. The required age for users in the UK is currently 13.

74. Creation of a Facebook account requires a prospective user to visit a Facebook registration and account set-up page and provide their details, which include: their name; email address or telephone number; a password; birthday and gender. While users are required to add these details, the veracity or accuracy of someone's identity are not routinely checked and other than the need for an accurate email address, false or inaccurate details may be provided either to disguise someone's identity, or for example, to avoid restrictions around people's ages.

75. Once a Facebook account has been created, a user may search Facebook or already have the details of someone they know is a user of Facebook and then invite them to become a "friend"; or similarly may receive "friend" requests. By means of that network of "friends", who may or may not know each other well, or not at all, people may share photographs; provide details of their activities; their locations; add "posts" on their own or others' "pages"; "like" posts of another user; or name and "tag" a friend in a photograph, provided that friend is content to be tagged.

76. As well as being able to accept and make friend requests, there are also Facebook "groups," which may either be public or private in nature and which allow users to share a common interest. Clubs, societies and political groups may all have "groups" on Facebook. The UK's parliament has its own public Facebook account. In summary, much material is available on Facebook to anyone with a Facebook account, regardless of whether they are "friends" with someone or not.

77. We turn to the question of publicity, in two senses: first, the extent to which material published on Facebook can be monitored; and second, how a person might generate interest on Facebook, i.e., how much publicity they might receive.

78. There are several barriers to monitoring, as opposed to ad hoc searches of someone's Facebook material. First, there is no evidence before us that the Facebook website itself has been "hacked," whether by the Iranian or any other government. Indeed, the apparent continued use of "phishes" tends to confirm the lack of access to data except through individual users' accounts.

79. Second, the effectiveness of website crawler software is limited, when interacting with Facebook. Someone's name and some details may crop up on a Google search, if they still have a live Facebook account, or one that has only very recently been closed; and provided that their Facebook settings or those of their friends or groups with whom they have interactions, have public settings.

80. *The ability to extract further information, if the account remains open, will depend on the routes outlined by Dr Clayton. If someone has public Facebook settings, it requires going through their various posts. If they have private settings, another option is to identify friends with whom the target's material is shared and who have public settings. Alternatively, there is the route of having a "friend request" accepted by the target.*

81. *Finally, and most fruitfully, there is the option of trying to obtain the target's Facebook password, either from them (because they are required to disclose it under compulsion); or through clandestine means such as a phishing attack. It is only by obtaining someone's password that a "DYI" process can be completed with moments, which contains the broad range of someone's Facebook data. Even then, multiple DYI accesses may trigger the intervention of Facebook."*

29. There is no evidence before me to show that the IKR authorities are able to hack facebook or that they are monitoring this Appellant's facebook activity. The available evidence provides:

"Freedom House, Freedom on the Net 2023 - Iraq, 04 October 2023 at page 44:

In July 2021, the Washington Post and other outlets reported Iraqi citizens were among those who may have been targeted with Pegasus, spyware produced by the NSO Group of Israel. Then president Barham Salih's phone number was among those that appeared in a list of potential targets. [208] KRG prime minister Masrour Barzani was also allegedly targeted; people with ties to the United Arab Emirates had reportedly infected Barzani's phone with Pegasus and surveilled him for over a year. Individuals close to Barzani, including a security adviser, may also have been targeted. [209] Several journalists and activists were also believed to have been targeted with Pegasus in recent years. [210]

Authorities may have purchased spyware from vendors outside Israel. According to a former KRG intelligence service member, spyware was purchased from Italy in 2021. Surveillance technology was also purchased from the Chinese company Xiaomi. [211]

And at page 45:

"Activists and journalists have been killed for their online content in recent years. In October 2021, activist Haider Muhammad was found dead under suspicious circumstances. Prior to his death, Muhammad had questioned the integrity of that month's elections on social media. According to local media, his murder was related to a specific Facebook post, which depicted supporters of some political parties as sheep, that he had shared a few days before his death."

30. I find that whilst the technology to undertake surveillance of Iraqi citizens does exist, there is no evidence that this has been utilised either to undertake surveillance of Iraqi citizens, in particular those from the IKR who are resident abroad or this particular Appellant. Mr Tan submitted and I accept that the evidence when read as a whole would suggest that the authorities target journalists and activists. I do not find on the basis of the evidence that this Appellant is an activist who would have attracted the attention of the IKR authorities.

31. Mr Wood sought to rely on the most recent Home Office CPIN October 2023 on internal relocation, civil documentation and returns at 5.1.3 which provides *inter alia*:

“5.1.3 The Inspection Report on Country of Origin information, Iraq and Myanmar (Burma) undertaken by the Independent Chief Inspector of Borders and Immigration (ICIBI), published June 2023 (ICIBI report June 2023), quoting Dr Rebwar Fateh, an expert witness on the Middle East, stated:

‘If a failed asylum seeker is returned to Iraq without an ID document, they will be detained at the airport.

a) The returnee will then be interviewed to give some indication of whether they are from their claimed governorate or region (through dialect, accent etc.). From the returnee’s Kurdish or Arabic dialect, the officer will be able to tell whether the returnee is from Iraq or not.

b) At this time, the returnee’s claimed name and address will also be cross referenced against suspect names in possession of the security services.”

32. (b) is the “pinch point” referred to by Mr Wood, however, this presupposes that the Appellant has already been identified by the authorities as a person of interest. For the reasons set out above, I find there is insufficient evidence to show that the Appellant will have been identified as a suspect person simply by virtue of a handful of facebook posts and occasional attendance at demonstrations, whilst residing in the United Kingdom. The finding by the First tier Tribunal judge that the Appellant could contact his family for assistance in obtaining an INID on return was preserved and thus no issues arise for consideration in respect of documentation.
33. For the avoidance of doubt, the Appellant’s case before me was not put on the basis that he would continue to attend demonstrations or post comments on facebook criticising the IKR authorities if he were to be returned to Iraq.
34. I find, even applying the lower standard of proof applicable ie a reasonable degree of likelihood, that the evidence before me for the reasons set out above does not show that the Appellant would be identified by the IKR authorities as a political opponent. Consequently, he cannot demonstrate that he has a well-founded fear of persecution on return to Iraq/IKR.

Notice of Decision

35. The appeal is dismissed.

Rebecca Chapman

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 January 2024