



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

Case No: UI-2024-001894

First-tier Tribunal No: PA/50072/2023  
LP/01709/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 4 July 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GRIMES**

**Between**

**H A**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr P Georget, counsel, instructed by Barnes Harrild & Dyer Solicitors

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**Heard at Field House on 11 June 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 the appellant. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

Introduction

1. The appellant appeals, with permission granted on 29 April 2024 by First-tier Tribunal Judge Chowdhury, against the decision of First-tier Tribunal Judge Chinweze promulgated on 31 December 2023.

## Factual Background

2. The appellant, aged 23 (date of birth 25 December 2000), is a national of Iraq, of Kurdish ethnicity. He arrived in the UK in April 2017 and claimed asylum on 30 May 2017. On 28 August 2019 the respondent refused the appellant's claim. His appeal to the First-tier Tribunal was dismissed by First-tier Tribunal Judge Cary on 22 October 2019 and permission to appeal to the Upper Tribunal was refused by the First-tier Tribunal and Upper Tribunal. The appellant made further submissions on 17 June 2021, the respondent rejected these submissions on 23 November 2022 and the appellant appeals against that decision.
3. In summary the appellant claims that his brother was killed by ISIS in 2014 and his father disappeared in December 2016 while working on a building site. He claims that the family were told that the building was demolished by Daesh/ISIS. The appellant claims that his father worked for the Ba'ath regime and supported Saddam Hussein. The appellant claims that he fears that he would be targeted following the death of his father and brother. The appellant claims that he is at risk on return as a result of his *sur place* activities.

## The decision of the First-tier Tribunal

4. The First-tier Tribunal Judge took the findings of Judge Cary as the starting point in accordance with the decision in Devaseelan [2002] UKIAT 00702. Judge Chinweze found no reason to depart from the previous judge's findings that the appellant had not demonstrated that his father was involved with the Ba'ath regime or was an active supporter of Saddam Hussein as claimed; that the appellant had not established that local people threw stones at his home because of his father's support for Daesh; that his father was abducted by Daesh in December 2016; and rejecting the appellant's claim that he experienced any problems in Iraq in Iraq with Daesh, Hash d' Al Shaabi or the local population generally.
5. The judge considered the appellant's claimed risk from *sur place* activities, considering his evidence of posts from his Facebook account and of attendance at demonstrations. The judge concluded that the Facebook posts are relatively few in number and there is no evidence that the appellant has played a role in organising or coordinating the demonstrations he attended or that he is any official role with any organisation that is critical of the government in Iraq, the Kurdistan regional government, or any Shia militia groups. The judge found that the appellant's *sur place* activities are not genuine and have been undertaken to avoid removal.
6. The judge went on to find that the appellant is not at risk of persecution given his lack of political activity in Iraq prior to his departure, his insignificant political profile and the nature of his Facebook posts. He found that the appellant can delete his posts before returning to Iraq and will not be identified and targeted upon his return. The judge did not depart from the findings of Judge Cary that the appellant still has family in Iraq who can vouch for him and secure necessary documentation and a CSID to enable him to function on return and make his way back to be reunited with his family. The judge dismissed the appellant's appeal on asylum, humanitarian protection and Article 8 grounds.

## The grounds

7. It is contended in ground one that the judge erred in his consideration of the appellant's social media activity. It is contended that, contrary to the judge's finding that the appellant had failed to provide his full timeline through the 'Download your information' function, the appellant had, in fact, provided that evidence after the stitched bundle had been uploaded. It is further contended that the judge erred in finding that the appellant can delete his posts before returning to Iraq when that was never put to him in evidence.
8. It is contended in ground two that the judge erred in finding that the appellant would be able to obtain his *original* CSID from family members in Iraq as this differed from the finding previously made by Judge Cary that the appellant will be able to obtain a *replacement* CSID from his local CSA office. It is contended that the judge's reasoning is therefore insufficient in light of the changing country guidance since the decision made by Judge Cary.
9. Permission to appeal was granted on ground one only. Judge Chowdhury considered it arguable that the judge made a mistake in failing to take into account evidence of the appellant's full Facebook timeline through the 'Download Your Information' function. She also considered it arguable that the judge erred in finding that the appellant could delete his posts before returning to Iraq if that contention was never put to the appellant.
10. Judge Chowdhury refused permission in relation to ground two (mistakenly referred to as ground 3 in the permission decision) on the basis that there is no material error as both judges found that the appellant has family in Iraq who could vouch for him and help him redocument in Kirkuk and that the judge gave reasons why he found that the appellant was not credible in stating that his mother had left the country.
11. The respondent did not file a Rule 24 response.

#### Decision on error of law

12. At the hearing Mr Georget accepted that permission had been granted on ground one only and did not pursue ground two.
13. Mr Georget accepted that he could not say that the full 'Download Your Information' information was before the judge. I note that on 11 December 2023, in advance of the hearing, the appellant uploaded the appellant's 'facebook wall print out' (24 pages) and his 'facebook activity log' (10 pages). There is no full 'Download Your Information' function pages within these documents or elsewhere in the papers before the judge. The judge referred to these documents at paragraph 2 of the decision and considered these documents at paragraphs 39-43 of the decision. Therefore the judge did consider all of the evidence as to the appellant's Facebook activity before him.
14. Mr Georget accepted that the credibility findings were not challenged and submitted that risk can occur regardless of the appellant's motives. He accepted in his final submissions that he could not submit that there was any unfairness to the appellant.
15. Mr Georget submitted that the main issue was therefore the judge's finding that the appellant could close his account. He relied on headnote 9 in XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 00023 (IAC) and submitted that the judge failed to consider whether a search could uncover a deleted account.

He submitted that the decision maker can consider whether the appellant could close his account and that this is factual inquiry on each case. He submitted that judge's consideration of this matter at paragraph 48 is speculative as the issue was not explored at the hearing. In his submission the judge did not undertake the factual inquiry required.

16. The matter of the potential deletion of the posts or closing of his Facebook account was not raised in the reasons for refusal letter. The appellant did not address this issue in his witness statement.

17. In the respondent's review (before the First-tier Tribunal) the respondent cited, *inter alia*, paragraph 9 of the headnote of XX and made the following submission at paragraph 11;

“As it is not accepted that the views expressed in the Facebook account are genuinely held by Appellant, there is no reason why he would be unable to take down his Facebook posts before returning to Iraq; paragraph 129 of XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 23 (IAC) is relied upon to support this proposition.”

18. At paragraph 48 of the decision the judge dealt with this issue as follows:

“As I am satisfied the appellant's Facebook activity is not genuine, he can delete his posts before returning to Iraq. As he has a low political profile, I do not consider there will any chance of him being identified and targeted in Iraq on his return.”

19. Mr Georget relied on paragraph 129 of XX where the tribunal said:

“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.”

20. The issue is therefore whether the judge erred in reaching the conclusions he did without the matter being specifically addressed at the hearing.

21. I accept Mr Clarke's submission that, as this issue was raised in the respondent's review, it was a matter before the judge. The appellant chose not to lodge a supplementary statement or to give oral evidence on this matter.

22. The judge found at paragraph 47 that the appellant's *sur place* activities are not genuine. He found:

“I am satisfied the appellant's *sur place* activity is not genuine and has been undertaken to avoid removal. I accept that *sur place* activity that is not genuine may still put an individual at risk of persecution depending on the attitude of the authorities in their home country. However, I do not consider the appellant

falls into this category, given his lack political activity in Iraq prior to his departure, his insignificant political profile and the nature of his Facebook posts.”

23. This finding was open to the judge on the evidence before him and was not challenged in submissions before me. It is clearly in the context of this finding that the judge went on to find that the appellant can delete his posts before returning to Iraq.
24. In conclusion, in light of the fact that this issue was raised in the respondent's review and not challenged by the appellant at the hearing, and in light of the judge's findings as to the credibility of the appellant's *sur place* activities and his background, the judge's finding that the appellant can delete his Facebook posts before returning to Iraq was a finding open to him on the evidence. That finding was not in my view speculative as it was based on the findings as to the credibility of the appellant's activities and discloses no unfairness.
25. The grounds are not made out.

**Notice of Decision**

26. The decision of First-tier Tribunal Judge did not involve the making of an error of law and I uphold it.

A Grimes  
Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**3 July 2024**