



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

**Appeal Number: PA/08240/2018**

**THE IMMIGRATION ACTS**

**Heard at Manchester CJC**

**On March 4, 2019**

**Decision &  
Promulgated**

**On March 7, 2019**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**MR EBRAHIM [K]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Mottershaw, Counsel, instructed by Barnes Harrild & Dyer Solicitors

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

Interpreter: Mr Zada

**DECISION AND REASONS**

1. The appellant, an Iranian national, claimed to have arrived in the United Kingdom on June 30, 2010 and he claimed asylum the following day. The respondent rejected his application but granted him discretionary leave to remain as a minor until December 22, 2010.

2. The appellant applied in time for further leave to remain, but this was refused by the respondent on January 14, 2011. He appealed this decision to the First-tier Tribunal and his appeal came before Judge of the First-tier Tribunal Wilson and in a decision promulgated on March 10, 2011 the Judge rejected his application and subsequent applications for permission to appeal were refused.
3. Further submissions were lodged, and this led to a consent order on March 21, 2018 when the respondent agreed to reconsider those submissions relating to sur place activities.
4. The respondent refused this application for protection on June 20, 2018 and on June 29, 2018 the appellant appealed under Section 82(1) of the Nationality, Immigration and Asylum Act 2002.
5. An appeal was heard by Judge of the First-tier Tribunal Bannerman on August 9, 2018 and in a decision promulgated on October 31, 2018 he dismissed the appellant's appeal.
6. Permission to appeal was sought on November 8 and on November 21, 2018 Judge of the First-tier Tribunal Hodgkinson granted permission to appeal.
7. At an earlier hearing on January 22, 2019 Mr Bates, Senior Home Office Presenting Officer, accepted that the Judge had not provided satisfactory reasoning for rejecting the sur place activity claim. Mr Bates accepted that the Judge had not fully engaged with the guidance issued in AB and Others (Internet activity - state of evidence) Iran [2015] UKUT 0257 and following the more recent decision of HB (Kurds) CG [2018] UKUT 430 he accepted the Judge should have attached more weight to the issue of his Kurdish ethnicity, when considering risk on return.
8. Having accepted there was an error in law, I adjourned the appeal due to the lack of an interpreter being present and the fact that the previous decision dated back to August 2018.
9. I preserved the findings given by the FTT Judge Bannerman set out in paragraphs 49 to 54 and directed that the resumed hearing would hear additional oral evidence as to whether there had been any further activity as well as oral submissions on the risk on return facing the appellant having regard to relevant case law and country evidence.
10. Since the last hearing the appellant's solicitors have lodged additional evidence as follows:
  - (a) A statement in which he reiterated he used Facebook to advertise his activities and he believed in what he wrote and that he would not delete his account.
  - (b) Evidence from his Facebook account of more recent activities (with translation).

11. No anonymity decision is made.

### **PRELIMINARY MATTERS**

12. I raised with the representatives the new Facebook evidence. Neither representative had compared the recent bundle of evidence to the appellant's live Facebook account. A cursory check of his Facebook profile, in court, revealed that only his own posts appeared on his profile.
13. Other posts made by Adnan Dastyar, and included with the new evidence, did not appear on the appellant's public Facebook profile but were viewable on Adnan Dastyar's profile and such posts "tagged" the appellant. As long as the appellant was on Facebook his name would be visible on such posts.
14. Mr McVeety indicated that he accepted the appellant had posted but would be arguing motive.

### **ORAL EVIDENCE**

15. The appellant adopted his recent statement and confirmed the pictures on page 6 were of him and others attending a demonstration on February 10, 2019 outside the Iranian Embassy. He stated that his friends shared his posts and he had 423 Facebook friends.
16. Under cross-examination he maintained he would not delete his Facebook account as he believed in what he had posted. If he did delete his account, he believed that his shared posts would remain, and that people would know what he had been doing from his posts.

### **SUBMISSIONS**

17. Mr McVeety invited the Tribunal to dismiss his appeal. The issue to be considered was what would happen if the appellant were returned. There were two limbs to his sur place activities namely his attendance at demonstration and his Facebook posts. FTT Judge Bannerman found he was not a credible witness and those core findings had been preserved. HJ (Iran) was not a liar's charter and if he was not genuine objector he could close his Facebook account down. The Tribunal had already found he had not come to the attention of the authorities in Iran so unless there was something that brought him to the attention of the authorities the only remaining risk factors were:
  - (a) He was a Kurd.
  - (b) He had left illegally.
  - (c) He had claimed asylum.

18. If the appellant closed his Facebook account, he submitted there was no evidence to support the appellant's claim that his posts would remain anywhere on Facebook.
19. The FTT Judge had found he was neither an organiser nor a leader at demonstrations and there was no evidence the authorities used facial recognition outside their Embassy. Taking his case its highest, the appellant may have been seen by someone outside the Embassy but as he had no profile from Iran they would not know who he was. The only risk factor was he is a Kurd but being Kurdish was not enough albeit it was a factor to take into account. He invited the Tribunal to reject his appeal.
20. Miss Mottershaw invited the Tribunal to allow the appeal. She adopted her skeleton argument and submitted that following the case of HB being Kurdish and a failed asylum seeker meant he would be subject to heightened scrutiny on return especially as he had left illegally and had been absent from Iran for some time. Taking into account his online activity and his attendance at demonstrations she submitted the appellant would face a real risk of persecution.
21. If his Facebook account was not deleted, then it would be discovered on return as he would be subject to heightened questioning. Even if the account was deleted, she submitted it was reasonably likely the account would come to the attention of the authorities as he will be identified at a pinch point and questioned. The appellant had continued to attend at demonstrations and Miss Mottershaw submitted the authorities monitored both the internet and demonstrations and she submitted it was not fanciful to suggest he would be of interest. Whether he deleted his Facebook account mattered little because he was linked to other activists online.
22. She invited me to allow the appeal.

### **FINDINGS**

23. When this appeal came before Judge Bannerman, he was concerned only with the appellant's sur place activities. In finding an error in law I preserved a number of his findings which followed on from the previous findings of Judge Wilson. Both Judge Bannerman and Judge Wilson found the appellant had given an account that was lacking in credibility and was implausible. They both rejected his claim that he had undertaken activities against the state in Iran. His activities in the United Kingdom and any possible risk on return had to be looked at against the background that the appellant was not of any interest to the Iranian authorities prior to leaving Iran.
24. I have to consider whether he would be at risk of persecution having regard to the following factors:
  - (a) His social media activity.
  - (b) His attendance at demonstrations.

- (c) The fact he is a Kurd.
  - (d) He left Iran illegally, He would be returned as a failed asylum seeker.
25. The additional Facebook evidence provided for the resumed hearing was limited in that since appearing before Judge Bannerman on August 9, 2018 he had personally posted three messages on Facebook.
  26. His first post dated back to November 26, 2018 but did not appear to be a political comment. His second post on February 10, 2019 contained a number of photographs of a demonstration that had taken place outside the Iranian Embassy the same day and his picture appeared in one of the photographs. That post had been “liked” by 48 people and there were 52 comments albeit the details of those comments were not provided. The most recent post was from February 20, 2019 in which he shared a picture and commented that many Kurdish citizens had been arrested by the Iranian security forces in January 2019 and that on average two people were arrested every day. 13 people had “liked” this post and three people had commented on it albeit their comments were not provided.
  27. Other posts attributed to Adnan Dastyar were political in nature and whilst they were not viewable on the appellant’s public Facebook profile they did referred to his name.
  28. These additional Facebook posts do not, in my opinion, alter the views expressed by Judge Bannerman in paragraph 51 of his decision. Miss Mottershaw did not seek to persuade me that the appellant was either a leader or an organiser of any demonstrations and again there was nothing contained in the new evidence that would detract from the finding made by Judge Bannerman at paragraph 52 of his decision.
  29. It was put to the appellant by Mr McVeety that he could simply delete his Facebook account and there would be no risk to him as the deletion of his account would remove his social media presence. The appellant claimed that anything he had shared would still remain but there was no expert evidence to confirm that would be the case and it seems logical that if his account is removed then any posts he has made would similarly be removed. Deletion of his account would remove his social media presence and there would be no risk to the appellant unless the posts had already been viewed or screenshot by the Iranian authorities.
  30. Miss Mottershaw submitted that these activities taken together with his ethnicity, illegal exit and failed asylum status would place him at risk.
  31. Dealing with his Facebook account I find the following:
    - (a) The appellant is entitled to open and operate a social media account.
    - (b) His personal posts were viewable by the general public.

- (c) His posts on his Facebook account opposed the government and it is arguable that if he did not delete the account and on return he disclosed the existence of his account and password to the authorities then this could create an actual or implied adverse profile.
  - (d) Since the previous hearing in August 2018 he has only posted two personal messages of a political nature on Facebook and both those were in February 2019-shortly before this hearing. It was previously found that he had created his Facebook account to enhance a protection claim and in such circumstances, it would not necessarily breach the HJ (Iran) principle to expect him to delete his Facebook account.
  - (e) The fact he had shared posts would not automatically create a real risk in light of the fact that the deletion or closure of his account would have the automatic effect of deleting such posts although I accept a deletion of the account would have no impact if the entries had been screen printed or converted into another format or had been seen by the authorities.
32. The appellant was neither a blogger nor a journalist nor an online activist. His claim about his activity in Iran was previously rejected (on two occasions) and he would not have been of any interest to the authorities in Iran before he came here. It was not reasonable likely the authorities would have been monitoring him.
33. The decision of AB is not an authority that persons returning to Iran, otherwise than with a regular passport, and who had anti-government Facebook accounts would be at risk. Recently, the Court of Session in EZ and SSHD [2017] CSOH 30 repeated the fact that AB was not a country guidance case.
34. It is not sufficient for the appellant to claim that because he has a Facebook account he would be at risk. The appellant must establish his claim to the lower standard of proof.
35. Whilst I accept the appellant has attended demonstrations and has shared a number of posts he does of course have the option of closing down his Facebook account which would have the effect of removing all the posts he has created. No evidence has been adduced to show the authorities have viewed or have had access to his account or would be able to recover his Facebook account once it has been deleted.
36. He was previously found not to be a genuine opponent of the Iranian authorities and therefore requiring him to close down/delete his Facebook account would not contravene the HJ (Iran) principle.
37. Although he has attended demonstrations, in light of my findings above and following BA (Demonstrators in Britain-risk on return) Iran CG [2011]

UKUT 36 (IAC), I do not find it reasonably likely he would have come to the attention of the authorities.

38. The Tribunal in HB concluded that whilst Kurds in Iran face discrimination the evidence did not support a contention that such discrimination is, in general, at such a level as to amount to persecution or Article 3 ill-treatment. The mere fact of being a returnee of Kurdish ethnicity with or without a valid passport, and even if combined with illegal exit, did not create a risk of persecution or Article 3 ill-treatment. However, Kurdish ethnicity was nevertheless a risk factor which, when combined with other factors, may create a real risk of persecution or Article 3 ill-treatment.
39. However, none of the factors listed in the headnote of HB apply in this case in view of the previous findings. The additional evidence that has been submitted since this matter was last heard by Judge Bannerman does not alter the appellant's political profile or situation. If anything, they add weight to Judge Bannerman's finding that his sur place activity was nothing more than attempt to bolster his protection claim.
40. The Tribunal referred in AB to the "pinch point" and whilst I accept returning the appellant, a Kurd, without a passport is likely to mean the authorities would question him on his return I find that as his claimed opposition to the authorities in Iran was rejected and his sur place activities have been undertaken to enhance his protection claim he would not be required to disclose anything about his deleted Facebook account or his attendance at demonstrations because those beliefs were not genuinely held.
41. In the absence of any evidence suggesting the authorities have the capacity or ability to access deleted accounts or posts, he has since deleted, I find that as he would only be returned as a failed Kurdish asylum seeker who left illegally he would have no adverse profile which would interest the authorities.

### **NOTICE OF DECISION**

42. Having previously set aside the decision, I remake the decision and dismiss the appeal on all grounds.

Signed

Date 05/03/2019



Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT**  
**FEE AWARD**

I do not make a fee award as I have dismissed the appeal.

Signed

Date 05/03/2019

A handwritten signature in black ink, appearing to read "SP Alis". The signature is written in a cursive style with a long horizontal stroke at the bottom.

Deputy Upper Tribunal Judge Alis