



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: PA/11941/2019

THE IMMIGRATION ACTS

**Heard remotely at Field House
By UK Court Skype
On 11 September 2020**

**Decision & Reasons
Promulgated
On 5 October 2020**

Before

UPPER TRIBUNAL JUDGE OWENS

Between

**MN
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: MS Rutherford, Counsel

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

**DECISION MADE PURSUANT TO RULES 34, 39 & 40 (3) OF THE
TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge French sent on 2 April 2020.

2. Both parties agreed that the decision of the First-tier Tribunal involved the making of an error of law for the reasons set out in the grant of permission. They were right to do so.
3. It was procedurally unfair for the judge not to have put to the appellant her concerns about the accuracy or the content of the Facebook material. The presence and content of the Facebook material was significant to the issue of whether the appellant is at risk on return to Iran. The judge also failed to make findings on the extent of the appellant's political activities in the UK. These errors are material to the outcome of the appeal.
4. Further the judge misapplied the law by failing to take into account the headnote in KB (Kurds) Iran CG [2018] UKUT 430 (IAC).
5. This states;
 - “(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) to (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 KRI, what the person 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
 - (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”.
6. The judge's findings at [9] that the appellant was not at risk because she is not a ‘leading figure’ and that her claimed

comments 'were not calling for the overthrow of the government' constitute an error of law because the judge has not applied the guidance in KB correctly.

7. This error is material, because had the judge not misapplied the law, the judge may have come to a different conclusion on the risk to the appellant on return.
8. In the circumstances, the findings as to the appellant's 'sur place' activities and the risk to her as a result of them are fundamentally undermined and unsustainable.
9. In the circumstances, given that none of the findings of fact in relation to the 'sur place' activities can be preserved, the part of the appeal relating to 'sur place' activities will have to be heard again for new findings to be made and for the law to be applied correctly and accordingly it is appropriate to remit the appeal to the First-tier Tribunal.
10. It is agreed by both parties that the findings in relation to events in Iran at [1] to [8] have not been challenged and are preserved, including the findings that the appellant is of Kurdish ethnicity and left Iran illegally; she is not at risk of serious harm on return to Iran by virtue of her sexuality; nor is she at risk of serious harm from her uncle. The only outstanding issue relates to the extent of the appellant's 'sur place' activities in the UK and the potential risk to her on return to Iran because of those activities.
11. Mr Clarke for the respondent raised an issue in that he asserts that the 'sur place' activities constitute a 'new matter' pursuant to s85(5) of the Nationality, Immigration and Asylum Act 2002. It is not for the Upper Tribunal to determine the issue of the 'new matter'. When the remitted appeal comes before the First-tier Tribunal, the issue of the 'new matter' can be dealt with. In the meantime, it is for the appellant to complete the relevant s120 notices and witness statements in relation to her 'sur place' claim and bring the respondent's attention to the 'new matter' prior to the hearing before the First-tier Tribunal.
12. Rule 40 (1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 provided that the Upper Tribunal may give a decision orally at a hearing which I did. Rule 40 (3) provides that the Upper Tribunal must provide written reasons for its decision with a decision notice unless the parties have consented to the Upper Tribunal not giving written reasons. I am satisfied that the parties have given such consent at the hearing.

Notice of Decision

13. The decision of the First-tier Tribunal involved the making of an error of law and is set aside.
14. I remit the appeal to the First-tier Tribunal for a fresh hearing on the 'sur place' issue alone.

Anonymity Order

15. This appeal concerns a claim made under the Refugee Convention. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders, I therefore consider it appropriate to make an order in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Signed

Date: 29 September 2020

R J Owens
Upper Tribunal Judge Owens