



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: PA/12093/2019**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1 February 2021**

**Decision      &      Reasons  
Promulgated  
On 15 February 2021**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**B R (IRAN)  
[NO ANONYMITY ORDER]**

Appellant

**and**

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

Respondent

Representation:

For the appellant: Ms Harleen Masih, Counsel instructed by Braitch Solicitors  
For the respondent: Ms Julie Isherwood, a Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Anonymity order**

*Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of B R who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of him or of any member of his family in connection with these proceedings.*

***Any failure to comply with this direction could give rise to contempt of court proceedings.***

### **Decision and reasons**

1. The appellant appeals with permission from the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 27 November 2019 to refuse him refugee status under the 1951 Convention, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds. The appellant is a Kurdish citizen of Iran, born Muslim but now, on his account, an atheist.
2. It is not disputed now that the appellant has an American Atheist symbol tattooed on his left arm or that his anti-Government raps are, or have been, uploaded to a number of online social media platforms.

### **Mode of hearing**

3. This appeal was heard remotely by Skype for Business. There were some technical difficulties for Ms Masih at the beginning of the hearing, which were resolved with the help of the clerk. All parties were in quiet places, where they were not disturbed.
4. I am satisfied that the hearing was conducted fairly, with the cooperation of the parties.

### **Vulnerability**

5. The appellant has mental health difficulties and is therefore a vulnerable person. He is entitled to be treated appropriately, in accordance with the Joint Presidential Guidance No 2 of 2010: *Child, Vulnerable Adult and Sensitive Appellant Guidance*.
6. No specific adjustments were required for this hearing as he did not give evidence.

### **Background**

7. The appellant was born in Iran in March 1991 and is now almost 30 years old. In Iran, he was a shopkeeper. He was Muslim by birth but claims now to be an atheist, having changed his religious outlook gradually between 2013 and 2015.
8. The basis of the appellant's claim is that he is an atheist and a rapper musician, who recorded anti-Government raps on his mobile phone while in Iran. His phone was lost or stolen and he became aware that his anti-Government raps had been shared on various online platforms (Facebook, YouTube and Telegram).
9. The appellant considered that he was at risk and he left his home town. After he left, his account is that his home was raided by the police, who

confiscated his computer and some SIM cards. His brother was taken to the police station and questioned about the appellant's whereabouts, on two occasions.

10. On 13 October 2015, having heard what happened in his home, the appellant left Iran. He spent time in Iraq and Turkey on his journey, before making an asylum claim in Germany, which was unsuccessful. The appellant travelled through France to the United Kingdom. He arrived in the United Kingdom on 26 March 2019, then aged 28, and claimed asylum on arrival.
11. In her refusal letter of November 2017, the respondent accepted that the appellant was an Iranian citizen of Kurdish ethnicity and that he had left Iran illegally. She did not accept that he was an atheist as claimed, or that he had rapped about the political situation in Iran, leading to his music being shared online, or that his raps drew adverse attention from the Iranian authorities.
12. The respondent refused international protection and the appellant appealed to the First-tier Tribunal.

### **First-tier Tribunal decision**

13. By a decision promulgated on 7 September 2020, the First-tier Tribunal dismissed the appellant's appeal. The First-tier Judge noted that the respondent accepted the existence of the appellant's atheist tattoo, and that his anti-Government raps were available online on social media sites. The judge was not shown any evidence of upload of the appellant's raps by persons unknown to him.
14. The First-tier Judge found that there were raps and posts dating from 2016, when the appellant was in Germany, but found that nothing had been produced from his time in Iran. The judge recorded that there was 'no evidence' of anything connected to the appellant being posted before then, but that is incorrect: there was, of course, the appellant's own evidence, and it is clear from the documents in the First-tier Tribunal bundle that the videos uploaded while the appellant was in Germany were created while he was still in Iran.
15. The judge made the following relevant findings:

"13. ...The posts that are in the papers, including more recent ones, are clearly critical of the [Iranian] government. If they were to become known [to] the Iranian authorities, then it appears that they would be a source of interest to the government. ...

19. A relevant consideration is the appellant's bona fides in pursuing his rapping, demonstrating and social media posts. ...Having regard to the danger that this would cause to his family if it were to become known, I find that the appellant's evidence does not show that the appellant has been

genuinely motivated in the posts downloaded and the demonstrations attended.

20. The fact that the appellant's activities are not underpinned by a genuine commitment to anti-Government sentiment or cause does not answer the question. The question is whether the appellant would be at risk on return to Iran. The only way that could be so is if the posts were in the future to become known to the authorities.

21. If the appellant were to be questioned on return and asked to provide access to his Facebook and any other social media posts, then as matters stand, whatever the motivation that lay behind them, the evidence in the papers would be a source of danger to the appellant. However, posts can be taken down and altered, settings can be changed between public and private, and screenshots only show the status shown on a page for the moment of the photograph and may only show a temporary change to a page made for the purpose of the screenshot itself.

22. In finding that the appellant is not motivated by anti-Government sentiment, the posts in the evidence before me do not genuinely reflect the appellant's own personal convictions. In those circumstances, it would be reasonable to expect the appellant to take down the posts that have been put up to assist with this claim and return his Facebook and any other affected social media accounts to reflect his non-committed position. "

16. As regards the American Atheist tattoo, the judge said there was no evidence to show it was a source of concern to the Iranian authorities or that they would be aware of its significance, at the 'pinch point' of return. The American Atheist symbol was neither the reflection of a deeply held conviction nor was it a source of danger on return. The appellant had not shown that he would be of interest on return.
17. Nor was the appellant's medical condition sufficiently serious. He was not receiving medical treatment for his skin condition, but his dosage of the antidepressant Sertraline had been increased.
18. The appeal was dismissed on all grounds and the appellant appealed to the Upper Tribunal.

### **Permission to appeal**

19. Upper Tribunal Judge Martin granted permission to appeal on 6 October 2020, on the basis of the contention in the appellant's grounds of appeal that the First-tier Judge had given inadequate reasons for finding that the accepted social media profile and atheist tattoo would not put him at risk on return.

### **Rule 24 Reply**

20. There was no Rule 24 Reply by the respondent.
21. That is the basis on which this appeal came before the Upper Tribunal.

## Upper Tribunal hearing

22. For the appellant, Ms Masih relied on her grounds of appeal and on the First-tier Tribunal evidence bundle, much of which was not taken into account in the First-tier Judge's decision.
23. Ms Isherwood accepted that even if the core account were considered to lack credibility, the question of the appellant's tattoo, and of his anti-Government raps, were established. Taken together, she agreed that those were sufficient to put the appellant at risk at the 'pinch point' of return: see *PS (Christianity - risk) Iran CG* [2020] UKUT 46 (IAC) at (4) in the judicial headnote.

## Evidence before the First-tier Tribunal

24. The First-tier Judge's decision made no reference to the country evidence in the bundle, nor to the assessment by the applicant's general medical practitioner that he has post-traumatic stress disorder, gets 'constant terrible nightmares, flashbacks of his past' and had expressed suicidal ideation and was very anxious when around people. The attached prescription for 29 January 2020 shows repeating prescriptions for Mirtazapine 15mg (2 each night) which is a medicine to treat depression and anxiety disorders, and for Sertraline 100 mg (1 daily), which is another type of anti-depressant, a selective serotonin reuptake inhibitor.
25. Nor did he consider the Austrian Red Cross/ACCORD report dated 12 June 2017 which appears at page 85 of the First-tier Tribunal hearing bundle. The external evidence there summarised is that in Iran it is illegal and/or unrecognised to identify as an atheist or non-religious. Iran is one of only 13 countries in the world where being an atheist is punishable by death. The Constitution of the Islamic Republic of Iran does not address the right of Muslim Iranian citizens to change or renounce their religious beliefs. Atheists cannot express their beliefs in public, and often use the internet to present their beliefs anonymously. There are a number of active atheist internet pages and blogs, including a Facebook page with more than 187000 followers.
26. An article from The Guardian newspaper dated 14 May 2012 records that Shahin Najafi, a Germany-based Iranian singer, was the subject of a fatwa for blasphemy, based on the content of his songs. The fatwa described him as an apostate.
27. An article from The Guardian dated 4 February 2019 entitled *A silent act of resistance: the hidden tattoo studios of Tehran*, recorded that tattoo artists are regularly arrested in Iran and sentenced to fines, lashes, or even imprisonment. Tattoos were not illegal nor strictly forbidden in Shi'a Islam but 'the authorities strongly reject them as a western phenomenon harmful to Iranian values':

“In some public places, such as swimming pools, there are signs warning that tattooed people are not welcome. When criminals are arrested, newspapers would publish photographs of their body art to convey the message that tattoos and crime go hand in hand. Football players with tattooed arms have been forced to wear long sleeves.”

28. Tattoos were nevertheless popular among the young, as ‘a silent act of resistance’. The only form of tattooing the authorities allowed was permanent makeup such as eyeliner.

### **Analysis**

29. The First-tier Judge’s reasoning is not consistent with his factual findings. The appellant’s tattoo signposts his atheist leanings, and he cannot be expected to lie about what it is, or why he has it, at the ‘pinch point’ of arrival. The judge’s finding that the appellant’s atheism is not genuine is of no assistance, given his tattoo, which he would have to explain.
30. Nor is it reasonable to assume that the anti-Government Facebook posts are not accessible to the Iranian authorities, even if they have been taken down. The judge accepted that the content of the anti-Government raps (which are in the First-tier Tribunal bundle) was of such a nature that if they were known to the Iranian authorities, the appellant would be at risk.
31. The First-tier Judge’s conclusions are perverse and the decision must be set aside. On the basis of the accepted facts, there is no alternative but to allow the appeal.

### **DECISION**

32. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by allowing the appeal.

Signed [Judith AJC Gleeson](#)  
Upper Tribunal Judge Gleeson

Date: 2 February 2021