Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/00376/2020**
[PA/50895/2020]

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On the 11 February 2022	**On the 30 March 2022**

Before

UPPER TRIBUNAL JUDGE HANSON
UPPER TRIBUNAL JUDGE BRUCE

Between

AK
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Ul-Haq instructed by Kalsi Solicitors.
For the Respondent: Mr McVeety, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Alis who in a decision promulgated following a hearing at Manchester on 16 February 2021 dismissed the appellant's appeal on all grounds.

Background

© CROWN COPYRIGHT 2022

2. The appellant is a citizen of Iran born on 25 October 1996. The Judge notes at [5] of the decision under challenge the four issues the parties agreed the Tribunal was required to make findings upon, being:

a. Has the appellant provided a credible account of his work as a Kolbar?
b. Has the appellant provided a credible account of his involvement with the KDPI in Iran?
c. Do paragraphs 7–22 of the appellant's rebuttal statement address the matters raised in the decision letter?
d. Will the appellant's sur place activities and being Kurd bring him to the attention of the authorities on return to Iran?
e. Will returning the appellant place him at risk of persecution and/or serious harm?

3. Having considered the oral and written evidence and submissions made the Judge sets out findings of fact from [27] of the decision under challenge. A summary of the key findings made by the Judge are as follows:

a. The fact the appellant only claims to have just started being a Kolbar despite leaving school at 12 undermine his credibility. The Judge accepted the timing was too coincidental and that this claim had to be considered alongside other claims he had made about his activities in Iran [34].
b. The Judge rejected the appellant's claim to have worked for the KDPI in Iran on the basis the evidence was not found to be credible [38].
c. It was not accepted the appellant has not had contact with family and friends in Iran as the appellant produced a Facebook account with over 2000 friends many of whom were in Iran. The Judge specifically rejected the appellant's claim he was unable to contact his family [40].
d. The Judge did not accept the appellant was wanted by the authorities and finds he was not a Kolbar and would not have to lie about that or his support for the KDPI in Iran were he to be questioned by the authorities [41].
e. The appellant's Facebook account had been set up around 3 to 4 months after he arrived in the United Kingdom and the documents submitted to the respondent containing privacy settings which prevented the public from seeing his posts [44].
f. The new post seen by the Judge were not found to appear to be 'open' posts. The appellant did not suggest that any of his 2000+ friends were informers or that he had received any abuse on his Facebook and there was nothing about his profile that would set him aside from the billions of other Facebook users [45].
g. Deletion of the appellant's Facebook account would remove his social media presence. There was no risk to the appellant unless the posts had already been viewed or screenshot by the Iranian authorities [48]
h. At [49] the Judge writes:
    i. The appellant is entitled to open and operate a social media account.
    ii. Almost all his personal posts were not viewable by the general public.
    iii. Some of his posts on his Facebook account were against the Iranian government and it is arguable that if he did not delete the account and then on return to disclose the existence of his account and password to the authorities this could create an actual or implied adverse profile.
    iv. Prior to coming to the United Kingdom he had no political profile on social media.
    v. 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.

i. The appellant was neither a blogger nor a journalist nor an online activist. As he was found to have no previous involvement with the authorities in Iran it was not likely the authorities would have been monitoring him prior to when he left Iran [50].
j. The Judge accepts the appellant has attended demonstrations and has posted articles on Facebook but finds he has the option of closing down his Facebook which would remove all the post he has created and that no evidence had been adduced to show the authorities have viewed or have had access to his account or will be able to recover his Facebook account once it had been deleted [53].
k. The Judge was not satisfied the appellant had come to the attention of the authorities in Iran, he did not claim to be a spokesman against the regime in the UK or Iran, there is nothing significant about the demonstration he attended that will distinguish them from any other demonstrations and the evidence adduced did not persuade the Judge that the appellant's attendance outside the Iranian Embassy would bring him to the attention of the Iranian authorities [60].
l. The Judge accepts that the appellant is a Kurd without a passport and that the authorities will question him on return but finds his claimed opposition to the authorities in Iran had been rejected and his sur place activities are neither genuine nor reasonably likely to come to the attention of the authorities and he would not be required to disclose anything about his deleted Facebook account or his attendance at demonstrations [61].
m. In the absence of evidence suggesting the authorities have the capacity or ability to access deleted accounts or posts he has since deleted the Judge finds the appellant would only be returned as a failed Kurdish asylum seeker who left illegally who would have no adverse profile which would make him of interest to the authorities [62].

4. The appellant sought permission to appeal asserting that even if his involvement in his sur place activities was disingenuous he would still be at risk on return to Iran. The appellant asserts all failed asylum seekers are questioned on arrival and questioned about why they claimed asylum and the Judge had failed to adequately explain how the appellant could avoid disclosing anything about his deleted Facebook account or his attendance at demonstrations without lying. The appellant asserts the country guidance case of HB (Kurds) CG [2018] UKUT 430 determined the appellant will be treated with heightened security on return and questioned about why he claimed asylum which will lead to an extreme reaction by the Iranian authorities who have a 'hair trigger' approach to those suspected or perceived to be involved in Kurdish political activities or supporters of Kurdish rights, which could lead to the appellant being persecuted.

5. Permission to appeal was granted by another judge of the First-tier Tribunal on the base it was said to be arguable Judge erred as alleged in the grounds in that the appellant is likely to be questioned about why he claimed asylum, that he cannot be expected to lie, and that his answers will reveal what the Iranian authorities may consider to be anti-regime activities and react accordingly.

6. Since the grant of permission to appeal the Upper Tribunal have promulgated the country guidance case of XX (PJAK, sur place activities, Facebook) (CG) [2022] UKUT 00023 which we have taken into account.

Error of law

7. The country guidance case of XX does not undermine the Judge's findings in relation to the ability of a person who has a Facebook account to delete that account and the effect of posts 'held' in that individuals Facebook account. They will, as the Judge found, be deleted and it was not made out before us that they could be recovered by a third party who may wish to examine such content at a later date.

8. There is also support for the Judges finding that it was appropriate for an individual to delete their Facebook account, and therefore the associated entries, if they had not demonstrated a genuinely held political view or any other aspect that formed part of their fundamental identity, such as sexual orientation, that was evidenced in such posts. The core findings made by the Judge are that the appellants Facebook entries did not demonstrate a genuinely held political view, were not matters that have come to the attention of the authorities in Iran and are entries that the appellant created after arrival in the United Kingdom. The relevance of the Judges observation concerning the posts privacy settings shows they will not be accessible to third parties.

9. The challenge indicating that the Judge erred in failing to adequately reason how the appellant could avoid disclosing anything about his deleted Facebook account or attendance at the demonstration without lying is not made out. The decision of the House of Lords and HJ (Iran) was about the right of an individual to protect their fundamental beliefs. It did not establish a binary requirement for a person to tell a third party everything.

10. In addition to HJ (Iran) we have considered the decision of the Supreme Court in RT (Zimbabwe) and others (Respondents) v Secretary for State for the Home Department (Appellant); KM (Zimbabwe) (FC) (Appellant) v Secretary of State for the Home Department [2012] UKSC 38 in that case the Court held, firstly, that the HJ (Iran) principle applies to applicants who claim asylum on the grounds of a well-founded fear of persecution for reasons of lack of a political belief just as it applies to those who claim asylum on the grounds of a well-founded fear of persecution for reasons of sexual orientation. There are no hierarchies of protection amongst the Refugee Convention reasons for persecution; the Convention reasons reflect characteristics or statuses which either the individual cannot change or cannot be expected to change because they are so closely linked to his identity or are an expression of fundamental rights. Moreover, the right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom not to hold and not to have to express opinions. There is no basis in principle for treating the right to hold and not to hold political beliefs differently from religious ones. Nor can there be no distinction between a person who is a committed political neutral and one who has given no thought to political matters.

11. In the current appeal it is not suggested the appellant faces a real risk on return as a result of not positively demonstrating support for the regime in Iran in the same way that the appellants in RT faced an identified real risk if they were unable to positively demonstrate support for the ruling Zanu PF party in Zimbabwe.

12. Secondly, the Court held that an individual could be at risk of persecution on the grounds of imputed political opinion and in these circumstances, it is nothing to the point that the applicant does not in fact hold that opinion. Persecution on the grounds of imputed opinion will occur if a declared political neutral is treated by the regime as a supporter of its opponents and persecuted on that account. But a claim may also succeed if it is shown that there is a real and substantial risk that, despite the fact that the asylum seeker would assert support for the regime, he would be disbelieved, and his neutrality would be discovered. This gives rise to questions of fact, but it is difficult to see how an asylum claim advanced on the basis of imputed political opinion could be rejected, unless the judge was able to find that the claimant would return to an area where political loyalty would be assumed and where, if he was interrogated, he would not face the difficulties faced by those who were not loyal to the regime in other parts of the country. If the claimant would return to any other parts of the country, the judge would be likely to conclude that there was a real and substantial risk that a politically neutral person who pretended that he was loyal to the regime would be disbelieved and therefore persecuted.

13. In the current appeal the question of neutrality is not the issue which is whether the authorities in Iran would hold a view, actual or imputed, that the appellant was a threat to the regime in Iran. In cases involving Iran it is necessary for it to be established to the lower standard relevant to a protection claim that an individual would be treated by the authorities as being disloyal to the regime on the basis of the evidence. In this appeal the Judge's specific findings was there is a lack of evidence the appellant's activities would have come to the attention of the authorities in Iran. This has not been shown to be a finding outside the range of findings reasonably open to the Judge on the evidence.

14. It is not made out there is anything the appellant will be required to say to the authorities return that would give rise to a real risk. In that respect the Judge has not been shown to have erred in law.

15. As noted above, it is not as simple as expressed by the appellant in the ground seeking permission to appeal. There must be a number of options available to an individual on return one of which is that they tell the truth that they made false claim which has no merit, as found by the Judge. The authorities in Iran know that a number of their citizens come to the UK and elsewhere to claim asylum and being a failed asylum seeker per se does not give rise to a real risk on return to Iran, even for a Kurd.

16. The main submission made by Mr Ul-Haq on behalf of the appellant was that there was no exploration of the possibility that the Appellant's posts/likes would have already come to the attention of

the Iranian authorities because of other people in his 'social graph' ie if there is a reasonable likelihood that some of those 2000 people would be subject to monitoring (for instance prominent KDPI leaders/ the KDPI account itself) then he may be able to make out a risk.

17. The Judge considered this aspect where he writes at [45];

> 45. The new posts in today's bundle do not appear to be open posts and this may be due to the fact one of his friends told him about the settings. He did not suggest that any of his 2000+ friends were informers or that he had received any abuse on his Facebook and there is nothing about his profile that would set him aside from the billions of other Facebook users.

18. We find that Judge Alis was entitled to make the findings that he did, on the evidence before him, and on the way that the case was put. There was no evidence that informers had infiltrated the Appellant's network (although we accept that this would rarely be a matter provable by the production of evidence). The account was private and to that extent Judge Alis' finding that it did not in itself expose the Appellant to risk was one open to him. It may be that in light of the decision in XX (Iran) and what is said there about the risks that might arise through connections on a 'social graph' the appeal would today be presented differently. We are conscious that neither the representatives nor the Tribunal were aware at the date of the hearing that such an analysis of the Appellant's connections would be helpful. We have not however been shown any evidence to indicate that such an omission would be material, and in those circumstances we can do no more than mark that the risk assessment may, to this limited extent, have been incomplete. If the Appellant believes this to be the case, then it is for him to make that case out in further submissions to the Secretary of State. It is not however a matter for this Tribunal, since Judge Alis made no error in assessing the case as it was put before him.

19. The Judge clearly considered the evidence with the required degree of anxious scrutiny, has made findings within the range of those available to the Judge on the evidence, supported by adequate reasons. We find the appellant has failed to establish legal error material in the decision of the Judge sufficient to warrant the Upper Tribunal interfering any further in this matter.

Decision

20. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

21. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

We make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated 18 February 2022