



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10867/2019**

THE IMMIGRATION ACTS

**Heard at Field House
On the 28 July 2022**

**Decision & Reasons Promulgated
On the 05 September 2022**

Before

**UPPER TRIBUNAL JUDGE FRANCES
DEPUTY UPPER TRIBUNAL JUDGE HARIA**

Between

**S A W
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Mohzam, Solicitor at Westridge Legal Limited
instructed by Alex Law Solicitors

For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iran born in 2002. He appeals against the decision of First-tier Tribunal Judge Lodge, promulgated on 4 February 2020, dismissing his appeal against the refusal of his protection claim on asylum, humanitarian protection and human rights grounds.
2. Permission to appeal was granted by Upper Tribunal Judge Keith on 1 September 2020 on the grounds that, even if the appellant had contrived to manufacture *sur place* material on Facebook to bolster his claim, it was

arguable that such posts may come to the attention of the authorities as a result of the appellant's interrogation on return as someone of Kurdish ethnic origin who had left Iran illegally.

3. Upper Tribunal Judge Sheridan found the decision of the First-tier Tribunal contained an error of law and set it aside for the reasons given in his decision promulgated on 22 February 2021. The issue to be determined at this resumed hearing is whether the appellant faces a risk on return to Iran because of his Facebook account even though the posting on it is not a genuine manifestation of a political belief and is an opportunistic attempt to fabricate an asylum claim.

Preserved findings of fact

4. The findings of fact at paragraphs 20 to 42 of the First-tier Tribunal decision were preserved and are summarised below:
 - (a) The appellant was not a credible witness and had fabricated his account;
 - (b) The appellant would not be at risk of harm from his father, mother or uncle;
 - (c) He had shown no interest in politics until posting matters on Facebook;
 - (d) The Facebook page was set up two weeks before the appeal hearing;
 - (e) The posts were entirely self-serving;
 - (f) The appellant had not attended any demonstrations against the Iranian government;
 - (g) He could not point himself out on the photographs of the demonstration;
 - (h) He could not say when the demonstrations took place;
 - (i) The appellant said he had attended a demonstration last week. The date on the Facebook page was 27 January 2020 referring to a demonstration in Cardiff. It was extraordinary that he could not remember attending a demonstration in the same week as the hearing;
 - (j) The appellant was unable to say which privacy level he had used.
 - (k) There had only been one Facebook post and it is not accessible to the authorities in Iran.
 - (l) Even if the appellant had attended demonstrations and put something on Facebook, his activity was at a very low level.
5. In summary, the appellant was not a credible witness and he was not politically active. As of 31 January 2020, he had not attended any demonstrations, he was of no interest to the authorities and his activities

were not known to the Iranian authorities. Since the last hearing there has been further country guidance: XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 23 (IAC). This appeal was adjourned pending this decision.

Country guidance

6. The headnote of XX is set out below:

The cases of BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC); SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC); and HB (Kurds) Iran CG [2018] UKUT 00430 continue accurately to reflect the situation for returnees to Iran. That guidance is hereby supplemented on the issue of risk on return arising from a person's social media use (in particular, Facebook) and surveillance of that person by the authorities in Iran.

Surveillance

- 1) There is a disparity between, on the one hand, the Iranian state's claims as to what it has been, or is, able to do to control or access the electronic data of its citizens who are in Iran or outside it; and on the other, its actual capabilities and extent of its actions. There is a stark gap in the evidence, beyond assertions by the Iranian government that Facebook accounts have been hacked and are being monitored. The evidence fails to show it is reasonably likely that the Iranian authorities are able to monitor, on a large scale, Facebook accounts. More focussed, ad hoc searches will necessarily be more labour-intensive and are therefore confined to individuals who are of significant adverse interest. The risk that an individual is targeted will be a nuanced one. Whose Facebook accounts will be targeted, before they are deleted, will depend on a person's existing profile and where they fit onto a "social graph;" and the extent to which they or their social network may have their Facebook material accessed.
- 2) The likelihood of Facebook material being available to the Iranian authorities is affected by whether the person is or has been at any material time a person of significant interest, because if so, they are, in general, reasonably likely to have been the subject of targeted Facebook surveillance. In the case of such a person, this would mean that any additional risks that have arisen by creating a Facebook account containing material critical of, or otherwise inimical to, the Iranian authorities would not be mitigated by the closure of that account, as there is a real risk that the person would already have been the subject of targeted on-line surveillance, which is likely to have made the material known.
- 3) Where an Iranian national of any age returns to Iran, the fact of them not having a Facebook account, or having deleted an account, will not as such raise suspicions or concerns on the part of Iranian authorities.
- 4) A returnee from the UK to Iran who requires a laissez-passer or an emergency travel document (ETD) needs to complete an

application form and submit it to the Iranian embassy in London. They are required to provide their address and telephone number, but not an email address or details of a social media account. While social media details are not asked for, the point of applying for an ETD is likely to be the first potential “pinch point,” referred to in AB and Others (internet activity – state of evidence) Iran [2015] UKUT 00257 (IAC). It is not realistic to assume that internet searches will not be carried out until a person’s arrival in Iran. Those applicants for ETDs provide an obvious pool of people, in respect of whom basic searches (such as open internet searches) are likely to be carried out.

Guidance on Facebook more generally

- 5) There are several barriers to monitoring, as opposed to ad hoc searches of someone’s Facebook material. There is no evidence before us that the Facebook website itself has been “hacked,” whether by the Iranian or any other government. The effectiveness of website “crawler” software, such as Google, is limited, when interacting with Facebook. Someone’s name and some details may crop up on a Google search, if they still have a live Facebook account, or one that has only very recently been closed; and provided that their Facebook settings or those of their friends or groups with whom they have interactions, have public settings. Without the person’s password, those seeking to monitor Facebook accounts cannot “scrape” them in the same unautomated way as other websites allow automated data extraction. A person’s email account or computer may be compromised, but it does not necessarily follow that their Facebook password account has been accessed.
- 6) The timely closure of an account neutralises the risk consequential on having had a “critical” Facebook account, provided that someone’s Facebook account was not specifically monitored prior to closure. Guidance on social media evidence generally.
- 7) Social media evidence is often limited to production of printed photographs, without full disclosure in electronic format. Production of a small part of a Facebook or social media account, for example, photocopied photographs, may be of very limited evidential value in a protection claim, when such a wealth of wider information, including a person’s locations of access to Facebook and full timeline of social media activities, readily available on the “Download Your Information” function of Facebook in a matter of moments, has not been disclosed.
- 8) It is easy for an apparent printout or electronic excerpt of an internet page to be manipulated by changing the page source data. For the same reason, where a decision maker does not have access to an actual account, purported printouts from such an account may also have very limited evidential value.
- 9) 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.

Documentary evidence

7. The appellant relied on a bundle containing 663 pages submitted by nine separate emails on 13 June 2022 including a witness statement (pages 4 and 5) and copies of posts and comments on Facebook pages. These pages indicate 4926 friends. For ease of reference, this figure was rounded up to 5000 in the evidence and submissions.
8. Only parts of this bundle were served on the respondent and the start of the hearing was delayed as a result. We asked Mr Mohzam to prepare a schedule of which pages he was going to refer to, identifying why they were relevant. Mr Mohzam relied on the following 14 pages: 14, 334, 335, 336, 337, 348, 374, 381, 384, 393, 394, 402 (repost of page 14), 405 (repost of the appellant our side the Iranian embassy).
9. During the hearing, Mr Kotas also drew our attention to the appellant's bundle of 41 pages containing the appellant's witness statement dated 11 May 2021 and copies of Facebook posts submitted on 12 May 2021.

Appellant's oral evidence

10. The appellant confirmed his name and address and relied on his statement dated 8 June 2022 as evidence-in-chief in which he stated the name of his public Facebook account. He regularly posted anti-Iranian government information and he had posted several photographs of him attending demonstrations outside the Iranian embassy. He wanted to stand up against the Iranian authorities and show support for the Kurdish people who were mistreated.
11. In response to questions from Mr Mohzam, the appellant stated he did not know all his Facebook friends. He added them because they tried to add him as a friend and asked about demonstrations and some were part of the demonstrations. He had attended 15 to 16 demonstrations, one in Cardiff and the remainder in London. He had a Facebook account showing anti-Iranian posts because he wanted to show the world that the regime is doing an injustice against Kurds.
12. In cross-examination the appellant stated that his family name was his grandfather's name and he confirmed his full name was that given in his statement. He did not use his grandfather's name on his Facebook account

because there was no need. The name he used was his father's name and he hadn't noticed it was spelt differently. The appellant accepted the Facebook profile was not the same spelling as the name he was known by and stated that it did not make a difference because he had posted his photograph. His education and writing were not good.

13. The appellant could not remember where the demonstration took place in Cardiff because it was a long time ago in 2020. The demonstrations in London were in front of the Iranian embassy. There were quite a lot of photographs of him demonstrating on his Facebook profile and there could be more than the 14 relied on by his representative. He posted on his profile two to three times per week and his last post was yesterday. The last demonstration he attended was 29 June 2022 and he had photographs of it on his mobile.
14. The appellant was asked why the list submitted by his representative only showed Facebook pages of demonstrations in 2020. He disagreed there were only photographs of a demonstration in 2020 and said there were photographs of demonstrations in 2020 and 2022.
15. Mr Kotas showed the appellant page 25 of the appellant's bundle and asked if he posted the picture. The appellant stated it could be his or it could be shared. When asked what was on page 25 he said on the left were his friends in the same demonstration and on the right he pointed to 28 comments and likes about the person who had been arrested by the Iranian police. He could not remember if he had posted this man's picture on his profile. When asked why he could not remember what was on his own profile he said he had posted many things and could not remember all of them.
16. The appellant was shown page 123 and confirmed he had posted the photograph and there were 20 likes. He could not remember the post at page 131 and did not know if he had posted the photograph. Mr Kotas asked how many videos were on his Facebook profile. The appellant replied two to three live videos and he did not know if there were any more. When asked about the video symbol at the top of the page he said it meant he had added seven videos. The symbol referred to the number of videos that could be watched, not just his videos but others. It was suggested he did not really know how Facebook worked and the appellant stated he did know. The symbol referred to the number of videos but it did not mean they were his, they could be watched from other sources. The videos were public and some were possibly of him. When asked if there were just seven videos on his Facebook page he said, "I do not know. All I know is that if you click on that symbol you can watch videos." The appellant stated he had live videos on his phone which he could share.
17. The appellant was asked about the bell symbol and the number eight and said that it indicated a subscription, "you can subscribe to something, like a page." He could not remember if he had seen that page or the bell and he did not see the name Navdeep at the top. Mr Kotas stated, "But it's your profile." The appellant replied, "I don't know." Mr Kotas suggested it

was not the appellant's profile at all and the appellant stated he had a Facebook account which he could show the court. He confirmed the pages in the bundle were his account and he had posted all of it.

18. The appellant was referred to page 402 and asked who 'AE' was. There was then some confusion with the bundle and the appellant's representative confirmed there were two pages labelled 402. Once the correct page had been located the appellant stated he did not know AE even though the bundle index stated these pages showed the accounts of his friends. The appellant stated these were people who had added him or with whom he had shared his account. He was asked if he knew any of his 5000 friends and he said he knew those who lived with him and those who lived in the same city.
19. When asked how to change the privacy settings on the account he said, "What do you mean?" He stated his Facebook account was publicly available and the globe symbol indicated that everyone could see it. He said, "The whole point of Facebook is to show the world what the Islamic Republic is doing to us. That is what I understand by public." It was pointed out that Facebook did not have to be public and he stated, "My point is the public is useful so if not public what is the point." He said if it was not public only the 5000 friends could see it. When asked if it was possible to have a private setting he replied, "No. I do not know that technical thing. All I know is Facebook is published for the world to know, for the public to know what is going on."
20. The appellant was asked what was shown on pages 13 and 14. He said it was a demonstration outside the Iranian embassy on 25 June 2022 and he had a train ticket for that day. When it was pointed out by the Tribunal that the bundle was emailed to the Tribunal on 13 June 2022, the appellant's representative said the date on the post was 25 May 2022 (25/5/2022) and the appellant corrected himself. When asked what was the relevance of 25 May 2022 he said he had not written the comment, he shared it.
21. The appellant was asked what was happening on page 336 and he said there was a demonstration against the Iranian regime. He did not know any of the people there and he went on his own. Page 337 was related to the previous picture taken the same day on 1 March 2020. Page 348 showed the appellant and his friend at home burning something. The appellant stated, "We burn the picture and he also posted the same photo of us burning something on 13 February 2020."
22. Mr Kotas asked the appellant whether he would delete his account if he was returned to Iran. The appellant replied, "If I deleted it or not they would probably execute me at the airport." He was asked, "If removed would you delete your account to remove the evidence?" He replied I have 5000 friends and have distributed posts already. It is in their accounts and in front of the embassy they take photos of everyone. Whether you delete it or not, they know me and posts have already been shared widely." There was no re-examination.

Respondent's submissions

23. Mr Kotas submitted the appellant had an entirely contrived asylum claim and XX should be followed. The issues were whether the authorities were already aware of the appellant or would become aware of his activities and what would happen at the 'pinch point' of return. A careful fact finding exercise was required. There were features of this case which meant there was no reasonable likelihood the Iranian authorities would be aware of the appellant or his Facebook profile.
24. Mr Kotas submitted it was impossible to discern when the posts were made or re-posted given the large volume of screen shots from a Facebook page with no dates. The schedule of relevant pages prepared by the appellant's representative related to 2020, although the appellant claimed to have attended a demonstration in 2022. Mr Kotas submitted the appellant's activities were of limited duration which began just before the hearing in the First-tier Tribunal and ended just after. The number of 'likes' was inconsequential and therefore, even though the appellant had many friends, there was little publicity: [83] XX. There were no videos before the Tribunal and it was not likely the inflammatory posts had come to the attention of the authorities. The appellant had little knowledge of Facebook and he was not in the same position as the appellant in XX.
25. Mr Kotas submitted the appellant was evasive when asked about whether he would delete his account. Unlike in XX, the appellant would not come to the attention of the authorities if he deleted his account. The appellant did not genuinely believe in the political views expressed in the Facebook pages. He would delete his account.
26. Mr Kotas submitted the Tribunal should attach significant weight to the name on the Facebook account. The appellant did not use his full name and he had changed the spelling. A search under the appellant's actual name would not yield the Facebook profile relied on. The appellant could legitimately say that he did not hold a Facebook account in his name. The appellant was not currently known or identified as someone with a critical Facebook account. He would not be at risk on removal because he would delete his account and he could tell the authorities there was no account in his name.
27. Mr Kotas submitted, if the panel found the authorities would already be aware of the Facebook profile relied on by the appellant, then he accepted there was a reasonable likelihood the appellant would be at risk on return. However, the appellant would not come to the attention of the authorities on basis of the photographs relied on because of the limited period, the appellant was one of many and there was no reason to focus on him. He was not with a prominent figure.
28. In response to a question from the panel, Mr Kotas submitted the appellant would not be asked about social media when he applied for an ETD and he would delete his account before he went to the embassy. The appellant

was not of significant interest to be subject to targeted surveillance and the Facebook evidence was not enough in itself. The appellant was so insincere he would delete his account. This did not amount to persecution. There was no evidence the Iranian authorities would be aware of the appellant or that they had any interest in him, notwithstanding his Kurdish ethnicity.

Appellant's submissions

29. Mr Mohzam relied on his undated skeleton argument and submitted all the posts in the schedule he prepared were from 2020. Pages 13 and 14 were not in the schedule and referred to a demonstration in 2022. The appellant was a Kurd who left Iran illegally. He had protested in the UK and would be perceived as politically active by the Iranian authorities. He had 5000 friends on Facebook and it was possible of one those 'friends' may be from the Iranian authorities or support the authorities. There was continuous evidence of 'blogging' by the appellant and following HB he was more likely to be at risk.
30. Mr Mohzam submitted, if the Iranian authorities were not already aware of the appellant, they would become aware of him when he applied for an ETD and they carried out an internet search. The Facebook account is open to the public and there were videos of the appellant's activities.
31. At the pinch-point of return to Iran the appellant would be subject to the hair-trigger approach following HB. The appellant was of Kurdish origin and he left Iran illegally five years ago. His small anti-Iranian activity in the UK would have grave consequences even though it was opportunistic. On arrival the appellant would be asked questions about what he was doing. He did go to demonstrations and he would be asked for his Facebook password. He would be asked if he held anti-Iranian views and he would have to tell the truth about his activities in the UK. Any kind of activity would put the appellant at risk even if he said his Facebook account was false.

Conclusions and reasons

32. We have considered all the evidence in the round and applied the lower standard of proof: 'a reasonable degree of likelihood'. We note the conduct of the appellant's representative in respect of the large bundle of Facebook pages of which only 14 were relied on at the hearing. We emphasise that the conduct of the appellant's representatives is irrelevant to our assessment of the appellant's credibility.
33. We find the appellant is not a credible witness. His witness statement submitted for this hearing failed to specifically refer to any of the Facebook pages and was lacking in detail. Over 600 pages of Facebook posts have been submitted. The appellant had little knowledge of the posts on this Facebook account. When specifically asked about the Facebook pages the

appellant was unable to explain what was happening, who was in the photographs and when they were taken, posted or re-posted. The appellant's bundle contained Facebook pages from his friends' accounts but the appellant did not know the name of these friends.

34. We find on the totality of the evidence, including the preserved findings, that the Facebook account relied on by the appellant has been manufactured and contrived to support his fabricated claim for asylum. Following XX at 7) and 8) (see [6] above) we attach little evidential weight to this evidence. We did not have access to an actual Facebook account.
35. We find the appellant has attended one demonstration outside the Iranian Embassy soon after his appeal before the First-tier Tribunal in 2020. We do not accept he attended a demonstration in 2022 as he claimed because he misidentified the date in oral evidence; initially stating it was 29 June 2022. After seeing the Facebook page, he stated it was 25 June 2022 and then he accepted the Facebook post referred to 25 May 2022. The Facebook pages produced contain the same evidence reposted. Looking at all the evidence in the round, the appellant has failed to show to the lower standard that he attended a demonstration in 2022.
36. The photographs of the appellant's attendance at the demonstration in 2020 show him as part of the crowd. There was insufficient evidence to show that the appellant would have come to the attention of the authorities because of his attendance at one demonstration in 2020. His claim to have been photographed by the authorities was speculative and there was insufficient evidence before us to support his assertion, given we do not find the appellant credible. Even if he had been photographed there was no reason to pick him out from the crowd given he was not politically active or with a prominent figure. Applying the lower standard of proof, we find that the appellant has failed to show he has already come to the attention of the authorities.
37. The appellant's case can be distinguished from XX on its facts. In that case the expert reviewed XX's actual Facebook account, not just copies of pages from that account which the Upper Tribunal found could be manipulated. The appellant in XX was photographed with a prominent member of PJAK and the Tribunal found his activities were sufficiently high profile to have raised his 'social graph'. Even a brief, targeted search of Facebook, prompted by his profile because of his 'real world' *sur place* activities, was sufficient to reveal his online activities. That cannot be said of the appellant in this case. The appellant was photographed outside the Iranian embassy as part of the crowd. The Facebook account was not in the appellant's full name and he had little knowledge of many of the posts in the apparent printouts or electronic excerpts in the appellant's voluminous bundle.
38. The appellant's claim is opportunistic and contrived. Deletion of his Facebook account does not amount to persecution: see XX at 9). There is no reason why he would not delete his account prior to his application for

an ETD. Deleting his account will not raise suspicions or concerns with the Iranian authorities XX at 3)

39. Further, the Facebook account relied on by the appellant was not in his full name and was spelt differently. There was insufficient evidence before us to show that an internet search of the appellant's name would retrieve the Facebook account relied on or those of his 'friends'. The appellant would not be at risk on his application for an ETD.
40. At the pinch-point of return, the appellant would have deleted the Facebook account and could legitimately state he had not held a Facebook account in his name. The appellant has failed to produce sufficient evidence to show that the Iranian authorities would become aware of his activities in the UK.
41. On the evidence before us, the appellant is not of significant adverse interest to the authorities and he would not be the subject of targeted online surveillance. There was insufficient evidence to show that an open internet search would reveal the Facebook pages relied on and a timely closure of the account would neutralise the risk.
42. Applying extant country guidance, the appellant would not be at risk on return to Iran as a failed Kurdish asylum seeker who had exited Iran illegally. We dismiss the appellant's appeal against the refusal of his protection claim on asylum, humanitarian protection and human rights grounds.

Notice of Decision

Appeal dismissed

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 5 August 2022

TO THE RESPONDENT

FEE AWARD

As we have dismissed the appeal, we make no fee award.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 5 August 2022

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.