



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

Case No.: UI-2024-000214

First-tier Tribunal Nos:
PA/50220/2023
LP/02437/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 6th June 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**MOA (IRAN)
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms F Shaw, Counsel instructed by JKR Solicitors

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

Heard at Field House via Teams on 13 May 2024

Order Regarding Anonymity

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.

DECISION AND REASONS

1. This is my judgment on the question of how the decision on the asylum appeal should be made, the appellant having been successful in his error of law challenge to the decision of First-tier Tribunal Judge Broe, which was promulgated on 6 December 2023 (“the Decision”). The Decision has been set aside as containing a material error of law, for the reasons given in my error of law decision promulgated on 15 April 2024.
2. As set out in that error of law decision, the First-tier Tribunal materially erred in law in failing to consider whether the appellant’s attendance at demonstrations outside the Iranian Embassy was sufficient to give him an adverse risk profile, and the Judge thereby did not give adequate reasons for concluding that the appellant would not on return be at real risk of persecution or serious harm at the hands of the Iranian authorities due to his *sur place* activities.
3. Although I set the decision aside, I preserved the findings of the First-tier Tribunal that (1) the appellant did not engage in political activity in Iran in the manner alleged by him or at all; (2) the appellant did not come to the adverse attention of the Iranian authorities in Iran as the result of carrying on political activity or as a result of working as a kolbar; (3) the appellant left Iran illegally; and (4) the appellant’s *sur place* activities in the UK were not genuine, but an attempt to manipulate the asylum system.
4. As also set out in the error of law decision, I gave permission under Rule 15(2)(a) of the Tribunal Procedure (Upper Tribunal) Rules 2008 for the appellant to adduce the material in Part B of the updated composite bundle.
5. The notice stated that the Part B evidence was simply an updated, downloaded version of the appellant’s Facebook account since his appeal was dismissed by the First-tier Tribunal. The evidence confirmed, it was submitted, the number of Friends the appellant had, and that he had been regularly active on his social media account by posting anti-Government material. Ms Shaw also submitted at the error of law hearing that the new evidence showed that the appellant had attended one further demonstration beyond the six which had been evidenced by the material placed before the First-tier Tribunal.
6. In the event, as set out in Ms Shaw’s ASA for the resumed hearing, the appellant relies on the material in Part B as demonstrating his attendance at five further demonstrations on the following dates: 3 September 2023; 16 September 2023; 21 January 2024; 25 February 2024; and 24 March 2024.
7. Conversely, as was highlighted during the resumed hearing, the downloaded material in Part B does not show the number of the appellant’s Friends or Followers.

The Resumed Hearing

8. The resumed hearing was a hybrid one, with Ms Shaw, the appellant and the Interpreter attending remotely via Teams, whereas Ms Isherwood was physically present with me in the courtroom at Field House.
9. The appellant spoke through the Kurdish Sorani Interpreter whom he clearly understood, and he adopted as his evidence in chief his witness statement signed by him on 2 April 2024, endorsed with a Statement of Truth.
10. In this statement, he said that since his hearing in the First-tier Tribunal on 15 November 2023 he had attended a further five demonstrations outside the Iranian Embassy. The demonstrations were held on 3 September 2023; 16 September 2023; 21 January 2024; 25 February 2024; and 24 March 2024. At the demonstrations, the attendees captured photos on their mobiles and the workers at the Embassy had been seen looking out of the windows holding devices which looked like mobile phones and taking photos, and even possibly recording the event. The Embassy would most certainly forward the photos and/or upload them on a shared system used by Iran to identify people.
11. He had posted as much as he could on his Facebook account about key events effecting Kurds in Iran. He used his Facebook page to show a wider audience what was happening to the Kurdish community in Iran. He would not stop this. He would not close his Facebook account.
12. Ms Shaw asked whether she could ask supplementary questions of the appellant, and Ms Isherwood said she did not object to this. Ms Shaw asked the appellant whether, in the event of him being questioned by the Iranian authorities on return, he would admit to attending demonstrations against the Iranian Government. He answered that they would know this anyway, as his name would be in the system.
13. The appellant was extensively cross-examined by Ms Isherwood on the material in Part B, and he also answered questions for clarification purposes from me. The appellant was able to follow Ms Isherwood's line of questioning because, as well as having a printout of the material in Part B, he was able to use his mobile phone to access photographs on his Facebook account. He would hold up the mobile telephone to the screen so we could see which photograph he was referring to.
14. In re-examination, Ms Shaw asked the appellant to show his Facebook profile, and he held up his phone to show that he had 2,078 Friends. He believed that most of them were in the UK, but that some of his Friends/Followers were in Iran.
15. In her closing submissions on behalf of the respondent, Ms Isherwood submitted that there were not substantial grounds for believing that the appellant had acquired an adverse profile as a result of his attendance at demonstrations, applying the guidance of *BA (Demonstrations in Britain - risk on return) Iran CG* [2011] UKUT 36 (IAC).

16. In reply, Ms Shaw relied upon her ASA, and submitted that the appellant's proven attendance at 11 demonstrations was sufficient to engender a real risk of the appellant having come to the adverse attention of the Iranian authorities.
17. Alternatively, even if he had not acquired an adverse profile by now as a result of his attendance at demonstrations and/or his continuing Facebook activity, he would be at risk at the pinch-point of return, having regard to the CPIN of May 2022 at para 2.4.16, *KK & RS [2022] EWCA Civ 119* at para [20], and the case of *D8*.

Discussion and Findings

18. Notwithstanding the appellant's adherence to the case that he put before the First-tier Tribunal, and notwithstanding the additional evidence that I have received for the purposes of remaking the decision, I am not persuaded to depart from the preserved findings of fact.
19. The material downloaded in Part B constitutes the "*photos, videos, text and status updates that you have shared on Facebook*" as of 2 April 2024. The profile information at page 4 indicates that the appellant registered his Facebook page on 8 January 2023. It does not contain any information about the number of Friends/Followers that the appellant has had since the date of registration. Although I accept that the appellant showed on his mobile telephone that he currently has just over 2,000 Friends, whereas in August 2023 he claimed to have around 1,000 Friends, a notable feature of the downloaded material is that there are no comments or likes, and there are no text exchanges between the appellant and any Friends.
20. Having had the benefit of receiving oral evidence from the appellant, I am not persuaded that the appellant's Facebook activity is an expression of genuine political activism as opposed to being a carefully curated performative exercise.
21. Neither in cross examination, nor in the content of the posts themselves, did the appellant display a genuine knowledge of the particular issue or issues about which any given demonstration was concerned with. This is typified by the fact that photographs of the appellant purportedly appearing at a given demonstration are usually accompanied by a message which is in completely identical terms.
22. Proceeding in page order through the material in the Addendum Bundle (which confusingly, but perhaps unavoidably, presents the downloaded Part B material in reverse chronological order) at page 8 there is the following message, which crops up repeatedly in subsequent pages, with the only alteration being the date of the demonstration:

"In the name of Allah

Sunday 24/3/2024

In front of the Embassy of the Islamic Republic of Iran in London, the capital of the UK.

My participation as an oppressed Kurdish individual the demonstration against the Islamic Republic of Iran against the oppression that exists, a system thirsty with the blood of all those who don't have opinions with system against Kurds, against freedom, against religion, against making a living."

23. Ms Isherwood put to the appellant that this repeated message was a reflection of the fact that other people were putting stuff on his Facebook page on his behalf. The appellant denied this, saying that he did it himself but his friends helped him with the writing.
24. However, it is apparent from page 213 of the composite bundle that this message has not been generated by the appellant, but is a verbatim copy of part of a longer message from another individual to whom I will refer by the initials BI. It is likely that a friend of the appellant's uploaded this longer message from BI to the appellant's Facebook page in connection with the demonstration that took place outside the Iranian Embassy on 11 June 2023.
25. The appellant's general credibility is also undermined by his evidence about the one uploaded photograph of him wearing a high-vis jacket. This was relied upon by Ms Shaw for the purposes of the error of law hearing as showing that on one occasion the appellant had been given the role of containing the crowd. In short, he had been given an official role as a Marshal. But when the appellant was asked about his wearing of a high-vis jacket by Ms Isherwood, he did not claim that he had come to wear it because he had been given an official role. He said he just got it to take part in the demonstration. The reason why he wasn't shown wearing a high-vis jacket at any other demonstrations was because he had not been able to get hold of one for the other demonstrations. He then said that it as a matter of choice whether to wear a high-vis jacket or not. Ms Isherwood put to the appellant that he was therefore a very low-level supporter. The appellant responded that he had got a lot of likes for his posts. However, as previously stated, there was no evidence of this in the material downloaded from his Facebook page.
26. In light of the country guidance given by the Tribunal in *XX (PJAK - sur place activities - Facebook) Iran CG* [2022] UKUT 00023 (IAC), there are not substantial grounds for believing that the appellant's Facebook activity to date has engendered a real risk *per se* of the appellant having come to the adverse attention of the Iranian authorities. There is no reason to suppose that one of the appellant's Friends has tipped off the authorities about the appellant's anti-Government posts, and I note that this was not a possibility that was entertained in the exhaustive analysis conducted in *XX*.
27. The crucial finding of fact in *XX* was that *XX* - despite being illiterate and not a genuine supporter of the PJAK - had succeeded in his "real world" *sur*

place activities in raising his social profile to a point where he had become a person of interest to the Iranian authorities with the consequence that it was likely that his Facebook account had become the subject of a targeted search.

28. The Tribunal did not explain the mechanism by which the Iranian authorities would have learned XX's name so as to be able to conduct a targeted search, but I infer that the Tribunal had in mind the dicta of Sedley LJ in *YB (Eritrea) -v- SSHD* [2000] EWCA Civ 360 at para [18], which is cited in *BA Demonstrators* at para [49]:

[18] Where, as here, the Tribunal has objective evidence which "paints a bleak picture of the suppression of political opponents" by a named government, it requires little or no evidence or speculation to arrive at a strong possibility - and perhaps more - that its foreign legations not only film or photograph their nationals who demonstrate in public against the regime but have informants amongst expatriate oppositionist groups who can name the people who are filmed or photographed. Similarly, it does not require affirmative evidence to establish a probability of the intelligence services of such states monitoring the internet for information about oppositionist groups. The real question in most cases is what follows for the individual claimant. If, for example, any information reaching the embassy that is likely to be that the claimant identified in the photograph is a hanger-on with no real commitment to the oppositionist cause, that will go directly to the issue flagged up by art 4(3)d of the Directive.

29. In the refusal decision dated 28 December 2022, it was noted that the appellant had submitted a single photograph of his attendance at a demonstration outside the Iranian Embassy, but that he was unable to provide any details of the date of the protest; what he did at the protest; or what the protesters wanted to happen. Nonetheless, it was accepted that he had attended one demonstration outside the Iranian Embassy.
30. In his witness statement dated 11 August 2023, which the appellant made for the appeal hearing in the First-tier Tribunal, the appellant said that in addition to a demonstration that he had attended in the summer of 2021, he had attended five demonstrations on 16 February 2023, 14 March 2023, 7 May 2023, 11 June 2023 and 13 July 2023 respectively. He said that there had been more demonstrations he could have attended, but he had not been able to attend them due to the cost of travelling to London.
31. The appellant provided evidence of his attendance at the five demonstrations that he had identified in his witness statement by providing a download of his Facebook account over the same period.
32. In the respondent's review, it was accepted that the appellant had provided evidence to demonstrate his "minimal" *sur place* activities, namely copies of Facebook posts which shared generic anti-regime materials and photographs appearing to show him at public protests.

33. In her decision, Judge Broe appears to have accepted that the appellant attended the demonstrations detailed by him in his witness statement. At para [31], she said that the appellant had provided Facebook posts containing photographs of himself at demonstrations which were designed to show him at the demonstrations.
34. The Judge rejected the appellant's claim that he had not been in contact with his family in order to protect them from scrutiny by the Iranian authorities because it was inconsistent with his parallel claim that he had a Facebook account in his own name which he said was public and would place him at risk on return. Although the Judge did not make a positive finding that the appellant's Facebook account had a public setting, the appellant had provided in advance of the hearing the information necessary for the Secretary of State to check whether the appellant's Facebook account was accessible to the public, and this could also have been checked at the face-to-face hearing before Judge Broe by inspection of the appellant's mobile telephone.
35. The appellant gave in advance of the resumed hearing the information necessary for the Secretary of State to verify the additional downloaded material in Part B. So, the fact that Ms Isherwood was not able to verify the downloaded information at the outset of the hearing - because her laptop does not permit her to conduct a Facebook search - is not a matter that can be held against the appellant.
36. Accordingly, I consider that the appellant has discharged the burden of proving that his Facebook account has a public setting, and that the downloaded material in the composite bundle and in Part B/the Addendum Bundle accurately reflects what appears on his public Facebook account.
37. As to the five further demonstrations that the appellant claims to have attended as shown by the downloaded information in Part B, Ms Isherwood's primary line of attack was not that the appellant had faked his attendance at these demonstrations, but that his participation in them was only on the periphery, and therefore it was very unlikely that he had been photographed by the Embassy and/or otherwise identified as a person of interest.
38. Having considered the evidence in the round, I am persuaded that the appellant has attended 11 demonstrations outside the Iranian Embassy, and that after a lengthy hiatus between the summer of 2021 and the opening of his Facebook account in February 2023, the appellant has attended demonstrations outside the Iranian Embassy on a regular basis.
39. I do not accept that the appellant has played any organisational or marshalling role, and I am not persuaded to the lower standard of proof that the three photographs at page 25 of the Addendum Bundle that were uploaded on 21 December 2023 were either (a) taken by the appellant or (b) all taken on the same occasion. The three photographs are relied upon by the appellant as showing that he was filmed or photographed by

Embassy staff when protesting at the demonstration on 21 December 2023. But the three photographs do not present as being taken on the same occasion, and in the case of the photograph on the left the appellant is not credible in his claim to have been close enough to the Embassy to have taken this photograph on his mobile phone.

40. Apart from the one photograph of the appellant wearing a high-vis jacket, the vast majority of the photographs feature the appellant standing the other side of the road from the Embassy, and some distance away from the front of the Embassy.
41. On the other hand, having regard to *WAS (Pakistan)* [2023] EWCA Civ 894 and to the passage from *YB (Eritrea)* cited above, it is very improbable that there will be any direct evidence of covert activity, whether consisting of monitoring of demonstrations or the use of spies or informers. I must not lose sight of the fact that direct evidence about the level of and the mechanics of monitoring in the UK are unlikely to be available to an asylum claimant.
42. While the appellant has not established to the lower standard of proof that the monitoring activity shown in the three photographs at page 25 was specifically directed at him, the evidence still serves to support the proposition that, due to his regular attendance at demonstrations outside the Iranian Embassy since February 2023, there is a real risk of the appellant having come onto the radar of the Iranian authorities and to have become the subject of targeted surveillance.
43. Accordingly, in line with the reasoning of the Tribunal in *XX*, it is irrelevant that the appellant has the option of now deleting his Facebook account, as the damage has already been done.
44. Every case turns on its own facts, and *XX*'s real world activities appear to have been more extensive and provocative than the appellant's. So, in the alternative, I turn to consider whether, if the appellant has not yet become the subject of targeted surveillance, he will nonetheless be at risk at the pinch point of return.
45. It is unclear to me whether the open judgment of SIAC in *D8* given on 19 October 2023 has been formally reported, but it is publicly accessible, and Ms Isherwood did not object to its citation by Ms Shaw.
46. The judgment of the Commission chaired by Jay J is relevant to the present discussion as it contains a gloss on *XX*. At [166], the Commission held that attention must be focused on what *D8* would do if returned to Iran, and the fact that he could take action to avoid persecution did not disentitle him to asylum if in fact he would not act in such a way as to avoid it, even if that failure to mitigate risk was unreasonable:

“In any case, were *D8* to say to his interlocutors at Tehran airport or elsewhere that his Facebook posts and ostensible anti-Government activities

were in reality to bolster his asylum claim, which may have a grain of truth, we very much doubt that would improve his chances.”

47. As stated at [165] of *D8*, the Tribunal in *XX* identifies two pinch points: the first is when an application is made for an ETD, and the second is on arrival at Tehran airport. The timely closure of an account neutralises the risk consequential on having had a Facebook account that is critical of the Iranian regime, provided that the Facebook account was not specifically monitored prior to closure. While the reasonable option for the appellant would be to delete his Facebook account in timely fashion in order to neutralise the risk of it coming to light at the stage of the ETD application, there are substantial grounds for believing that this appellant would not close his Facebook account in timely fashion, as this would be inconsistent with the determination that he has shown to manipulate the asylum system to his advantage.

Decision

The decision of the First-tier Tribunal contained a material error of law, and so the decision is set aside and the following decision is substituted:

This appeal is allowed on asylum and human rights (Article 3 ECHR) grounds.

Anonymity

The First-tier Tribunal made an anonymity order in favour of the appellant, and I consider that it is appropriate that the appellant continues to be protected by anonymity for the purposes of these proceedings in the Upper Tribunal.

Andrew Monson
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
28 May 2024