



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/04485/2018

**THE IMMIGRATION ACTS**

**Heard at Newport  
On 16 November 2018**

**Decision & Reasons Promulgated  
On 7 February 2019**

**Before**

**MR C M G OCKELTON, VICE PRESIDENT  
DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS**

**Between**

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

Appellant

**and**

**RSS  
(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr C Howells, Home Office Presenting Officer

For the Respondent: Mr H Dieu, Counsel instructed by Barnes Harrild & Dyer

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Clemes in which he allowed the appeal of the Respondent (who we shall call “the Claimant”), a citizen of Iran, against the Secretary of State’s decision to refuse asylum and issue removal directions.
2. We make an anonymity direction under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in order to protect the anonymity of the Claimant who claims asylum. This direction prohibits the disclosure

directly or indirectly (including by the parties) of the identity of the Claimant. Any disclosure and breach of this direction may amount to a contempt of court. This direction shall remain in force unless revoked or varied by a Tribunal or Court.

3. The application under appeal was refused on 16 March 2018. The Claimant exercised his right of appeal to the First-tier Tribunal. The appeal came before Judge Clemes on 11 May 2018 and was allowed. The Secretary of State applied for permission to appeal to the Upper Tribunal. The application was granted by First-tier Tribunal Judge Lambert on 20 June 2018 in the following terms

“The judge found the Appellant not to have provided credible evidence of political activity or links to the KDPI in Iran, that the chances of him having been monitored in the UK were ‘minimal’ (paragraph 28), but that he was at risk on return due to sur place activity on Facebook, albeit that that was undertaken for ‘cynical reasons’. The judge’s conclusions are grounded firmly in expert evidence from Dr Joffe set out at paragraph 31-32 of the decision. The final sentence of paragraph 31 sets out the current risk on return, according to the expert evidence, of failed Kurdish asylum seekers thought to have defamed the Iranian regime while abroad.

The grounds rely on the fact that the Appellant’s political views expressed on Facebook could be deleted prior to return and were not genuine and contend inconsistency with the country guidance in **HJ (Iran)**. In so far as the judge’s decision does not engage with that country guidance or the argument put forward by the Respondent at the hearing (cf paragraph 14 of the decision), they may be arguable.”

## **Background**

4. The history of this appeal is detailed above. The Claimant is a citizen of Iran born on 1 January 1997. He arrived in the United Kingdom on 24 September 2017 and claimed asylum. The basis of his claim was that his political activity in Iran as a member of the KDPI would cause him to face persecution on return.
5. The Secretary of State refused the claim not accepting that he was a member of the KDPI or that he had carried out activities on their behalf and therefore that he had faced persecution in the past or would face persecution on return. At the appeal hearing the Claimant maintained his claim to KDPI membership and activity and added that he would also face adverse interest due to his Kurdish ethnicity and his political activity in the United Kingdom. The Judge found that the Claimant was not involved in and had no interest in political activity in Iran and that his level of involvement in the United Kingdom was limited to Facebook posts made for cynical reasons. Because of these Facebook posts the Judge found that the Claimant would be likely to come to adverse interest for defaming the Islamic Republic when he faced interrogation on return as failed Kurdish asylum seeker.

## **Submissions**

6. For the Secretary of State Mr Howells referred to the grounds of appeal. He said that the key finding at paragraph 32 of the decision is that the Claimant has defamed the Islamic Republic on Facebook for cynical reasons. As the Judge made adverse credibility findings as to the Claimant's involvement in politics the Claimant can simply delete the Facebook posts before he returns. He does not genuinely hold the political beliefs put forward in those posts so there is no reason why he should not delete them.
7. For the Claimant Mr Dieu said that the Judge accepted that the Claimant had a Facebook profile. The fact that he has such a profile was not challenged and this profile would cause him to be seen to be against the government. Although the Judge found that the Claimant was not credible in his beliefs there would be a risk for him at the point of return because of this profile. There would be an enhanced risk of questioning on return because the Claimant is Kurdish, he left illegally, and he is a failed asylum seeker, and this will bring about a pinch point for interrogation and it is at this point that his social media profile may be seen.
8. Asked by us why the Claimant could not simply delete the Facebook posts Mr Dieu said that the Claimant could not be compelled to delete the posts. He accepted that the danger to the Claimant comes down to whether he is prepared to delete the posts.
9. We said that the appeal of the Secretary of State would be allowed, and the decision of the First-tier Tribunal set aside. A new decision would be substituted dismissing the appeal. We reserved our written decision.

## **Decision**

10. The issues in this case are simple and clear. The claim to international protection was based on the Claimant's activities in Iran which were said to involve membership of and active support for the KDPI. Having arrived in the United Kingdom and claimed asylum the Claimant said that there was further danger because of his political activities in the United Kingdom exacerbated by posts made on social media. At the hearing before the First-tier Tribunal clear and comprehensive adverse credibility findings were made in respect of the Claimant's political activities both in Iran and United Kingdom. Paragraph 27 of the decision summarises these findings

"As I have found as a fact above, the appellant has no actual background in terms of being a political opponent openly in Iran. I am satisfied as above that he did not have any interest in or links to the KDPI or any other similar Kurdish political party or pressure group. His level of involvement in the UK - I am satisfied - is limited to the Facebook posts he has made. I accept and find that these are publicly accessible. I'm also satisfied that he has made these posts for cynical reasons: he wants to attract attention to reinforce an otherwise weak asylum claim."

There is no challenge to these findings on behalf of the Claimant. The challenge by the Secretary of State is only to the question of whether the

Facebook postings are publicly accessible. The Secretary of State submits that the Claimant

“could delete his post as they do not represent anything ... The appellant does not have any genuine political profile, and these aren’t his genuine feelings”

11. In our judgement the judge erred in law by failing to consider and apply HJ (Iran) and HT (Cameroon) v SSHD [2010] UKSC 31. In HJ (Iran) Lord Rodger JSC gave guidance (at paragraph 82) on the approach to be adopted by Tribunals where any applicant applies for asylum claiming to fear persecution on the grounds of sexuality and fundamental to this approach is a consideration of what the individual applicant would do on a return to the home country. This guidance makes it clear that a person cannot be expected to live discreetly, subverting his sexuality for fear of persecution. The HJ (Iran) principle applies to a fear of persecution on any Convention ground. A person cannot be expected or required to hide an innate part of their personality or a genuinely held political view to avoid persecution. In HJ (Iran) Sir John Dyson makes this clear

“The Convention must be construed in the light of its object and purpose, which is to protect a person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country". If the price that a person must pay in order to avoid persecution is that he must conceal his race, religion, nationality, membership of a social group or political opinion, then he is being required to surrender the very protection that the Convention is intended to secure for him.” (paragraph 110)

12. Had the Judge considered HJ (Iran) he would have noted that as the political views espoused in the Facebook posts were not genuinely held by the Claimant there was no reason why they could not be deleted. Whether the Claimant chose to expose himself to danger by maintaining posts which expressed views which were not genuinely held was an entirely voluntary act. The failure to consider HJ (Iran) was an error of law and this error of law materially affected the Judge’s decision to allow the appeal and for that reason we allow the appeal of the Secretary of State and we set aside the decision of the First-tier Tribunal.
13. In remaking the decision, we repeat what we have said above. The Claimant is a person who has put forward a false claim for international protection. The findings made that he had no political profile in Iran and undertook no political activity in the United Kingdom are comprehensive and unchallenged. Social media posts on Facebook made by someone else on the Claimant’s behalf have been found to be a cynical attempt to bolster a weak asylum claim. As the Claimant does not genuinely hold the beliefs espoused in the Facebook posts there is no reason at all why he cannot delete them. A person who voluntarily exposes himself to danger may be entitled to international protection if such voluntary exposure

cannot be remedied but where a person maintains such voluntary exposure in circumstances where it could be simply retracted (in this case by deleting Facebook posts) that person cannot in our judgement be entitled to international protection. We therefore remake the decision of the First-tier tribunal and dismiss the Claimant's appeal.

**Summary of decision**

14. The appeal of the Secretary of State is allowed. The decision of the First-tier Tribunal is set aside.
15. We remake the decision. The appeal of the Claimant RSS is dismissed.

Signed

Date: 31 January 2019

A handwritten signature in black ink, appearing to read 'J F W Phillips', with a stylized, cursive script.

J F W Phillips  
Deputy Judge of the Upper Tribunal