



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/00983/2020;
[PA/51463/2020]**

THE IMMIGRATION ACTS

Heard at George House, Edinburgh
On 19 January 2022

Decision & Reasons Promulgated
On 01 February 2022

Before

UT JUDGE MACLEMAN

Between

MZAFAR JAMAL HAWLA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Latta & Co, Solicitors
For the Respondent: Mr M Diwyncz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. FtT Judge Kempton dismissed the appellant's appeal by a decision dated 10 March 2021.
2. The FtT refused permission to appeal to the UT.
3. The appellant submitted revised grounds to the UT, headed as error in law in relation to the appellant's *sur place* political activity, subdivided into points (i) - (xi).
4. The grounds, in summary, are as follows:

- (i) error at [45] in saying that the appellant had not proved his identity, when this was not disputed by the respondent or in previous decisions, and no notice was given;
- (ii) error at [30] in finding a document might be false, when if finding it to be a forgery the FtT had to say so and give reasons based on evidence;
- (iii) error in using an adverse finding as an *a priori* reason for finding at [30] that the document might be false;
- (iv) contradiction between finding at [30] that the name given by the appellant was false but at [45] that his identity is unknown;
- (v) reference at [34] to a statement by F N Ibrahim, but no assessment of the identity card of the witness produced in the appellant's bundle;
- (vi) error in doubting the identity of the appellant vitiates the finding at [45] that the Facebook account does not relate to him;
- (vii) if the Facebook activity is genuine, error in finding the appellant could delete it, as he cannot be expected to conceal his opinions;
- (viii) - (ix) - withdrawn at the hearing;
- (x) even if "bad faith" finding correct, error in failing to assess whether real risk might result through use of a pseudonym;
- (xi) internal flight no answer to risk through surveillance and targeting of online activists at or outside the airport, and the appellant not being expected to conceal his opinion.

5. UT Judge Blundell granted permission on 12 May 2021:

[1] I have considered the grounds ... with the benefit of Judge Kempton's typed record ... I consider it arguable that the Judge erred in resolving the *sur place* claim ... at [45] ... There is nothing in the record to indicate that it was any part of the respondent's case that the appellant was not who he claimed to be ... it is arguable that it was not open to the Judge to take that point ... without notice to the appellant.

[2] Any error [on that point] might prove to be immaterial, given the Judge's findings that the appellant is not genuinely committed and could delete his internet posts. The criticisms of those findings at (vii) - (x) are much weaker ... however, the proper course is to grant permission so that the grounds may be considered at an oral hearing.

6. Mr Winter submitted along the lines of the grounds. He said that the appellant had advanced two cases, a blood feud and his *sur place* activities, but that his grounds now focused only on the latter. He accepted that although some versions of the identities recorded for the appellant might be only minor variations on the details which he now says are true, he was shown as using different names and dates of birth previously, but that was elsewhere in Europe, prior to arriving here and first stating his claim. Since then, he has given only his current claimed identity. If he had been on notice of any point about his identity, he might

have brought more evidence, for example from friends in the UK who have known him over a long period. He had produced a considerable amount of documentary evidence, much of it predating his claim, referring to him in his current identity. A remit to the FtT was sought.

7. Mr Diwyncz accepted that there had been no significant focus on the appellant's identity at the hearing, but not that the Judge fell into any error in assessing the case before her. He observed that if the finding of bad faith was to stand, there was no error in holding that the posts could be deleted; and that if the Judge was correct that posts would not be traceable to the appellant, there was no need even for that. The FtT gave several good reasons for finding the appellant not to be a reliable witness and for finding his documents not to be reliable either, for example, in observing at [24 - 25] that "murder" is not an expression likely to be found on a certificate as a cause of death.
8. Mr Winter in reply submitted that it was important not to trespass from adverse findings on the blood feud into the *sur place* case, which the Judge had decided separately on its own merits, as she was bound to do. The findings that the appellant was an unimpressive witness were not relevant, as disbelief on one aspect did not relate to the other. The Judge had not resolved the issue of risk if the Facebook posts were genuinely made in good faith, so if there had been an error on the identity issue, there was still a case to be decided.
9. I reserved my decision.
10. A *sur place* claim does require separate consideration and may, in principle, be made out even by an appellant who acts in bad faith. However, I am not aware of any legal doctrine requiring the Judge to consider the Facebook activities and the identity used online by the appellant entirely in isolation from other evidence bearing on his general credibility.
11. On the evidence before the FtT, a finding of bad faith was the end of the *sur place* claim. There would be no reason not to delete the account, or the postings. This stands apart from the finding on identity.
12. The two aspects of the claim, as presented by the appellant, were not entirely distinct. He portrayed his Facebook activity as a continuation of a life of political protest. The Judge found that claim to be "blown apart", for reasons in which no error is suggested.
13. The appellant has failed dismally in a succession of claims and further submissions. He has been found to be an unreliable witness and his documents to throw up more questions than answers.

14. The appellant is well aware that he has a record of use of other identities and of generally adverse credibility findings. Judge's observation at [45] that he has not proved his identity, once placed in context, can hardly have come as a surprise. He has not shown that he has anything further to offer in response. I am not persuaded that the Judge fell into any error on a point of law; and even if she did, it is immaterial to the outcome.
15. The decision of the FtT shall stand.
16. No anonymity direction has been requested or made.



21 January 2022
UT Judge Macleman

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.