



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/04948/2013

**THE IMMIGRATION ACTS**

Heard at North Shields  
On 11 December 2013

Determination Sent  
On 5 March 2014

Before

UPPER TRIBUNAL JUDGE DEANS

Between

MR SAEED ALIZADEH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms L Brakaj, Iris Law Firm  
For the Respondent: Mr P Mangion, Home Office Presenting Officer

**DETERMINATION AND REASONS**

- 1) Judge of the First-tier Tribunal Mensah dismissed this appeal in which the appellant claimed to have a well-founded fear of persecution in Iran on the basis of his conversion from Islam to Christianity. Permission to appeal was granted and there was a hearing on 30 September 2013 before Judge Aitken in the Upper Tribunal. On 23 October 2013 following this hearing Judge Aitken issued a corrected version of his decision on error of law. In terms of this decision there was to be a further hearing before the Upper Tribunal for the purpose of re-making the decision. This hearing took place before me on 11 December 2013.

## Error of law

- 2) The Judge of the First-tier Tribunal did not accept that the appellant's conversion to Christianity was genuine and this finding was not overturned by the Upper Tribunal. The issue before the Upper Tribunal was whether the Judge of the First-tier Tribunal had properly assessed risk on return. The appellant had put entries on Facebook relating to his alleged conversion. On the risk which might arise from this, Judge Aitken expressed the following conclusions in his decision of 23 October 2013:

- "9. Here the First-tier Tribunal Judge acknowledged the position as to examination of risk on return at paragraph 39 of the determination and went on in paragraph 39 and 40 to indicate that there was insufficient evidence to show that the Iranian authorities had the capacity or will to search for everything written on Facebook were they not firstly in possession of a name which had stirred their interest. That may be so, but there was evidence before the Tribunal on that occasion within the Home Office Operational Guidance Note on Iran at paragraph 3.6.8 that the authorities did conduct Facebook searches on people who were returned to Iran, and required them to reveal their passwords so that private pages could be checked. An assessment is required of the dangers arising out of that in this case, dealing also with Mr Dewison's point that all is required is a simple erasure before arrival, or as it is put in the Middle East Report Online at page 187 of the appellant's bundle "in bound travellers will de-activate their account."
10. The parties were unable to deal with these points before me and the decision will have to be remade by the Upper Tribunal after a further hearing limited to the issue of the risk on return arising out of Facebook.
11. Ms Brakaj sought leave to re-open the question of the appellant's conversion, since he has now been in the country longer and his position is inevitably somewhat different, in addition a matter for which he was previously criticised, that of his religious leader not being called has now been remedied and the pastor of his church is willing to give evidence, there was however no bar to him giving evidence on the last occasion. I must refuse that application, there is no error of law within the decision as regards the findings relating to the sincerity of his conversion. If there has been a change of circumstances the appellant must make a further application."

## Evidence

- 3) For the resumed hearing, the appellant submitted a supplementary witness statement dated 3 December 2013 addressing his use of his Facebook account. The appellant sought to give further evidence at the hearing before me in relation to this matter. He adopted his witness statement and was cross-examined.

- 4) In cross-examination it was pointed out to the appellant that his Facebook account could be de-activated or shut down by way of an application to Facebook. The appellant acknowledged that this was possible. He acknowledged that he was not aware of any technical reason why this could not be done. The appellant was asked if he would do this before he returned to Iran. The appellant replied that it was not a question of de-activating his account but of de-activating himself. The use of Facebook was a way of communicating with many people and it was an important job for a Christian person to invite people to share their faith. The appellant confirmed that he used Facebook to spread his faith. He confirmed that he was still in touch with his family in Iran. He maintained contact through a friend. He had not spoken to his family recently but he had spoken to his friend. His father was not allowed to work and his brother was not allowed to go to university because of the problems he had caused them.
- 5) The appellant was asked if it was his position that the Iranian authorities were aware of his Facebook activities. The appellant indicated that anyone in Iran could access his Facebook account. This would cause problems for his family but not for him in the UK. The appellant referred to a teaching of Jesus that if someone preferred their parents over him then they were not a part of him. He confirmed that it was more important to him to continue his Facebook activities than to safeguard his family's safety.
- 6) The appellant was asked if there was a specific reason why the authorities would know about his Facebook activities. The appellant replied that he was not sure. He referred to the possibility of a Facebook "friend" giving the authorities his details. He referred to the existence of Facebook accounts which appeared to have been made by Christians but were in fact fake in order to find people like him.
- 7) The appellant was asked if his family had been told about his Facebook activities. When the appellant asked for a further explanation he was asked if, when his father and brother were detained as he had alleged, they were told the reasons for their detention. The appellant replied that they were told it was because of him. He was asked what they were specifically told about him. The appellant replied that they were told he was going to church in Iran and spreading the faith. A Holy book was found in the family home. As a result his father could not get a job and his brother could not go to university and this might be because of the appellant's Facebook account.
- 8) The appellant was asked if his Facebook account had been blocked. The appellant replied that he could access the internet only in the library. There were 2 or 3 occasions on which he had tried to open the account and it would not open or it opened without any details or information or without all the friends listed. The next day everything was fine and working perfectly.
- 9) In re-examination it was put to the appellant that he had 678 Facebook friends. He was asked how many he had invited to be friends and how many had invited him. The appellant replied that he did not know. Everyday 4 or 5 people added him to their

Facebook account. Sometimes this was in “posts” that come up or a photograph or something about Christianity. His friends’ friends might put these out and he would then add the person because of that post. The appellant referred to a list of his Facebook friends in the documentary evidence. Mr Mangion, intervened at this point to say that not all of these friends were in Iran. Ms Brakaj asked the appellant to confirm that he found requests every time he logged on and the appellant did so. Ms Brakaj asked him if he was unable to tell whether these were fake accounts or whether he knew the people and the appellant confirmed that he was unable to tell. He was asked if he made any checks. He said he took a look at the request and sometimes accepted it without looking further. The appellant was asked how he found these posts. He said they appeared on his page when he logged in.

## Submissions

- 10) In his submission for the respondent Mr Mangion relied upon the respondent’s reasons for refusals letter and the findings made by the Judge of the First-tier Tribunal, who found that the appellant was not a genuine convert, and made a number of other findings at paragraphs 18, 24, 26, 28 and 31 of the determination. The appellant had the option of de-activating or deleting completely his account provided he was not a genuine convert. As he was not, he would not be protected by HJ (Iran) [2010] UKSC 31.
- 11) Mr Mangion asked whether the authorities in Iran would be aware of the appellant’s situation. If the appellant’s claim to be a convert was not credible then there was no reason why the authorities would look at his activities and no reason why he would come to their attention. It was suggested that the authorities were monitoring the Facebook account but there were many thousands of Facebook accounts and they were not able to monitor them all. Mr Mangion referred to the case of BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 and to Freedom House reports of 2011, 2012 and 2013 on “Freedom on the Net”. There was no mention in the 2013 report of anyone being targeted exclusively for religious activities. The report for 2013 referred to desecrating Islam through offences related to pornography. Prosecutions were related to political activities and there was a cross-over between politics and religion but no reference to anyone targeted exclusively because of having converted. It was necessary to insult Islam or the Ayatollah to experience difficulties. The government in Iran had access to Facebook and if the appellant’s page had come to their attention it could be blocked. The fact that this had not happened showed that the authorities were not interested in his account, which was one of thousands. There was a suggestion of a more lenient attitude since the Presidential elections but it was too early to say where this was going. There was a country guideline case on Facebook before the Upper Tribunal but the decision was not expected to be promulgated until March. Until then BA (Iran) should be followed.
- 12) For the appellant, Ms Brakaj submitted that the first issue was whether the Iranian authorities were aware of the Facebook account. The Judge of the First-tier Tribunal had asked whether the authorities would have searched for the appellant’s name. It

was not necessary for them to be aware of the appellant's name, however. The appellant daily receives requests from people he does not know asking to join his page. He adds them as friends without filtering them. This is an open page. The appellant was also a member of groups and could be linked through organisations such as the Israeli group or the Elim Pentecostal Church. Reference to these groups were to be found in the documentary evidence. It was not a case of the authorities just looking for the appellant's name but of individuals locating the appellant because of their beliefs and approaching him on Facebook. He had such a large number of Facebook friends. He was identifiable from the Facebook page. If the authorities were aware of his activities the information could be printed off even if the appellant's account was deleted. For instance, where the appellant had expressed a liking for a group this might be printed off without a power to delete.

- 13) Mr Mangion intervened that it was not unusual to have a thousand friends or more on Facebook. Friends were accepted by clicking.
- 14) Ms Brakaj referred to the Freedom House report of 2013, at page 16, which stated that the Iranian authorities follow overseas online posts. The authorities were interested in apostasy and would be interested in a Christian who was challenging the authorities. The authorities could be aware of a site without blocking it and this did not mean that they had no interest in it. The appellant was openly making posts among the Farsi community and among those located in Iran. The appellant's activities included proselytising.
- 15) Ms Brakaj referred to country information on a crackdown on dissent and the ill-treatment of Christians, as well as a crackdown on "cyber struggles". There was surveillance of Facebook and there was a serious possibility and a real risk that the authorities were aware of the appellant's activities. As far as the authorities were concerned, for the appellant to follow Jesus was an act of defiance. The appellant's material was not just being liked on his own page but was also be re-posted. This would then appear on the site of a friend. Parts of the appellant's Facebook site appeared on other sites if other people liked his post. There were lots of friends on other sites which put the appellant at risk.
- 16) Ms Brakaj referred to the appellant's evidence regarding his faith. She referred to the case of Danian [2000] Imm AR 96. Even if the appellant was not believed, what would his situation be if his site was not taken down at the point of removal? The country information suggested that passwords and login details would be requested on return and this would give rise to a risk to the appellant. Ms Brakaj acknowledged that, given the terms of the resumed hearing, she could not argue that the appellant would refuse to take down his site on the grounds of faith but it would need a specific request from the appellant to permanently delete the material. If the account was not removed and the appellant was asked for his login details then he was placed at risk. The authorities did not need to hack into the account to access it as it was an open account where no password was required.

## Discussion

- 17) Ms Brakaj's reference to Danian was apposite to this appeal. The question for me is not whether the Facebook pages maintained by the appellant reflect his genuine views or not but whether they would expose him to a real risk of persecution on return to Iran. This is a matter to be decided in accordance with the country information before me.
- 18) Mr Mangion's strongest point was that the authorities were not interested in those whose sole activity was converting to Christianity or promoting the Christian faith. In order for the authorities to take an adverse interest in a person it was necessary to have some political involvement or some other aspect to their activities, such as uploading pornography. In support of this proposition Mr Mangion relied on the Freedom House report of 2013 at page 15. This material refers to a number of named individuals, four of whom have been sentenced to death and one of whom died in custody. In other words, these individuals have been exposed to the most extreme sanctions imposed by the Iranian authorities. One of them was prosecuted on charges of insulting and desecrating Islam because a software programme he had designed was used without his knowledge to upload pornography. This is an extreme example of persecution directed against computer use. The point is also made that numerous bloggers are in prison in Iran and serving prison terms of up to 20 years. An increasing number of bloggers had been threatened, arrested, tortured, kept in solitary confinement and denied medical care without being tried or convicted.
- 19) As Ms Brakaj pointed out, the same report states that Iranians outside Iran were also intimidated for their online activities. One faced heavy criticism for a song which was described as blasphemous and apostasy sentences were issued against him. The father of an Iranian student in the Netherlands was arrested because of his son's satirical posts on Facebook. The son was threatened that if he did not return to Iran his father would be executed. There was a significant rise in reports of individuals arrested for their activities on Facebook. Four internet users in Sirjan were arrested in October 2012 because of their supposed use of computers for anti-government activities and the insulting of officials on Facebook. Despite international legal restrictions placed on the selling of surveillance equipment to the Iranian government, there have been numerous media reports that Chinese and some western companies were providing the Iranian authorities with technology to monitor citizens' digital activities. Reports by Reuters and the Wall Street Journal found that two Chinese firms were key providers with surveillance technology to Iran's government, although both companies denied this. Numerous Facebook accounts of Iranian users which were deemed to be un-Islamic were hacked and defaced with a statement from Iran's judiciary saying "By judicial order, the owner of this page has been placed under investigation." It is said that Iran has significantly increased its hacking capabilities in recent years.
- 20) I was referred by both parties to the current country guideline case of BA Iran. This starts with the premise that given the large numbers of those who demonstrate here, and the publicity which demonstrators receive, for example, on Facebook, combined with the inability of the Iranian government to monitor all returnees who have been

involved in demonstrations here, regard must be had to the level of involvement of the individual here as well as any political activity which the individual might have been involved in Iran before seeking asylum in Britain. In relation to *sur place* activity, it was necessary to look at the type of demonstration and the role of the person's involvement together with the extent of their participation and the publicity attracted. It was also necessary to look at the risk of identification and the regime's capacity to identify individuals. Consideration should be given to factors which would trigger an inquiry or action on return such as a significant profile or an immigration history. It was necessary then to consider what the consequences of identification would be and whether the person identified would face a risk on return if the border post was able to match them with the information already held.

- 21) On the facts found by the First-tier Tribunal this appellant was not of interest to the authorities before he left Iran. In addition, the Judge of the First-tier Tribunal was not satisfied that the appellant left Iran illegally, although it does not appear to be disputed that the appellant entered the UK illegally. Accordingly, the outcome of the appeal depends on whether there is a real risk to the appellant arising from his activities on Facebook in promoting Christianity and Christian themed material.
- 22) As was pointed out at the hearing before me, the appellant has made no attempt to conceal his identity on Facebook or to screen the people he has befriended. Therefore if the Iranian authorities have any interest in his Facebook activities, his identity will be known to the authorities and they will be able to identify him as the holder of this Facebook account either on return or following his return. From this point of view it seems of little significance whether the appellant would delete or de-activate his account before returning to Iran. The question which must be considered is, if there is a real risk that the authorities are already aware of this site, would they have an adverse interest in him because of it.
- 23) Mr Mangion addressed this point. He submitted that the authorities would have no interest in religious views without any political involvement or other illegal activity, such as uploading offensive material. I am not sure, however, that I can take such a sanguine view of this matter as Mr Mangion. The Home Office OGN dated 30 October 2012, which was before me, states at paragraph 3.8.4 that while the law does not explicitly stipulate the death penalty for the offence of apostasy, courts have administered such punishment based on their interpretation of religious fatwas. The constitution officially recognises religious minorities, including Christians, but Christians are permitted to practice under the constitution as long as their members do not proselytise. In practice, however, the right to practise religion was denied. During 2011 the government's respect for and protection of the right to religious freedom continued to deteriorate. It is stated at paragraph 3.8.8 that the government actively denied Christians freedom of religion. Christians, particularly evangelicals, experienced increased harassment and surveillance during the year. The government enforced its prohibition on proselytising by closely monitoring the activities of evangelical Christians, discouraging Muslims from entering church premises, closing churches and arresting Christian converts. The following paragraph of the OGN

refers to least 300 arrests of Christians having been reported during 2011. Some of these were released almost immediately while others were held in a secret location without access to lawyers. There were numerous incidents during the year of Muslim converts to Christianity facing arrest and sentencing. A named individual was sentenced to death in October 2011 after being convicted of apostasy. It appears that at a retrial he was acquitted of apostasy but sentenced to three years in prison on a charge of "propaganda against the regime". As he had already served this period he was released.

- 24) The same report at paragraph 3.8.5 draws a distinction between offences committed in a public space and those things done in the private sphere. Activities that are at odds with Islam and take place in public are punished, while things that take place in private, such as drinking alcohol, illegal films, books and music as well as religious practises or illicit sexual affairs, will to a larger extent be tolerated. This raises an issue arising in an earlier country guideline case, that of FS and others (Iran - Christian Converts) Iran CG [2004] UKIAT 00303. The Iranian authorities may have little interest in an individual's private beliefs, even if the person has converted from Islam to Christianity, provided they do not attempt publicly to convert others.
- 25) The idea of what it means to proselytise or to preach has changed with advances in technology. Where once a preacher might have stood in a park or on a street corner, a preacher can now use the internet and social media, as this appellant has been doing. There is no doubt as to the nature of the material on his Facebook page, printouts of which were before me, and to the fact that access is entirely unrestricted.
- 26) This appeal is concerned with the assessment of risk to the appellant on return to Iran. The appellant does not have to be a genuine convert to Christianity for the authorities to take an adverse interest in him. He does not have to have proselytized by traditional means within Iran for them to take an adverse interest in him. It would be enough to establish a real risk were he to be regarded as a convert to Christianity who has used his Facebook page to promote Christianity among Iranians both within and outwith Iran. On the basis of BA, the authorities might not recognise the appellant on his return to Iran. His identity is no secret, however, and he could be located by the authorities at any time after he had returned to the country. The risk is not just on entry alone but also subsequently. Even if the appellant were to de-activate his account before return, the authorities may already have details of his activities and, in any event, he has made posts on other Facebook pages relating to his Christian faith. If the appellant is of interest to the authorities, it is too late for him to attempt to conceal his activities.
- 27) Having regard to the public nature of the appellant's Facebook activities, his significant number of friends (many of whom are not known to him) and the activities of the Iranian authorities in monitoring cyber space, I consider that there is a real risk that the authorities are aware of the appellant's Facebook page. Having regard to the explicit Christian material posted on it, much of which is in Farsi, I consider there is a real risk that the authorities would consider this material to be not only un-Islamic but also to



be offensive, in part because it is in the public sphere. Judging from their names, many of the appellant's Facebook friends are Iranian. Some of them give locations within Iran but some of them do not specify a location. As the appellant himself commented, he does not know whether these Facebook friends are all genuine or whether they include individuals who would report his activities to the authorities.

- 28) The standard of risk I am examining is less than the balance of probabilities. It might be difficult for the appellant to prove that it is more probable than not that the Iranian authorities have identified his site and would take action against him on return because of it. On the basis of the documentary evidence before me, however, including the Facebook material and the country information, I am satisfied there is a real risk that this is the case and accordingly the appeal will succeed on the basis that the appellant has a well-founded fear of persecution in Iran by reason of religion.

### **Conclusions**

- 29) As already found by Judge Aitken, the making of the decision of the First-tier Tribunal did involve the making of an error on a point of law and has been set aside so far as risk on return is concerned.
- 30) I re-make the decision in the appeal by allowing it.

### **Anonymity**

- 31) Although Judge Aitken made an order for anonymity I consider that there is no need to renew this or continue it as the information relating to the appellant's activities is already in the public domain.

**Fee Award**                      Note: This is not part of the determination

As recorded by the Judge of the First-tier Tribunal, no fee has been paid or is payable.

Signed

Date

Judge of the Upper Tribunal