



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

Appeal Number: AA/10444/2013

THE IMMIGRATION ACTS

**Heard at North Shields
on 15th August 2014**

**Determination
Promulgated
On 19th November 2014**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**G R
(Anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Behbahani instructed by Oaks solicitors.

For the Respondent: Mr Dewison – Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Henderson promulgated on 8th January 2014 in which she dismissed the Appellant's appeal against the direction for her removal to Iran that accompanied the refusal of her claim for asylum or any other form of international protection.

2. The Appellant first claimed asylum in 2007 using an identity different from that in which she made this claim, in relation to both name and date of birth. The Appellant has admitted that the first account was untrue and that the current basis of the claim is that she seeks to rely upon. Having considered the evidence the Judge sets out her findings of fact from paragraph 53 of the determination which can be summarised as follows:
 - i. The Appellant is an Iranian national who arrived in the United Kingdom with her mother and sister on a family visit. Bio-data taken from the entry clearance application confirms the current claim is made using her true identity [53].
 - ii. The issue of credibility has been made difficult by the Appellant presenting what she confirmed as false information regarding her identity and reasons for claiming asylum earlier [54].
 - iii. The basis of the current claim is as summarised in paragraphs 11 to 24 of the determination. It is accepted the Appellant came to the United Kingdom with a visit visa with the intention of visiting an aunt in Leeds although she claimed to have very quickly become involved with an Iranian man she met in a coffee shop in the UK [57].
 - iv. The alleged rapidity with which the Appellant stated she moved from first meeting the man in the coffee shop to a relationship, to a sexual relationship, to becoming pregnant, to leaving her aunt's house, to living with the man, was said to be "quite astonishing". The Appellant provides no dates in her statement and gives little by way of a timescale when asked to be more precise about the relationship and events in interview [57]. Replies to questions in interview indicate the Appellant came to the United Kingdom on 25th October 2006, met unnamed man at the end of October, had a relationship that lasted two months, took the pregnancy test which proved positive in November and that her boyfriend obtained tablets for the termination of the pregnancy [58]. In oral evidence however the Appellant confirmed she had a first meeting with the named man by November. The Judge records 'surprise' at the evidence regarding the alleged discovery of being pregnant. The Judge records that in light of past history she has real concerns about accepting such facts as credible [59].
 - v. The Judge found it surprising her family in Iran were aware of the pregnancy within days of the Appellant knowing [60] it was found odd that her mother would tell her father when she was aware of what the reaction might be. The assertion her mother had to tell her father was not found to be supported by any reason [61].

- vi. A false asylum claim was made after the Appellant had allegedly left the named man although she was vague about who advised her to submit the false claim. Other family members who entered on similar visit visas remained in the United Kingdom until the end of December/early January. The Judge found it surprising that the family members would not collectively or individually make an effort to find the Appellant and discuss the issues with her [62].
- vii. The Appellant's claim she and her aunt were no longer speaking to each other was again said to be 'surprising' albeit not implausible given she reunited with her aunt in 2007 and was living with her at the time she made a second application. The aunt could have corroborated her account but she was not in court to assist the Appellant. The Appellant's claim to have used her cousin's laptop in court (son of her aunt) indicated ongoing contact. The Judge concluded the Appellant was not being truthful regarding contact with her aunt and the reasons for her aunt not attending court or knowledge of her aunt's immigration history [63].
- viii. The Appellant was very vague about what she had been doing in the United Kingdom for the past few years. No one came to support her. She has a Facebook account in which she has been very active and from which many pages were provided in evidence. There are references to links on reports about Iran. The Judge found the Appellant uses Facebook "like most people to communicate, contact, shock, inform and entertain" [65]. The Judge finds that what is lacking from the information provided in the Facebook correspondence is how open the forums are in which the Appellant is participating [66].
- ix. The Appellant claims to fear persecution on account of contact with KS who she claimed she met through a discussion group on Facebook. In addition, Gmail correspondence from her laptop with links to several reports has been provided although apart from the Appellant's assertion that this is a Gmail account in Iran there is no evidence to show this is the case. It is simply a Gmail account to someone with an Iranian name which can be accessed by a recipient in any country and there was no additional evidence which shows that this was an e-mail sent to Iran [67].
- x. If the Appellant sent attachments such as those she provided to the First-tier Tribunal to a recipient in Iran there is a real risk that the recipient could be monitored and she face problems with the authorities. The difficulty is that there is no evidence to show that this evidence has been sent to Iran or that the Appellant has allowed open access to her Facebook account [68].
- xii. Objective evidence regarding the monitoring of Internet communications by the Iranian authorities is noted but the

Appellant is not a known activist or dissenter. The material contains reports and sentiments which are anti-regime. Links for the reports are being passed on to others but not necessarily in Iran [70].

- xiii. The case of SB (risk on return-illegal exit) Iran CG [2009] UKAIT 53 is relied on both parties but the Appellant will not in general face a real risk on account of past activities in Iran as she left the country legally. There remains the issue of whether on return her conduct on Facebook constitutes a risk factor [71].
- xiv. Having taken account of the case of BA (demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36: the Appellant has received and passed on links on her Facebook which would be perceived as anti-regime, she can be clearly identified by name and location on her Facebook account, the factors which would trigger enquiry or action on return would be the long absence from Iran and the fact the Appellant will be returned forcibly. The Appellant does not have a political profile and has not been previously identified as an opposition activist [74].
- xv. The Appellant's account of the whereabouts of her passport was inconsistent and it was not accepted she was being truthful. The claim in interview to have destroyed it yet also to have left it at the house of the person with whom she claimed to have conceived a child was an unexplained discrepancy. The passport would, however, have expired on 20 August 2011 and she would require a new travel document which could trigger enquiries [75].
- xvi. BA refers to individual cases of returnees being asked to hand over details of their Facebook account with information on the same leading to them being identified as taking part in anti-regime demonstrations. There is no evidence the Appellant has been involved in such demonstrations such that she will be identifiable on return. It was found to be relatively easy to identify a person if somebody has a Facebook account and to check what is on the account although the Appellant has the option of removing incriminating material from her account prior to her return. There is no evidence that she has participated in sending material to Iran or to any individual outside her known circle. It was not accepted the Appellant would ignore privacy settings which are so crucial to her safety. There is no evidence to show that the information read on the Appellant's Facebook account by the Tribunal has come to the attention of the authorities or that it would come to their attention on return given that she can remove any offending material prior to return [76].
- xvii. It is not accepted that the Appellant is at risk on account of an imputed political opinion or that as a failed asylum seeker there is a real risk of persecution on return [77]. The Appellant is not credible

concerning the core of the account regarding a fear of return to Iran. She has not shown a real risk for a Convention reason or substantial grounds for believing that she will face a real risk of serious harm if returned to Iran. No medical evidence has been provided to show she is unfit for removal [78].

xviii. The decision to remove is proportionate by reference to Article 8 ECHR [79-81].

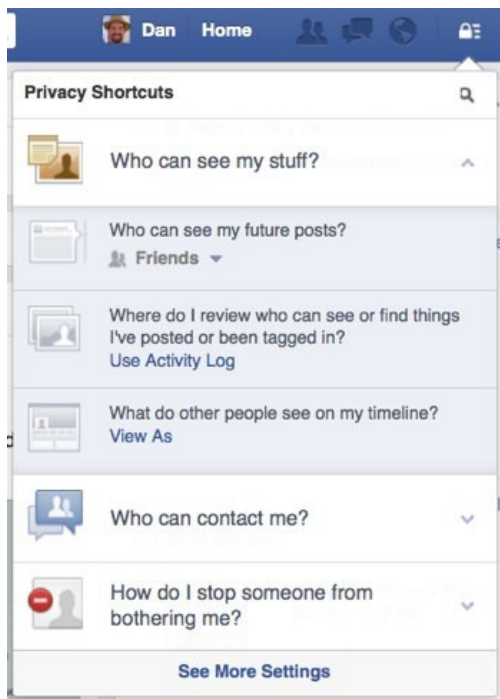
Error of law finding

3. The grounds assert legal error in the determination as the core element of the Appellant's claim is that she has come to the attention of the Iranian authorities following the arrest and detention of KS with whom she has claimed to have been exchanging anti-government material on Facebook and to whom she has sent specific e-mails from the United Kingdom containing anti-government and highly critical content. The grounds assert that the overall findings are flawed in that the determination is silent on any consideration of the core issue of KS's arrest and continued detention and interrogation of the Appellant's family following his arrest. Paragraph 67 to 68 of the determination are challenged on the basis that the finding there was no corroborative evidence is irrational in light of the fact that the Appellant's evidence was only that she and KS were privy to the e-mails and given that he had been arrested and was in detention she was unable to provide corroborative evidence from him as to receipt of the e-mails, especially as it is alleged his computer and belongings have been seized by the authorities. The requirement for corroborative evidence is said to be wholly unreasonable. It is also asserted that the Judge erred in failing to properly consider the issue of risk on return in the context of her own positive findings especially in light of the fact that the claim rested on the core issue of adverse interest by the authorities against the Appellant following the arrest of the named individual. The failure to consider and make findings regarding the authorities interrogation of the Appellant's family, particularly her father, following adverse interest in the Appellant makes the conclusions unsafe.
4. It is also asserted the Judge failed to consider relevant case law such as RT (Zimbabwe) [2012] UKSC 38 and that the Appellant cannot be expected to return to Iran to modify her behaviour and opinions simply to avoid becoming a target of prosecution. Asserting the offending material can be removed from her face account prior to return to Iran is contrary to the Supreme Court findings.
5. I find the Judge did not ignore the core of the claim. The Judge was clearly aware of the basis of the claim but was also troubled by the weight such a claim deserved in light of the fact the Appellant has been shown to be dishonest and willing to lie in order to secure her desired end of being permitted to remain in the United Kingdom.

6. The core of the claim is not that the Appellant will face a real risk on return as a result of attending demonstration or her own direct anti-regime political activities but rather that she will be perceived as holding views contrary to the interests of the regime if detained on return and interrogated as a result of material she claims to have sent to KS who she claims has been arrested and whose computer was seized. She infers such material must have been discovered leading to the visit to her home by the authorities looking for her. As a result the Judge set her focus not upon the credibility of the claim KS was arrested for, as the Judge acknowledges, there is no evidence to corroborate such a claim and the only source of this claim is therefore the oral evidence from a person whose credibility has been damaged, but upon the credibility of the claim the material the Appellant relies upon has been shown to have been sent to and/or received by the named person in Iran.
7. The material in question originates from two sources, e-mails sent via the Gmail server and Facebook. The Judge does not dispute the fact the materials relied upon exist or that the content of the same, if they came to the attention of the authorities in Iran will create an arguable real risk for the sender. The issue is whether, in respect of the communications, they have ever come to the attention of the authorities and, in relation to the Gmail account, which is an e-mail account service provided by Google, whether they were ever sent to or received by a person in Iran.
8. The Judge has not engaged upon a flight of fancy in such an approach as it is not sufficient to tender documents asserting they create a real risk without more, as otherwise this is all an individual would need to do to succeed with a claim for international protection. If the material has not been sent to Iran there cannot be an arguable real risk and the credibility of the claim to face such, or that the authorities have an adverse interest in the Appellant, has not been proved.
9. There have been many reports in the press regarding the actions of the Iranian authorities in relation to the blocking of internet access for its citizens, especially at the time of elections or periods of greater opposition activity. Google has been specifically targeted and access to its sites denied. E-mail or other electronic communications sent during such a period and carried on the Google server are, therefore, not likely to have reached the intended destination.
10. E-mails have what is known as a Header which ordinarily contains details of the sender, the address to which it is sent, and the subject. This is a summary of what are considered to be the main details of interest to a sender and recipient. Most service providers allow an e-mail account holder to expand the header to provide the delivery path and it has not been shown this was evidence available to the Judge or that enquiries had been made of the internet service provider (ISP) to

obtain evidence that the messages had been delivered to an address in Iran and opened. In multi-cultural Britain a person with a name similar to that of an Iranian national need not necessarily be a person in Iran.

11. The Judge was provided with a number of copy Facebook entries and comments upon the lack of evidence relating to the security setting used by the Appellant on her account. As a general rule it is possible to control how users see or do not see a profile on Facebook. Various settings are available to maintain the level of transparency a user wants.
12. When a person logs in to Facebook, in the top right corner are two different ways to access privacy settings. Clicking the lock icon opens a drop-down menu that shows Privacy Shortcuts. From here key changes can be made to the settings.



13. There are three settings to control how posts are seen on the site and by whom. The options are 'Public', 'Friends', 'Only Me' and 'Custom'. What this is set to becomes the default sharing setting for all future posts unless changed. It does not affect anything previously posted. If posts are set to Public they will be captured by Google and other web indexing services and made available to the world for all to see, otherwise the restricted access is applicable.
14. There is also available within Facebook an Activity Log page on which everything a person has done on Facebook or been tagged as doing by others will show up. It is this type of information the Judge was referring to and which had not been provided in the evidence made available to her.

15. If the material shown to the Judge has not been accessed by anyone in Iran or is not shown the Appellant can be identified as the source of such material as a result of privacy settings, any claim of risk as a result of the Iranian authorities becoming aware of it has not been substantiated. The Judge's finding to this effect has not been shown to be irrational or tainted by legal error on the basis of the evidence made available to her.
16. The Judge is also criticised for the finding such material could be deleted before return on an RT (Zimbabwe), HJ(Iran) basis. The key element in relation to this claim is that it is not acceptable to insist a person is required to delete information or to change their behaviour to avoid persecution if this involves the suppression of a genuinely held belief that forms part of a person's fundamental identity. In this case it was not established on the evidence that the material does represent such genuinely held views of the Appellant. She stated she was asked by a named individual to access and send information he was unable to view from Iran, which she did. Whilst the core finding that this has not been proved is noted, it has not been shown the Appellant should not be required to delete information of a matter that has not been shown to represent an element of her fundamental identity. It has also not been established on the evidence that the lifestyle the Appellant has in the United Kingdom represents a genuine fundamental held belief or that requiring her to adapt to life in Iran will create an entitlement to a grant of international protection.
17. As the core account has not been accepted the credibility of the claim the authorities came to her father's house looking for her must also have been rejected by the Judge. This can be inferred even if not expressly stated in the determination.
18. The burden is upon the Appellant to prove legal error material to the conclusion the Appellant failed to substantiate her claim to be at risk on return to Iran. On the basis of the available evidence the Judge's conclusions have not been shown to be irrational, unlawful, or contrary to that evidence.

Decision

19. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

20. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I continue that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 18th November 2014