



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

Appeal Number: PA/02853/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 23 October 2017**

**Decision & Reasons Promulgated
On 26 October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

[F S]

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Gayle, Solicitor

For the Respondent: Mr Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iran. He was born on [] 1993. He appealed against the respondent's refusal to grant him asylum dated 10 March 2016. In a decision promulgated on 12 September 2016, the First-tier Tribunal Judge (FTTJ) dismissed the appeal because he found that the appellant was not credible and was not at risk on return.
2. Leave to appeal was refused on 14 October 2016 by a Judge of the First-tier Tribunal. He found the grounds amounted to nothing more than a

disagreement with findings which the FTTJ was entitled to make on the evidence and for which he gave sustainable reasons for the adverse credibility findings.

3. When the grounds were resubmitted, an Upper Tribunal Judge found that it was arguable the judge's decision was inadequately reasoned and unduly speculative. Further, it was arguable the challenge to the decision went beyond mere disagreement.

Submissions on Error of Law

4. Mr Gayle claimed the grounds identified numerous material errors of law, some of which were perverse. Most egregious was the FTTJ's failure to reconcile what was described as the wealth of documentary evidence, corroborative of the appellant's claim to be a blogger and political activist, with the finding that there would be no risk to him on return to Iran. Mr Melvin relied upon the Rule 24 response. He submitted that the FTTJ made adequate findings of fact and gave detailed reasons for the findings as set out at [28] - [39] of the decision. The FTTJ was entitled to make such findings which were not perverse or irrational.

Conclusion on Error of Law

5. The judge identified correctly that this case "*..... absolutely turns on the alleged sur place activities of the appellant in the UK*", but before he considered those sur place activities he reviewed the appellant's claim with regard to previous political activities in Iran.
6. The FTTJ at [29] described the appellant's account of his activities as a teenager as "*flimsy and lacking in substance*", but he did not adequately engage with the evidence in order to carry out his analysis.
7. The FTTJ at [29] described the appellant's account as "*very vague*" but he did not adequately engage with the Reasons for Refusal Letter and the appellant's statement in response to explain his findings.
8. The FTTJ said at [29] that the appellant's evidence was that he came from a political family who had been engaged in previous demonstrations. His parents were government employees who had never been previously detained. The judge speculated that "*.....at the very most, his parents probably expressed a discontent rather than actually exposing themselves to all the risks to them and their son, in direct confrontation with the state.*" In arriving at that speculative conclusion, the FTTJ did not explain which material he was relying upon.
9. It was the appellant's claim that he started to conduct a blog in April 2015. It was made anonymously until October 2015, shortly after he submitted his asylum application.
10. The FTTJ said at [30], that most of the material blogged was of a generic nature provided by other sources, however, he failed to explain why it was

that he considered such generic material would not place the appellant at risk. Nor did the FTTJ in making his findings engage with the material set out in detail in the appellant's bundle in particular, blog and Twitter posts at P7 – P32, and P41 – P87.

11. As regards the FTTJ's adverse credibility findings with regard to events in Iran, he found the appellant's claim "*remarkable*", "*utterly unbelievable*" and "*hard to imagine*". The FTTJ clearly found the appellant's claim wholly without merit. The FTTJ found incredible that the appellant should return to Iran in July 2015 to orchestrate a demonstration on 10 October 2015 having previously returned to this country on 22 September 2015. The FTTJ said there was no evidence which had been provided as to what happened at the protest but he overlooked that there was reference to the detention of civil rights activists at P91 of the appellant's bundle which he did not take into account.
12. The FTT Judge appears to have misunderstood the sequence of events at [34] when he said that if the appellant had been under observation or was in any way implicated, he would have been identified in July 2015 on return and his home address raided prior to October 2015. The appellant's claim was based upon being identified only in October 2015 on the arrest of his friends, the authorities attending at his home and his identity being revealed which was also when he revealed his true identity on-line. As of July 2015, it was the appellant's claim that he was unknown to the authorities.
13. The FTTJ referred to **Danian [1999] EWCA Civ 3000** at [26]-[27]. The issue (although the FTTJ did not say so) was whether the appellant was at risk on return, notwithstanding what the judge considered were his opportunistic, bad faith activities here to bolster his claim. The FTTJ said that the conclusions in **Danian** "*...was that a person who deliberately engages in activities to draw attention to himself does not necessarily exclude himself from protection, but that the essential test as had to be considered is whether or not the overall claim lacked credibility.*" Brooke LJ in **Danian**, put it slightly differently:

"For all these reasons I do not accept the Tribunal's conclusion that a refugee sur place who has acted in bad faith falls outwith the Geneva Convention and can be deported to his home country notwithstanding that he has a genuine and well-founded fear of persecution for a Convention reason and there is a real risk that such persecution may take place. Although his credibility is likely to be low and his claim must be rigorously scrutinised, he is still entitled to the protection of the Convention, and this country is not entitled to disregard the provisions of the Convention by which it is bound, if it should turn out that he does indeed qualify for protection against refoulement at the time his application is considered."

14. Whilst the FTTJ was of the view that the case turned on the appellant's alleged sur place activities (see [5] above), he first considered events in

Iran. When the FTTJ found such events in Iran incredible, he next turned to the blogging activities which at [38] he referred to as an embellishment to bolster the appellant's claim. The FTTJ crucially failed to consider that as per **Danian**, there was a possibility that the appellant might be at risk on return as a result of his blogging activities even if the events in Iran were not credible.

15. Although the FTTJ was referred to **BA (Demonstrations in Britain - risk on return) Iran CG [2011]** where he said it was observed that careful consideration had to be given to the level of involvement and the likelihood of the individual coming to the attention of the authorities, the FTTJ carried out no such analysis. As regards the appellant's blogging, **AB and Others (internet activity - state of evidence) Iran [2015] UKUT 0257 (IAC)** was of significance, but whereas this case was included within the appellant's bundle and drawn to his attention, the FTTJ failed to include it as part of his analysis. Whilst it is not CG, the summary is worth recording here:

“466. It is very difficult to establish any kind of clear picture about the risks consequent on blogging activities in Iran. Very few people seem to be returned unwillingly and this makes it very difficult to predict with any degree of confidence what fate, if any, awaits them. Some monitoring of activities outside Iran is possible and it occurs. It is not possible to determine what circumstances, if any, enhance or dilute the risk although a high degree of activity is not necessary to attract persecution.

467. The mere fact of being in the United Kingdom for a prolonged period does not lead to persecution. However it may lead to scrutiny and there is clear evidence that some people are asked about their internet activity and particularly for their Facebook password. The act of returning someone creates a 'pinch point' so that a person is brought into direct contact with the authorities in Iran who have both the time and inclination to interrogate them. We think it likely that they will be asked about their internet activity and likely if they have any internet activity for that to be exposed and if it is less than flattering of the government to lead to at the very least a real risk of persecution.

468. Social and other internet based media is used widely through Iran by a very high percentage of the population and activities such as blogging may be perceived as criticisms of the state which is very aware of the power of the internet. The Iranian authorities in their various guises both regulate and police the internet, closing down or marking internet sites although this does not appear to be linked directly to persecution.

469. The capability to monitor outside Iran is not very different from the capability to monitor inside Iran. The Iranian authorities clearly have the capacity to restrict access to social internet

based media. Overall it is very difficult to make any sensible findings about anything that converts a technical possibility of something being discovered into a real risk of it being discovered.

470. The main concern is the pinch point of return. A person who was returning to Iran after a reasonably short period of time on an ordinary passport having left Iran illegally would almost certainly not attract any particular attention at all and for the small number of people who would be returning on an ordinary passport having left lawfully we do not think that there would be any risk to them at all.

However, as might more frequently be the case, where a person's leave to remain had lapsed and who might be travelling on a special passport, there would be enhanced interest. The more active they had been the more likely the authority's interest could lead to persecution.

The mere fact that a person, if extremely discrete, blogged in the United Kingdom, would not mean they would necessarily come to the attention of the authorities in Iran. However, if there was a lapse of discretion they could face hostile interrogation on return which might expose them to risk. The more active a person had been on the internet the greater the risk. It is not relevant if a person had used the internet in an opportunistic way. The authorities are not concerned with a person's motivation. However in cases in which they have taken an interest claiming asylum is viewed negatively. This may not of itself be sufficient to lead to persecution but it may enhance the risk."

16. As I understand it, once the appellant's identity was attached to the blog, all previous anonymised blogs would also be revealed. What was necessary on the part of the FTTJ was an analysis of the blogging history both anonymised and under the appellant's own name. It is irrelevant that the FTTJ found that most of the material was of a generic nature provided by other sources. What was required from the FTTJ and was overlooked, was an analysis of the blogging by reference to **AB**, its nature and the implications for the appellant at any "pinch point" on return.

Notice of Decision

The decision of the First-tier Tribunal contains errors of law which I have identified above. The appeal will be reheard in the First-tier Tribunal de novo by a judge other than the FTTJ.

No anonymity direction is made.

Signed

Date 23 October 2017

Deputy Upper Tribunal Judge Peart