



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

Appeal Number: PA/14096/2016

THE IMMIGRATION ACTS

**Heard at Bradford
On 25th May 2017**

**Decision and Reasons
Promulgated
On 31st May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

**MR ALI MUSAVI
(ANONYMITY NOT DIRECTED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Marwha, Counsel instructed by Bankfield Heath Solicitors

For the Respondent: Mr M Diwnzcz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Judge Dearden, sitting at Bradford on the 19th January 2017, in which he dismissed the appeal against refusal of the appellant's Protection Appeal. The appellant is an Iranian national who was born on the 1st January 1977.
2. The essence of the appellant's appeal was that he has a brother, Afshin Ghotbi, who is something of a sporting hero in Iran but who had openly criticised the Iranian regime both before and after fleeing to the United Kingdom. Their mother became seriously ill during the course of 2015 and the appellant made high-level but ultimately unsuccessful representations to the Iranian authorities with a view to persuading them to allow his brother to visit her in Iran prior to her death, which occurred on the 9th December 2015. During the course of making those representations he met with the

Deputy Sports Minister. At that meeting, he lost his temper, insulted the Prophet and threatened to publish documents that would give the lie to the regime's claim that his brother was guilty of tax evasion. In addition to fearing the consequences of his intemperate behaviour at that meeting, he fears that upon return to Iran he would be questioned by officials who would force him to reveal postings on Facebook that demonstrate his hostility to the Iranian regime.

3. Judge Dearden gave many reasons for disbelieving the appellant's narrative. Those specifically challenged in the present appeal may conveniently be summarised as follows:

- (a) the regime would not have granted the appellant permission to stand in municipal elections if they either knew or cared about his postings on Facebook;
- (b) the postings were not in any event critical of the regime;
- (c) it was inherently unlikely that the Deputy Sports Minister would attend a meeting concerning whether the appellant's brother had paid his taxes;
- (d) it was not credible that the Iranian authorities would accuse the appellant's brother of evading tax in circumstances when this was clearly contradicted by documentary evidence that it had been deducted at source;
- (e) there was no evidence before the Tribunal to support the appellant's claim that his brother had made critical comments about the Iranian regime to both the BBC and 'Voice of America'.

I will take the criticisms of these findings in turn.

4. The first finding is said to be based upon a misunderstanding by the judge as to how Facebook operates. The appellant had been represented before Judge Dearden by Ms Frantzis. Her submissions are recorded at paragraphs 26 to 28 of the Decision. The accuracy of the judge's recording of one particular submission is challenged in the grounds of appeal against his decision –

Miss Frantzis drew attention to the various Facebook pages to be found at page C3 onwards of the Respondent's bundle. She told me that with the assistance of the Virtual Private Network (referred to at page 536 of the Appellants bundle) it was possible for the Appellant to share various Facebook conversations without his name appearing

This is apparently inaccurate because, as Ms Marwaha explained it to me, the effect of encrypting an internet connection via the VPN is that the authorities are unable to trace the source and thus the location from which the material in question has been posted. Ms Marwaha did however acknowledge that this would not have prevented the authorities from viewing the appellant's Facebook page by other means, such as employing the simple expedient of making a search against the identity details (name,

date of birth, and so forth) provided by the appellant in his claimed application for permission to stand as a candidate in municipal elections. Ms Marwaha acknowledged this to be a possibility, but she countered that certain posts would nevertheless have been viewable only by the appellant's Facebook "friends". When I asked her refer me to the evidence that would have allowed Judge Dearden to distinguish between those posts that were and were not capable of being viewed by the Iranian authorities, she told me that a 'globe' icon appears alongside those posts that are open to general public viewing and that it follows from this that posts without such an icon are not. Ms Marwaha did however accept that the Facebook 'user guide', in which this is all apparently explained, had not been included within the appellant's bundle of documents. I am not therefore satisfied that on the evidence that was before him, it was not reasonably open to the judge to conclude that the Iranian authorities had viewed these posts and had been untroubled by them.

5. In relation to the second finding (that the posts did not in an event make adverse comment upon the activities of the Iranian regime) it is said that the judge failed to take account of the appellant's witness statement in which he opined that, "by sharing posts, clips and articles, I believe this is the same as liking and advocating posts". This is elaborated in the grounds in the following way:

It is reasonably likely that by sharing posts from the BBC and other international media outlets, publicising the Iran regime's actions, for example, public flogging, summoning to court female athletes for being 'half naked' and executing Christians, A's Facebook activity shall be viewed with disdain by the Iranian authorities and persecutory treatment shall follow.

Thus expressed, the above is plainly nothing more than a quarrel with the judge's findings and does not identify any arguable error of law. I shall nevertheless assume that this ground was intended to mount a challenge to the finding on grounds of perversity. It is however noticeable that each of the examples that are quoted in the grounds (above) was simply shared by the appellant with his 'friends'. Moreover, the evidence in his bundle of documents illustrates that the 'sharing' of a post on Facebook is but one of three options. The other two options allow the user either to 'like' or to 'comment' upon the post in question. The appellant's claim in his witness statement that 'sharing' a post is equivalent to 'liking' it is thus patently untrue: it is perfectly possible to 'share' a post whilst simultaneously indicating that it is not 'liked'. Absent any evidence that the Iranian regime wished to censor the information in question, it was thus reasonably open to the judge to conclude that the mere sharing of a purely factual news report, whilst expressing neither approval nor disapproval of its reported facts, was not and would not be a cause for concern to the Iranian authorities.

6. Judge Dearden's finding that it was "inherently unlikely" that the Deputy Sports Minister would attend a meeting with the appellant in order to discuss a plea for his brother to be allowed to visit their ailing mother was, in effect, a finding that it was implausible that a relatively high-ranking official would attend such a meeting. I acknowledge that there is a need for caution when employing 'plausibility' as a tool for assessing evidence, given

that it is essentially a subjective concept. I am also bound to confess that I am attracted by the arguments, advanced in the grounds, that attendance at such a meeting by the Deputy Sports Minister is in fact entirely plausible when judged within its claimed context. Had this been the sole basis upon which Judge Dearden had reached his decision, I may thus have been persuaded to set it aside. There were however many reasons why Judge Dearden did not accept that such a meeting had taken place at all. The plausibility of it being attended by any given individual does not therefore, in my judgement, go to the core of his reasoning.

7. The following credibility finding is said by the grounds to be “unclear” –

I concluded that the Appellant was not credible when he said that in the Persepolis football contract the employer deducted the tax and sent it to the Iranian equivalent of the Inland Revenue but the appellant’s brother is accused of not paying his tax.

I am afraid to say that I am unable to see what is “unclear” about that finding. When it is read in context, it is clear that Judge Dearden did not find it credible that the Iranian authorities would accuse the appellant’s brother of not paying tax on his earnings for the Persepolis football club when such an accusation could readily be disproved by reference to his contract.

8. Finally, it is said that Judge Dearden acted unfairly in making an adverse credibility finding against the appellant concerning his failure to produce evidence from YouTube to back up his claim that his brother had publicly criticised the Iranian regime. That criticism is based upon the following passage in the decision –

The brother is said to have made certain comments to the BBC and to the Voice of America news criticising the Iranian regime for their interference in football. In fact no objective evidence is produced to me confirming that such criticism took place thereby preventing the brother from returning to Iran. Miss Frantzis says that the Appellant is not well versed in the types of evidence required in immigration proceedings, but in my conclusion his solicitors are.

On a fair reading of that paragraph, however, it is clear that Judge Dearden was criticising the appellant’s representatives, rather than the appellant, for failing to make advance arrangements to facilitate the viewing of any relevant video clips during the course of hearing the evidence, rather than attempting to do so ‘on the hoof’ after Counsel had begun her closing submissions. Furthermore, it is clear that Judge Dearden’s observation concerning the absence of independent evidence to support this particular aspect of the appellant’s claim did not extend to a finding that its existence had been invented.

9. I am thus satisfied that the grounds of appeal upon which permission to appeal to the Upper Tribunal was granted amount to nothing more than a quarrel with findings that, with one possible and immaterial exception, were reasonably open to the judge on the evidence that was before him. Moreover, it seems to me that this ought to have been apparent to the

judge who found there to be “arguable points” in the grounds, the legal nature of which were not identified in granting permission to appeal.

Anonymity is not directed

Signed

Date: 26th May 2017

Deputy Upper Tribunal Judge Kelly