



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12987/2016

THE IMMIGRATION ACTS

Heard at Glasgow
On 26 April 2018

Decision and Reasons Promulgated
On 30 April 2018

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

KARIM NOUROZI
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms H Cosgrove, of Latta & Co, Solicitors

For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Iran, born on 16 September 1989.
2. This decision is to be read with:
 - (i) The respondent's decision dated 17 November 2016, refusing the appellant's protection claim.

- (ii) The appellant's grounds of appeal to the FtT, filed on 23 November 2016 (which are only generic).
 - (iii) The determination by FtT Judge Bart-Stewart, promulgated on 4 August 2017, dismissing the appellant's appeal.
 - (iv) The appellant's **3 grounds of appeal to the UT**, stated in the application for permission made to the FtT, dated 21 August 2017.
 - (v) The refusal of permission by FtT Judge Adio, dated 7 November 2017.
 - (vi) The appellant's application for permission made to the UT, dated 5 December 2017, on the same grounds.
 - (vii) The grant of permission by UTJ Plimmer, dated 9 January 2018.
3. Having heard the submissions, I reserved my decision.
 4. Grounds 1 and 2 are selective disagreement on matters of fact. They do not tackle the reasoning in the decision as a whole, and do not amount to a case that it should be set aside for error on a point of law. Further, these grounds are not of much strength, even within these limitations.
 5. Ground 1 does not show that the appellant was unreasonably asked to speculate, or that the judge's reasons in turn are speculative. The appellant's evidence was that he was little known among the congregation and had not been seen on the day, and so it was unclear why he might be warned not to go home or why his home would be raided. The judge adequately explained why she found the raid unlikely. It was obvious that the appellant's account did not explain how the *Ettela'at* might have known to remove the back of his television to find a bible. As Mrs O'Brien submitted, that was not an expectation that the appellant should see into the minds of the authorities.
 6. Ground 2 does not show any unfairness in the judge finding that the appellant gave a weak account of his engagement in church services in the UK or in how these were interpreted. A judge must make up her mind on the evidence placed before her. That does not require an ongoing dialogue about points of concern. The passage of evidence quoted in the ground does not make the matter any clearer. The appellant was not taken unfairly by surprise, and he does not suggest that he has any better explanation to provide.
 7. The submissions by Ms Cosgrove focused on ground 3. Representatives agreed that it is of a different nature and, if made out, would not lead to a fresh hearing but to a remaking of the decision by the UT, based on the evidence which had been before the FtT and on submissions.
 8. The proposition in the skeleton argument in the FtT is that paragraphs 457, 464 and 467 of *AB and others* (internet activity- state of evidence) Iran [2015] UKUT 257

“clearly places the appellant at greater risk in Iran”. As stated in the grounds of appeal to the UT, countering paragraph 38 of the FtT’s decision, it is not that the Iranian authorities monitor the Facebook of every Iranian, but that on return there is a “pinch point” where the appellant’s internet activity is likely to come to the fore.

9. Ms Cosgrove pointed to the evidence of many Facebook pages in the appellant’s own name, all of an evangelical nature. She accepted that as this was his own Facebook account, he could delete it, but she said that he was likely to be asked and could in principle not be expected to lie.
10. The proposition that the appellant qualifies for protection by a false claim to Christian conversion posted on Facebook has several weaknesses.
11. The appellant may at any time delete his Facebook account. Having been found to have set it up in bad faith, there is no reason to think that he would not take that elementary precaution before return.
12. The respondent’s decision at ¶54 considers the appellant’s account based on illegal exit from Iran, although the truth of that is not explicitly conceded, and finds, based on country guidance, no risk arising. The appellant did not focus in the FtT on obtaining a finding about his exit. He did not try to show that the only course available to him is return on a travel document marking him out as a failed asylum seeker. It would have been for him to do so. There is no presumption of enforced return.
13. Refusal to return voluntarily, where that course is available, does not contribute to a claim for protection: see e.g. *Macdonald’s Immigration Law and Practice*, 9th ed., ¶12.24, citing *AA v SSHD*, *LK v SSHD* [2006] EWCA Civ 401, [2006] NLJR 681, [2007] 1 WLR 3134. Put another way, “A person cannot rely on their own failings (as where they do not co-operate in securing valid travel documentation) to obtain international protection”: *Macdonald’s Immigration Law and Practice*, 9th ed., ¶12.28, citing *HF v SSHD (Iraq)* [2013] EWCA Civ 1276.
14. If not marked out on return as a failed asylum seeker, it is not likely the Iranian authorities would ask the appellant for details of his history in the UK.
15. There is a general principle of not being expected to lie, by making false claims of political allegiance, or denying religious convictions or sexual identity. However, the appellant cited no authority which would entitle him to a presumption that if asked, he would volunteer to his national authorities, against his own interests, details of activities he undertook in bad faith. The proposition appears to be a considerable stretching of the case law.
16. There would be no sensible reason to find as a fact that the appellant would volunteer such information.
17. Somewhat similar arguments in cases of activities at low level and in bad faith were rejected by the UT and by the Court of Appeal in *SSH and HR* (illegal exit: failed

asylum seeker) Iran CG [2016] UKUT 00308 (IAC) (see the headnote, and ¶¶23, 29-30, and 34) and in AS (Iran) [2017] EWCA Civ 1539 (¶¶32-33).

18. Ground 3 does not show that the FtT's resolution of this issue involved the making of an error on a point of law.
19. If remaking on this issue was required, then for the above reasons the appeal would again have been dismissed.
20. The decision of the First-tier Tribunal shall stand.
21. No anonymity direction has been requested or made.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

27 April 2018
Upper Tribunal Judge Macleman