



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/13044/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Bradford

On 28 January 2019

**Decision
Promulgated**

On 19 March 2019

&

Reasons

Before

UPPER TRIBUNAL JUDGE LANE

Between

SAR

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Mair, instructed by Barnes Harrild & Dyer, solicitors

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

DECISION AND REASONS

1. By a decision promulgated on 20 June 2017, I found that the First-tier Tribunal had erred in law such that its decision fell to be set aside. My reasons were as follows:

1. The appellant, SAR, was born in December 1983 and is a male citizen of Iran. He first claimed asylum in the United Kingdom in September 2009 but his claim was refused and an appeal to the First-tier Tribunal dismissed on 25 November 2009. There was no onward appeal. The appellant made further representations to the Secretary of State in February 2013 but the respondent maintained the refusal of the decision dated 22 October 2015. The appellant appealed to the First-tier Tribunal (Judge Moxon), which, in a decision

promulgated on 6 December 2016, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The three grounds of appeal to the Upper Tribunal concern the appellant's sur place activities in the United Kingdom. I am not invited to interfere in any way with the other findings by Judge Moxon and by the previous First-tier Tribunal Judge in 2009 as to the appellant's credibility and his past activities in Iran made. Having said that, the ground of appeal concerning procedural unfairness also touches upon the appellant's claim to have left Iran illegally. That claim was rejected by Judge Moxon:

I also note that within the refusal letter it is not expressly accepted that the appellant did leave Iran illegally, it being stated that this aspect is only "claimed". The only evidence that the appellant left Iran illegally and is known by the name he has provided to the British authorities, is from the appellant himself. He has not adduced any documentation to this effect. Given the significant adverse credibility findings of Judge Lambert and myself, as outlined below, I do not accept, upon the appellant's word alone, that he did in fact leave Iran illegally and that he is known by the name he has used for these proceedings.

3. Ms Smith, for the appellant, submitted that the question of the appellant's claimed illegal exit from Iran had never been raised by the respondent beyond the reference in a refusal letter to which Judge Moxon in turn refers in the passage which I have just quoted. Given that I will set aside Judge Moxon's decision, I am prepared to accept that the question of the appellant's illegal exit may be considered at the resumed hearing before the Upper Tribunal. However, only that issue and sur place activities and the effect these activities may have on increasing the appellant's risk on return to Iran remain the only issues in this appeal to which the Upper Tribunal will have regard at the resumed hearing; all other findings by both previous Tribunals shall stand.

4. As regards sur place activities, the grounds deal principally with the appellant's Facebook postings. I have to say that I find the judge's findings at [50] regarding an anti-government demonstration which the appellant claims to have attended in 2014 and a further event in October 2015 to be entirely sound. The judge did not accept that the appellant had attended these events, a finding with which I will not interfere.

5. At [51], Judge Moxon did not accept the appellant had posted political messages on Facebook. The appellant claimed to have posted these messages from 2013. The judge wrote:

Whilst I have seen printouts that appear to be from Facebook I only have the appellant's evidence that these are actual screenshots from the Facebook page. Given the general adverse findings and the fact that the Facebook postings have not been disclosed previously I am not satisfied that the documents purporting to be Facebook messages are in fact true representations of what has been posted on line by the appellant. I also take into account the inadequate explanation from the appellant as to why he would post such things if he believed that it would increase his risk of harm if returned.

6. Ms Smith submitted that, had the judge's concerns about the Facebook postings been brought to the appellant's attention at the hearing, he would have been in a position to have shown the Facebook pages to the judge on his mobile phone. The judge acted unfairly by denying the appellant the opportunity to

explain and possibly allay the judge's concerns regarding the Facebook postings. Further, the actual reliability of the Facebook pictures and postings had not been brought into doubt by the representative of the respondent before the First-tier Tribunal. Ms Smith also submitted that the judge had failed to apply the case of *AB and Others* (internet activity – state of evidence) Iran [2015] UKUT 0257 in particular at [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.

7. At [56], Judge Moxon wrote:

I therefore do not accept that the purported Facebook messages would come to the attention of the Iranian authorities if [the appellant] was to be returned. Even if they had been genuine. I do not believe that he would be identified as someone upon images of anti-government demonstration in the United Kingdom (sic) I do not accept that his activities have been monitored.

8. I accept Ms Smith's submission that the judge appears to be dealing here only with the monitoring of the appellant's Facebook account prior to his return; in other words, in circumstances where, before his arrival in Iran, the Iranian authorities would be aware of his activity on Facebook. This ignores the observation made by the Upper Tribunal in *AB* that the appellant is likely to be questioned about Facebook activity and that he should not be expected to lie about that activity but to state the truth, namely that he had posted on Facebook. As I discussed with the advocates at the Upper Tribunal hearing, this gives rise to a number of issues which require further examination. First, there needs to be an assessment of the appellant's own character and likely conduct if he is returned according to the principles of *HJ (Iran)* [2010] UKSC 31. If the appellant is found to be a genuine political opponent of the Iranian regime and fearless in the face of any possible persecution at their hands, then he is likely to inform those interrogating him on arrival that he has posted on Facebook so as to allow those officials to find the anti-government postings. However, as Judge Moxon observed, it is unlikely that an individual who is not genuinely opposed to the Iranian regime would, if he were returned to Iran, be likely to seek to obliterate any records on the internet which, having proved useless in securing his immigration position in the United Kingdom, might put him in difficulties upon return. Internet postings, therefore, differ in kind from, for example, photographs which embassy officials might take of those attending a demonstration; once taken, the subject is powerless to prevent a photograph being published to third parties. Secondly, this, in turn, gives rise to the question of whether or not one is able to remove postings on Facebook and, even if they are removed, whether they leave on the internet any form of “trace”. I accept that, if the postings cannot be removed, then the appellant cannot be expected to lie in order to protect himself if he is asked about his Facebook account. Equally, however, if the appellant is able to remove the Facebook postings then it is necessary to consider whether he would be likely to do so before he returned to Iran so that he would not need to lie to his interrogators.

9. Save for the issue of illegal exit and sur place activities, all the findings of the previous Tribunals including that of Judge Moxon shall stand. However, I set aside the decision and shall remake the decision in the Upper Tribunal following a resumed hearing. The issues which I have indicated in paragraph [8] above will be the subject of the resumed hearing. It would be helpful if the Tribunal were to have the advantage of expert opinion regarding the question of internet postings, dealing, in particular, with Facebook postings and whether or not these may be removed and, if they can be removed, whether they would leave any form of 'trace' which would enable the Iranian authorities, if they are given access to the appellant's Facebook account, to retrieve the postings. If the appellant's internet profile may be extinguished by him prior to returning to Iran, then the Tribunal will need to consider (having regard to the views of the previous Tribunal as to his credibility) whether he would indeed seek to remove his profile in order to protect himself and in order to prevent the need to lie during any interrogation.

10. I direct that any evidence on which either party may seek to rely at the resumed hearing should be served on the other party and filed at the Upper Tribunal in no less than ten days prior to the resumed hearing.

The decision of the First-tier Tribunal which was promulgated on 6 December 2016 is set aside. Save for the issues of (i) illegal exit from Iran and (ii) sur place activities namely the appellant's Facebook postings, all the findings of fact of the First-tier Tribunal are preserved. The remaining issues will be determined by the Upper Tribunal at a resumed hearing before Upper Tribunal Judge Clive Lane at Manchester on the first available date after 1 August 2017.

2. The resumed hearing took place at Bradford on 28 January 2019. The appellant gave evidence in Kurdish Sorani with the assistance of an interpreter. He was cross-examined by Mr Bates, who appeared for the Secretary of State. Having heard the oral submissions of both representatives, I reserved my decision.
3. The burden of proof is on the appellant. The standard of proof is whether the appellant has shown that there are substantial grounds for believing that he would be at real risk of persecution or treatment which would breach Article 3 ECHR if he is returned to Iran. I had regard to all the evidence both written and oral and I have considered the expert evidence upon which the appellant relies. I have considered the evidence as a totality before reaching any findings of fact or reaching conclusions as to the credibility of any part of the appellant's account. I have sought to identify the 'core' issues in the appellant's claim and to distinguish those issues from peripheral matters.
4. Mr Bates submitted that the appellant's account of how he had left Iran was not credible. He reminded me that the appellant did not claim to have any form of profile with the Iranian authorities before he left that country. He submitted that the appellant had spelt his name differently on his Facebook page, omitting the 'i' from his surname. He submitted that the appellant is likely to have done that so that he would be able to distance himself from the Facebook account, if challenged. Mr Bates submitted that the appellant's Facebook account would never, in any event, come to the attention of the Iranian authorities. Those authorities would have no reason to look for the appellant, an individual without profile, on social

media and, if they did come across him, the difference in the spelling of his surname would enable him to escape detection. Even if the authorities became aware of the Facebook account, the appellant's activities on social media were not of a high level. The account had been opened in 2011 yet the appellant accepted that he had never raised it with the Home Office before 2014. Such conduct indicated that the appellant was not a genuine asylum seeker. As regards the photographs of attendance at demonstrations upon which the appellant relies, there was no evidence at all that the appellant's name was connected with the photographs. It was also not credible that the appellant did not contact his family through Facebook. He had been in contact with them between 2011 - 2014. There was no evidence at all that the family had been put in fear in Iran on account of the appellant's Facebook activity.

5. Mr Bates submitted also that the Tribunal still did not have detailed technical expert evidence regarding the posting of material on Facebook or other social media portals. It remained unclear whether an account could be wholly deleted. However, it did seem to the case that, if deleted, an account could not be resurrected. The important point was whether the appellant, returning as a failed asylum seeker from the United Kingdom, would be able to pass through the 'pinch point' of interrogation at Teheran airport. The authorities would not have any reason to identify the appellant from the passenger manifest prior to his arrival.
6. Mr Bates submitted that the appellant's name never been taken at any demonstration and that his participation would not lead the Iranian authorities to identify him or take an interest in him. Because the appellant did not genuinely hold the political views which he had espoused during the course of his claim and appeal, he would delete his Facebook account if he believed he was to be returned to Iran. In consequence, he would be able to pass through the 'pinch point' of the airport and return to live without risk in his home area of Iran.
7. Ms Mair, who appeared for the appellant, invited me to accept that the appellant had exited Iran illegally in 2009. She told me that the appellant accepted that his Facebook activity had begun in 2011. She submitted that country guidance indicated that the Iranian authorities had a 'hair trigger' when faced with returning individuals who may be opponents of their regime.
8. I have considered the evidence of the appellant very carefully. I am aware that before the appellant lost his appeal before Judge Moxon an earlier appeal had also been dismissed November 2009. The appellant given an account at that stage of involvement with the KDPI which the judge (Judge Lambert) had rejected as untruthful. Judge Lambert's decision was never successfully appealed by the appellant and her findings remain relevant as a starting point for my own (see *Secretary of State for the Home Department v D (Tamil)* [2002] UKIAT 00702 *).
9. I do not find the appellant to be a truthful witness. He was unable to explain in any way which I found rational or credible why he had not

informed the United Kingdom authorities of his Facebook activity until 2014. I do not accept his claim that he does not have contact with his mother, sister and brother who continue to live in Iran. He said, variously, that he had no means of contacting them but also that he had refrained from doing so because he did not want not to 'get them into trouble.' I did not accept that explanation as truthful. I find it reasonably likely that the appellant is in contact with his family in Iran, as he acknowledges he had been in the period 2011 -2014. I find that he has been untruthful about this contact because does not want the Tribunal to be aware that his family in Iran have suffered no adverse effects from his activity on Facebook. They have not done so because the Iranian authorities are, in my opinion, wholly unaware of the appellant, his social media account or his *sur place* activities in the United Kingdom.

10. I have to consider whether the appellant's claimed opposition politics are genuinely held by him. Judge Lambert found that the appellant had lied about his political beliefs and activities. I find that the appellant does not hold any genuine opposition political views and his claim to do so is simply an attempt to extend his residence in the United Kingdom. I find that it is significant that the appellant has raised the matter of his Facebook account and his *sur place* activities at demonstrations only after previous unsuccessful attempts to persuade the respondent and a judicial decision-maker that his views were genuine. I find that the fact that the appellant's surname is incorrectly spelt on his Facebook account is no accident but a ploy by him to ensure that the Iranians authorities would never link him to posts on that account (even assuming that the authorities ever became aware of the account which I consider unlikely).
11. Moreover, I find it reasonably likely that, if the appellant became aware that he was to be removed from the United Kingdom to Iran, he would immediately delete the Facebook account. In her analysis of the technical expert evidence regarding social media which is contained in her helpful skeleton argument, Ms Mair records that deletion is delayed by Facebook for a few days after a request is made to delete. It may take up to 90 days from the beginning of the deletion process to remove all posts but, crucially, from the point of deletion process posts are not viewable by third parties. I find, having regard to the past conduct of the appellant, his wholly cynical deployment of claimed opposition political views in support of his asylum claim and the fact that he does not genuinely hold any of the political views which he claims to espouse, that the appellant would take steps immediately to delete his Facebook account if faced with removal. The effect of deletion would be that, by the time he reached Teheran, none of the past postings on the account would be visible unless the appellant cancelled the deletion by logging back into his account. I find that he would not do that and I find that there are no reasons for supposing that officers of the Iranian government who might interrogate the appellant at the airport would ask him to log back into an account which they did not even know existed. I find there is no evidence to show that the appellant would even be asked whether or not he had a Facebook account.

12. Ms Mair's skeleton argument also raises the suggestion that the appellant may have been tagged in the Facebook account of another user. The deletion of the appellant's account would not remove such 'tags.' There is no evidence that the appellant is tagged in the third parties account or, even if he has been tagged, that the account contains material which might be of interest to the Iranian authorities. Moreover, given that the appellant himself is not of interest to those authorities, it is difficult to see what circumstances third parties account containing references to the appellant would ever come to their attention.
13. As regards the appellant's *sur place* activities at demonstrations, I agree with Mr Bates that there is no evidence that the appellant's presence has been recorded by the officials at the Iranian Embassy. By the appellant's own evidence, there were many demonstrators taking part in the events and their names were not taken Iranian officials. Given that he has no profile, I do not find it reasonably likely that the appellant's attendance would come to the attention of interrogators at Teheran airport. There is no evidence to show that those interrogators would ask the appellant directly if he had attended demonstrations. Given that he is not a genuine political activist, I find that, if he were asked, he would explain that he had attended not to oppose the Iranian government but only in order to support his claim for asylum.
14. In summary, I find that the appellant is not a truthful witness. No part of his account past events can be relied upon whilst I find that he does not genuinely hold any of the political views which he has claimed to possess in support of his application for asylum. He has deliberately used a false name on a Facebook account. I find that that account would, in any event, not come to the attention of the Iranian authorities nor are those authorities likely to ask the appellant if he ever had such an account. Moreover, if faced with removal, I find the appellant would delete the account forthwith. This would have the effect of preventing third parties from viewing any of the posts on the account unless the appellant resurrected it by logging back into the account which I find he is not reasonably likely to do or to be asked to do by Iranian officials in Tehran who would have no idea that the account existed in the first instance. I find that the appellant will pass safely through the 'pinch point' of Teheran airport and he will not be at real risk of persecution or ill-treatment either at the point of arrival or whilst living subsequently in his home area of Iran. Accordingly, his appeal is dismissed.

Notice of Decision

15. This appeal is dismissed.

Signed

Date 3 March 2019

Upper Tribunal Judge Lane