



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

Appeal Number: PA/09057/2018

THE IMMIGRATION ACTS

Heard at Manchester CJC

On 8th March 2019

Decision & Reasons

Promulgated

On 21st March 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

[B H]

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Holt (Counsel)

For the Respondent: Mr A McVeety (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Durance, promulgated on 17th September 2018, following a hearing at Manchester on 4th September 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Iran, and was born on [~] 1988. He appealed against the decision of the Respondent refusing his application for asylum and for humanitarian protection pursuant to paragraph 339C of HC 395. The decision under challenge is dated 29th June 2018.

The Appellant's Claim

3. The Appellant's claim is that he is a farmer. His work consisted of helping his father in farming. His parents and siblings still reside at the same address. He had not been involved in any demonstrations in Iran. He had assisted PJAK, although he was not a member. He provided them with provisions. He left Iran on 2nd October 2016, travelling to the Turkish border, and onwards to Italy. He stayed there for two days. He then went to France, where he stayed for two years. He fears the Iranian secret services. He states that they came to his home. They had an arrest warrant. In the UK, he has been involved in internet activity, where he has denounced the authorities in Iran, as is clear from his Facebook posts.

The Refusal Letter

4. The refusal letter states that the Appellant could have claimed asylum in France where he was resident for two years. With respect to his Facebook page, where he is engaged in anti-Iranian rhetoric, this is not in his own name, but in the derivative name of "[BHZ]", and it is unlikely that his account would be monitored in Iran in any event. The authorities would not be able to identify the Appellant at all. The Appellant also had not disclosed his full Facebook account. The burden of proof is on the Appellant. Within the context of a "pinch point" it was necessary to evaluate what the Iranian authorities would see. The posts were opportunistic.

The Judge's Findings

5. The judge held that there was no reason why the Appellant could not delete his posts, or delete his account entirely. His Facebook posts had been created so as to generate a risk on return and they did not form part of an innate characteristic and there was no reason for the Appellant to maintain those posts on return at all. Moreover, the tags on his account were opportunistic. They had been created to generate a *sur place* claim in a similar manner to the fabrication of his PJAC claim (see paragraph 25 K to J of the determination).
6. The judge dismissed the appeal.

Grounds of Application

7. The grounds of application state that the judge erred in two fundamental respects. First, he failed to consider the material matter, namely, the Facebook content in detail. In assessing whether the Facebook posts were

opportunistic or a product of genuinely held beliefs, the judge had failed to refer to highly relevant evidence, which the grounds of application referred to as “the unconsidered evidence”. This involved (a) page 1 of the Facebook posts where the Appellant wrote condemning the Iranian regime for execution of three Kurdish civilians, and where there were 44 reactions from other Facebook users; (b) page 2 of the Facebook posts, where the Appellant wrote condemning the killing of a Kurdish civilian by Iranian security forces, and where there were 52 reactions from other Facebook users; and (c) page 19 of the Facebook posts, where the Appellant had written “may God’s damn be on you for how long you would do that to our brothers. Damn you and your filthy leaders”, and where there had been 54 reactions from other Facebook users.

8. The second ground in the application for permission concerned a failure to give adequate reasons. It was alleged that the judge had accepted (at paragraph 25(g)) that the Appellant had engaged in anti-Iranian rhetoric in the UK, and yet the only reasons given by the judge for finding that the Facebook posts were opportunistic can be found at paragraphs 47 to 48, where the judge states that he had already rejected the Appellant’s credibility insofar as events in Iran were concerned, and he had concluded that the Appellant had manufactured his claim of events in Iran and his activity in France for two years indicated that he was in the UK solely for purposes of economic betterment.
9. On 19th December 2018, permission to appeal was granted by the Upper Tribunal.

Submissions

10. At the hearing before me on 8th March 2019, Mr Holt, appearing on behalf of the Appellant, drew my attention to paragraph 43 of the judge’s determination where he had concluded that, “all of the content which has been selected is content which is critical of the Republic of Iran”, and that, “as such, I accept that if on return the authorities encountered these posts that this would cause the Appellant some difficulties and a genuine risk of harm” (paragraph 43). That being so, submitted Mr Holt, it was necessary for the judge to consider the genuineness of the Appellant’s belief of being against the Iranian authorities. This was important for two reasons. First, whether the Appellant would actually delete his Facebook account. The judge concluded that he would.
11. Secondly, however, in order for the judge to come to this conclusion, he had to consider all of the evidence. That evidence included the “reactions” to the posts that the Appellant had put up. The significance of this was to do with the “pinch point”, namely, the point at which the Appellant would be exposed to risk. What the judge states here is that,

“Whilst the Appellant’s posts might form part of someone else’s pinch point, the Appellant has not used his full name. I should note that the Appellant has not discharged the standard of proof in terms of identifying who the people are who have ‘liked’ his posts so as to

demonstrate that they would contribute to the pinch point” (paragraph 46).

The issue that the judge had not considered here was whether the reactions of other Facebook users, to the Appellant’s posts, would actually increase the risk to the Appellant upon return.

12. For his part, Mr McVeety submitted that around 50 people had reacted to the Appellant’s Facebook posts. That did not mean to say that they had read these posts. All it means is that they had “liked” the posts. The judge was entitled to come to the conclusion that the Appellant would not be at risk. This is because the judge comes to the clear view that the Facebook posts provided are selective. He had in no uncertain terms stated that,

“It is also highly unsatisfactory to only have the documents which an Appellant has selected for the Tribunal to see not least when issues of credibility have been raised within the reasons for refusal letter. Given my findings insofar as credibility of the Appellant is concerned and given that I simply have a snapshot of what the Appellant has chosen for me to see, I give little weight to the Facebook posts as the Appellant has not been fully candid in his disclosure” (paragraph 45).

13. Added to this, submitted Mr McVeety, was the fact that the Appellant had used somebody else’s name, namely, the name of “[BHZ]” of which the judge is very critical (at paragraph 38). Although the judge does not go so far as to so say, one cannot rule out the possibility that this is not even the Appellant’s own account, but the account of somebody else.
14. But in any event, the Appellant cannot be exposed to a risk of ill-treatment or persecution on the basis of the principles in **HJ (Iran)** because what he has posted is not in his own name, and there is no reason why he would himself be apprehended upon arrival at Tehran Airport for having put up a post that can be associated with him.
15. In reply, Mr Holt, who has conducted this appeal in a measured and thoroughly professional manner, went on to say that, “I agree that the Appellant’s level of English seems to contradict the low levels of literacy that he has claimed to hold”. Mr Holt also submitted that I agree also that the reactions are from people who have liked the post, without these people being identified. However, none of this, he submitted, is part of the judge’s decision. The judge had to look at the “genuineness of political belief” of the Appellant, and if having done so, he had come to the view that the Appellant generally held those beliefs, then he would clearly be at risk.
16. He asked me to allow the appeal.

No Error of Law

17. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007)

such that I should set aside the decision and remake the decision. My reasons are as follows.

18. First, in what is a clear, comprehensive, and detailed determination, the judge considers the evidence carefully. Mr Holt took me to paragraph 43 of the determination. This is where the judge at the outset makes it clear that, “all of the content which has been selected is content which is critical of the Republic of Iran”. That being so, the fact that, (as the grounds of application allege) there has been a failure by the judge to have regard to “the unconsidered evidence” (see paragraph 7 of the grounds), is neither here nor there. The judge accepts precisely that which the Appellant would wish the judge to accept, namely, that the evidence relied upon is all “critical of the Republic of Iran”, and indeed, the judge also accepts that if these posts were encountered by the authorities it would place the Appellant in “some difficulties and a genuine risk of return” (paragraph 43). However, the judge then goes on to say, for precisely the reasons which she sets out carefully, that the Appellant would not be exposed to such a risk. This is because the Facebook accounts are in the name of someone else, namely, [BHZ].
19. Second, as Mr McVeety pointed out, (and which Mr Holt did not demur from), the Appellant has presented himself as an illiterate farmer. Yet, the Facebook posts refer to criticism in language that states “let it be destroyed the fascist regime of Iran” (paragraph 38). The judge found the Appellant’s claim to be opportunistic, his having spent two years in France, and then having used somebody else’s name, and came to the conclusion that the Appellant could delete his Facebook posts (paragraph 40), and this was a conclusion that he was entitled to come to. The judge also considered what the “pinch point” would be and again, the judge referred to a country guidance decision which concluded that “Facebook posts in the UK would not of itself generate an interest in Iran” (paragraph 42).
20. In short, and finally, the judge’s conclusion (at paragraph 50), that the Appellant had used an alias, and not disclosed his full name, was meant to be,

“An insurance policy in the event of return - i.e. if returned he can deny that this is his particular Facebook account as it is not in his name. This insurance policy supports my conclusion that he would delete his posts out of self-preservation” (paragraph 50).
21. All in all, therefore, there is no reason whatsoever why the judge was not entitled to come to the conclusions that he did. He did come to the firm view that the Appellant’s views were not genuine in terms of his political belief. Those views are based upon the use of language in the Facebook posts, the selective nature of the Facebook posts, and the use of an alias by the Appellant. The conclusions are entirely sustainable.

Notice of Decision

22. The decision of the First-tier Tribunal did not involve the making of an error of law. The decision shall stand.
23. An anonymity direction is made.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

24. This appeal is dismissed

Signed

Date

Deputy Upper Tribunal Judge Juss

20th March 2019