Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07888/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22 May 2017	**On 5 June 2017**

Before:
UPPER TRIBUNAL JUDGE GILL

Between

MM Appellant
(ANONYMITY ORDER MADE)

And

Secretary of State for the Home Department Respondent

Anonymity

I make an order under r.14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. This direction applies to both the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

The parties at liberty to apply to discharge this order, with reasons.

Representation:

For the Appellant: Ms J Elliott-Kelly, of Counsel, instructed by Elder Rahimi Solicitors.
For the Respondent: Mr. S Staunton, Senior Home Office Presenting Officer.

DECISION AND Directions

Introduction and background facts:

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1. The appellant is a national of Iran, born on [ ] 1993. He has been granted permission to appeal the decision of Judge of the First-tier Tribunal Devittie who, following a hearing on 24 February 2017, dismissed his appeal against a decision of the respondent of 14 July 2016 on asylum grounds, humanitarian protection grounds and human rights grounds.

2. The appellant most recently arrived in the United Kingdom in August 2010 with entry clearance as a Tier 4 student valid from 11 August 2010 until 31 October 2012. His leave was subsequently extended until 17 October 2016. On 13 October 2015, a decision was made to curtail his leave so as to expire on 18 January 2016. On 14 January 2016, he claimed asylum. This was refused by the respondent in the decision of 14 July 2016 which was the subject of the appeal to the First-tier Tribunal ("FtT").

3. The issue before me is whether the judge's decision involved an error on a point of law such that it falls to be set aside.

4. The basis of the appellant's asylum claim may be briefly summarised as follows:

5. Whilst in the United Kingdom, the appellant wrote blogs that were critical of the Iranian government. His parents have travelled on several occasions between Iran and the United Kingdom without difficulties. However, when his parents travelled back to Iran on 13 October 2015, his father was detained on arrival at the airport as a direct consequence of the authorities linking his father to his blog. His father was detained for about a week. His father told him that he was told by the authorities that the appellant had been active against the regime by writing blogs. His father advised him to be cautious. However, he decided to continue with his blogs. On 26 January 2016, he started a viber chat account with friends in the United Kingdom. They published satirical stories which he found provocative. He participated in this viber chat group for a few weeks before it ceased to function.

6. It was not in dispute before the judge that the appellant ran a blog on which he had posted material that was critical of the Iranian regime. The judge stated, at [9], that it was not seriously contested that the appellant may have run a viber chat group. The issue before the judge was whether the appellant's activities had come to the attention of the authorities in Iran and, if they have, whether the appellant would be at real risk of persecution upon his return to return.

7. The judge's findings, to the extent relevant to my decision, may be summarised as follows:

   i) The appellant did not begin running the blog and the chat group because of any genuinely held political opinions concerning the situation in Iran ([10(i)] although he accepted that this does not detract from the question whether his conduct would give rise to a well-founded fear of persecution ([10(ii)]).

   ii) The appellant's evidence that his father had been arrested as a direct consequence of the authorities linking his father to his blog was not credible, given the appellant's evidence that the reason why he continued to run his blog after his father's arrest was because of his view that the authorities were interested in his father and not him which the judge found was inconsistent with his evidence that his father was arrested because of his activities on the internet.

   iii) The appellant accepted that the blog did not show his surname and that his name is not an uncommon name ([10(ii)]).

   iv) The background evidence shows that there were well over a million bloggers in Iran, a significant number of whom expressed political opinions and are monitored by the authorities. The judge said that it was difficult to understand how the Iranian authorities would have made a link between the appellant and his father and undertaken investigations such as to lead to the father's arrest at the airport or why the appellant's

blog would have attracted any interest at all having regard to its content and the apparent lack of interest in significant numbers of persons.

v) The judge therefore found that the appellant's evidence of his father's arrest had been entirely fabricated and that it was not reasonably likely that the appellant's online activities have come to the adverse attention of the authorities.

vi) The judge found that, if returned as a failed asylum seeker and questioned at the airport, it would cause him no difficulty at all not to mention his online activities and, if he did, he would in truth have to disclose that the blog and other such activities were not the result of any genuine conviction on his part.

The grounds

8. There are four grounds which may be summarised as follows:

i) (Ground 1) The judge erred in law by failing to mention and/or take into account the oral and written evidence of the appellant's mother. This was material because the appellant's mother was a direct material witness to the fact and circumstances of the arrest of the appellant's father. The appellant's mother also gave evidence about the appellant's blog and his viber posts and concerning her unsuccessful attempts to persuade the appellant to cease blogging after his father's arrest.

ii) (Ground 2) The judge erred in law in failing to give reasons for not admitting a witness statement from the appellant's father. In the statement, the appellant's father explained the circumstances of his arrest and the questions he was asked by the Iranian Intelligence Service during his detention. The statement was received on the morning of the hearing and translated and faxed to the Tribunal at some point during the course of the hearing. An adjournment application was not made in order to avoid losing the opportunity of the appellant's mother giving oral evidence. The judge refused a request by the appellant's representative for the fax to be retrieved and the statement admitted as evidence.

iii) (Ground 3) In any event, the judge made several mistakes concerning the appellant's evidence. These are explained at paras 13-16 of the grounds.

iv) (Ground 4) The Judge failed to take into account fully and properly AB and others (internet activity – state of evidence) [2015] UKUT 0257 (IAC).

Assessment

9. In relation to ground 1, Mr Staunton submitted that it was not necessary for the judge to engage with all the evidence that was before him. In his submission, the appellant's mother did not give much evidence about the appellant's blogging or viber activity. Although the evidence of the appellant's mother was potentially corroborative, Mr Staunton submitted that it was not material that the judge did not refer to her evidence because he gave reasons for rejecting the appellant's evidence.

10. In my judgement, this last point made by Mr Staunton was misconceived as it effectively side-steps the complaint that the judge failed to consider and take into account the potentially corroborative evidence of the appellant's mother before deciding to reject the appellant's evidence that his father was detained as a direct consequence of his blogging activity.

11. Whilst it is correct to say that Tribunal judges are not obliged to deal explicitly with every aspect of the evidence that is before them, this does not mean that the failure to engage with evidence that is potentially corroborative of a material aspect of the account upon which an individual relies in his or her asylum claim will not amount to an error of law or a material error of law. In this particular case, it is evident that the evidence of the appellant's mother, that the

appellant's father had been arrested on return to Iran, was potentially corroborative of his claim that his blogging was the reason for his father's arrest. This was material to the appellant's case, that he was at real risk due to his blogging activity. The judge's failure to engage with the evidence of the appellant's mother demonstrates, at worst, that he overlooked her evidence, or at best, that he failed to explain why he rejected it.

12. Mr Staunton also submitted that the issue before the judge was whether there was enough content in the appellant's blog and viber activity for the appellant to be at real risk of persecution on return to Iran. The judge considered the content of the appellant's blog and found that the blog could not be linked to the appellant.

13. In my judgment, this submission ignores the fact that the appellant relied upon his father's arrest as evidence that his blogging *had* come to the adverse attention of the Iranian authorities.

14. I am satisfied that ground 1 is established and that the judge did err in law, in that, he either overlooked the potentially corroborative and material written and oral evidence of the appellant's mother, or, if he rejected the evidence, gave no reasons for doing so.

15. In relation to ground 2, I agree with Mr Staunton that the appellant had not complied with directions requiring him to submit evidence that he wished to rely upon five working days prior to the substantive hearing. As far as I can see, no explanation was given to the judge or to me for the failure to comply with this direction. The case management review hearing took place on 10 February 2017, i.e. 14 days before the hearing took place before Judge Devittie. Parties must co -operate with the Tribunal and assist it to discharge its duty to hear and determine all appeals justly without unnecessary adjournments and without the necessity for the judge to re-open part of the case.

16. It is evident from para 9 of the grounds that the translation of the statement of the appellant's father was faxed to the Tribunal only after the oral evidence of the appellant and his mother had concluded. If the judge had admitted the statement at that stage, he would have been obliged to allow the respondent's representative an opportunity to consider the statement and, if necessary, allow both the appellant and his mother to be questioned further.

17. Although I note that it is said at para 9 of the grounds that the judge's list completed at about 14:45 hours and that the judge did not take a float, it is not for the appellant or his representatives to make submissions on whether the judge's list could have accommodated the statement being admitted at a late stage without an adjournment.

18. Having said all of this, I have noted that the appellant's father gives evidence of his detention in Iran and the questions he was asked about the appellant and his blogging activities. It is evidence that is potentially material to the issue whether the appellant's blogging activities have come to the adverse attention of the Iranian authorities. In my judgement, and notwithstanding my observations at [15]-[17] above, the judge ought to have arranged for the fax to be retrieved and, if there was insufficient time for oral evidence to be re-opened and for the case to conclude on the same day, adjourned part-heard for oral submissions or agreed a timetable for written submissions. By failing to do so, the judge excluded from his consideration evidence that was potentially corroborative of a material aspect of the appellant's case.

19. I am satisfied that, in relation to ground 2, the judge erred in law in excluding from his consideration the potentially corroborative and material evidence of the appellant's father.

20. I am further satisfied that both of these errors of law are material. This is because the evidence of the appellant's mother and his father potentially supports the appellant's evidence that his blogging activities have come to the adverse attention of the Iranian authorities.

21. I therefore set aside the decision of Judge Devittie in its entirety.

22. It is not necessary for me to consider grounds 3 and 4.

23. In the majority of cases, the Upper Tribunal when setting aside the decision will be able to re-make the relevant decision itself. However, the Practice Statement for the Immigration and Asylum Chamber of the Upper Tribunal at para 7.2 recognises that it may not be possible for the Upper Tribunal to proceed to re-make the decision when it is satisfied that:

> "(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
>
> (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."

24. In my judgement, this case falls within para 7.2(b). In addition, having regard to the Court of Appeal's judgment in JD (Congo) & Others [2012] EWCA Civ 327, I am of the view that a remittal to the First-tier Tribunal for a re-hearing on the merits on all issues is the right course of action. Ms Elliott-Kelly and Mr Staunton agreed that, if I found that the judge had materially erred in law, the appropriate course of action would be to remit this case for a re-hearing on the merits by another judge.

Decision

The decision of Judge of the First-tier Tribunal Devittie involved the making of errors on points of law such that the decision of the First-tier Tribunal is set aside in its entirety.

This case is remitted to the First-tier Tribunal for that Tribunal to re-make the decision on the appellant's appeal on the merits on all issues by a judge other than Judge of the First-tier Tribunal Devittie.

Signed Date: 2 June 2017
Upper Tribunal Judge Gill