Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08433/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
Heard on 12th of September 2017	**Heard on 9th October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

MR NABAZ IBRAHIM
(Anonymity order not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms C Bexson of Counsel
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of Iran of Kurdish ethnicity born on 26th of May 1998. He appeals against the decision of Judge of the First-tier Tribunal Broe sitting at Birmingham on 28th of February 2017 who dismissed his appeal against a decision of the Respondent dated 28th of July 2016. That decision was to refuse the Appellant's application for asylum. The Appellant left Iran in or about October or November 2015 and arrived illegally in United Kingdom on 2nd of February 2016 via a lorry drop. He

made a claim for asylum on the same day after being encountered by immigration officers and being served with papers as an illegal entrant. It was the refusal of this application on 28th of July 2016 which has given rise to the present proceedings.

The Appellant's Case

2. The Appellant's case was set out by the Judge at paragraphs 11 to 14 of the determination. At interview the Appellant told the Respondent that he used to live in the village where he was born, Dola Tou, in Sardashat, Iran. He lived with his parents, a brother and a sister. The area was well known for farming and smuggling as the border with Iraq was about 3 or 4 hours away on foot. The Appellant told the Respondent that he was illiterate and was involved in smuggling goods across the border because he needed money to feed his family. He smuggled alcohol from Iraq to Iran and took rice, sugar and oil in the opposite direction. His father looked after a shop which was attached to their house. The Appellant travelled by back roads across the mountains to avoid the Iranian authorities who had issued an execution penalty against him.

3. The area through which he passed was controlled by a group of Kurdish fighters opposed to the Iranian authorities. They would stop the Appellant and ask him to bring them food and cigarettes. They did not pay him because that was the price of their permission to cross their territory. One day when he was smuggling goods he became aware that the Iranian intelligence service, the Etalaat, had been to his home. He went back and his mother told him that his father had been arrested. When his father came home he told the Appellant to leave the country because of the order issued by the Iranian intelligence service. The Appellant had been betrayed by man in the village who was an Etalaat spy.

4. The Respondent did not accept the credibility of the Appellant's account particularly because it was not considered plausible that the Appellant had been unable to avoid the Kurdish fighters but was able to avoid the Iranian authorities when there was only one route the Appellant could use.

5. About three weeks before the hearing at first instance the Appellant had set up a Facebook page on which he put downloads from a Facebook account. These downloads were critical of the Iranian regime. The Appellant argued that the Iranian authorities would be aware of this Facebook page and would have an adverse interest in him upon return because of it.

The Decision at First Instance

6. The Judge did not find the Appellant to be a credible witness. The Appellant had given contradictory accounts in his interview and statement about the smuggling of alcohol. Smuggling was regarded as a

serious matter in Iran and the Appellant would be expected to know whether or not he had smuggled alcohol into Iran. The contradictions in the account undermined his credibility. The Judge also found the Appellant had been inconsistent about whether he had been paid by the Kurdish fighters for the cigarettes he gave them or whether he had been forced to deliver cigarettes to them for free. The Judge did not accept the Appellant was of interest to the authorities or that a warrant for his execution had been issued. It was unlikely that if the Appellant's father had been arrested at his home the Etalaat would not also have searched the premises and discovered the contraband goods in the shop.

7. Turning to the *sur place* claim the Judge noted how recently the Appellant had created a Facebook page and considered it was no more than a last-minute attempt to bolster the claim and no credit attached to the Appellant for that. At paragraph 37 the Judge wrote: "in any event having given careful consideration to the documents I note that there is no reference to the Appellant. The page is in the name Nabaz Yusfee and he is not named as a contact or friend. I am satisfied that there is no reason for the authorities to connect the Appellant to this account".

8. The Judge cited the Upper Tribunal case of **AB and others (Internet activity-state of evidence) Iran [2015] UKUT 257** noting that this was not a country guidance case but was reported so that the evidence considered by the Tribunal to do with anti-regime Internet activity would be in the public domain. In **AB** the Tribunal had found the material put before it did not disclose a sufficient evidential basis for giving country guidance about the possible reception in Iran for those returning without a regular passport in relation to the interest the authorities the authorities might have in Internet activities. These might be revealed by an examination of blogging activity or a Facebook account. The Tribunal found that some monitoring of Internet activity outside Iran did occur but overall it was very difficult to make any sensible findings about anything which could convert a technical possibility of something being discovered into a real risk of it being discovered.

9. The Judge cited paragraph 472 of the decision in which the Tribunal concluded that the mere fact that a person is extremely discreet when blogging in the United Kingdom would not necessarily mean that they would come to the attention of the authorities in Iran. If there was a lapse of discretion they could face hostile interrogation on return which might expose them to risk. The more active a person had been on the Internet the greater the risk. It was not relevant if a person had used the Internet in an opportunistic way (as the Judge had found the Appellant had done in this case). This was because the authorities were not interested in a person's motivation. Where the authorities had taken an interest, claiming asylum would be viewed negatively. It might not of itself lead to persecution but it might enhance the risk.

10. The risk could arise when a person returned to Iran without their own passport as they would be questioned and could be asked to provide information enabling the authorities to gain access to their Facebook page. In this case however the Judge found the Appellant did not have a Facebook page in his own name. If the Iranian authorities had been able to monitor the account provided, there would be no reason to connect it to the Appellant. The Judge rejected the claim that the Appellant would face interrogation upon return potentially exposing him to risk. He dismissed the appeal.

The Onward Appeal

11. The Appellant appealed against this decision concentrating solely on the rejection of the *sur place* claim. It was argued that the Judge had failed to consider that the Appellant's Facebook page may already be monitored by the Iranian government. The Appellant's profile and posts on the Facebook account were set to public access. The public nature of the posts meant that the Iranian authorities might already be aware of them as they monitored such activity. The Judge had also failed to consider properly or at all the evidence contained within the Facebook account. The Iranian authorities were not interested in the motivations behind adverse Internet blogs or posts. That they were public and critical of the government would be sufficient to place the Appellant at risk. The recent dates on the entries would not dissuade Iranian authorities from viewing the entries as hostile to the regime.

12. The risk factors in this case were the previous illegal exit from Iran, the length of time he had spent out of the country, the fact that he had claimed asylum and the content or substance of the Internet activity. The Appellant would return on a special passport meaning that he would be questioned at the airport and would be required to access his Facebook account. In such circumstances he would have no choice but to log into his own account and the material would be linked to him irrespective of the spelling of his name on his Facebook account. The Appellant's photograph appeared on the Facebook profile. This would identify the Appellant as the owner of the Facebook page. Further photographs appeared on subsequent posts.

13. The application for permission to appeal came on the papers before Designated Judge Shaerf on 26th of July 2017. In granting permission to appeal he wrote that the Judge had arguably erred in law by failing to address the relevant paragraphs in **AB** when considering the likelihood that the Appellant would be required to disclose his Facebook entries at the airport on return. The Respondent replied to the grant of permission arguing that the Judge had directed himself correctly.

The Hearing Before Me

14. In consequence of the grant of permission the matter came before me to determine in the first place whether there was a material error of law in the determination such that it felt to be set aside and the matter reheard. If there was not, then the decision at first instance would stand. In oral submissions counsel for the Appellant argued that the issue was whether the Appellant's Facebook account would place him at risk upon return. The Judge had erred in his findings about what would happen on return to Iran. There were a wide range of factors which would lead to the risk (see paragraph 12 above). The Judge had not considered those factors adequately or at all. The Appellant would be questioned at the airport and he would have to give up access to his Facebook account. It was wrong for the Judge to find that the Facebook account was not in the Appellant's name. Yusfi was his surname, that was the name he had given to social services, his college and the doctor. He had provided his full name in his asylum claim. That name had been referred to in documents from the Appellant's previous solicitors Messrs Solomons.

15. Counsel's second point was that the Judge had failed to consider the risks to the Appellant already existing from his use of his Facebook account. Motivation was immaterial, if the posts were public they could be accessed by people in Iran and the authorities could already be aware of them. The posts contained direct criticism of the Iranian government, there were cartoons and satirical blogs. That would put someone at an enhanced risk. The Judge had failed to consider the content of the account itself since the settings were set to public. The Appellant would be linked to his account.

16. In reply the Presenting Officer referred to the rule 24 response which I have summarised above. At first instance the Judge knew the Appellant as Ibrahim. The Facebook page was in another name Yusfi. What was before the First-tier Judge that could lead to the Judge identifying the Appellant as Yusfi? That name did not appear in the SEF interview. The Judge had done nothing wrong, he had considered the leading authority of **AB**. Since the Facebook account was not in the Appellant's name it did not matter if there had been previous viewings of the site. Given what was in front of the Judge was difficult to see how the Judge had fallen into error. The Judge described the Facebook account but the Appellant had failed to tie up his claim with what was on Facebook. The Appellant was not named in those documents.

17. In reply counsel argued that the Respondent was aware of the Appellant's additional name. There was a document which referred to the Appellant's surname dated July 2016, it was a report from social services. The case should be sent back for a fresh hearing for the Appellant to produce further evidence that it was his Facebook account. The Appellant had not had an education in Iran but he could communicate on Facebook because he had a detailed knowledge of English. The Appellant it was argued had not had a fair hearing at first instance. A lot of points had not been engaged with.

Findings

18. The Judge did not find the Appellant to be a credible witness and rejected the Appellant's account of being at risk from smuggling. There was no appeal in relation to that aspect of the claim. The onward appeal before me was pursued on the basis that the Judge had erred in rejecting the *sur place* argument. Three weeks before the hearing and in an effort to bolster an otherwise weak asylum claim the Appellant (or someone else) set up a Facebook account containing criticism of the Iranian regime. Based on information before the Judge the account could not be linked to the Appellant and thus the Appellant would not be at risk upon return even if he came back from United Kingdom after making an unsuccessful claim for asylum since he could not be linked to the relevant Facebook account.

19. The reason for this conclusion was because the Facebook account was in a different name to the one the Appellant was using in the appeal proceedings. The Judge pointed out in his determination that the Appellant had made a statement only in response to the Respondent's refusal letter not one setting out the claim in full. The significance of that statement is that it does not mention the Appellant's claim to have a surname of Yusfi. Indeed, it does not appear that the Judge hearing the Appellant's appeal had any information at all to link the Appellant with the Facebook account produced very late in the day.

20. At the very least an explanation why the Appellant was now using a different name could reasonably have been expected. The evidence which the Appellant has sought to produce after receiving the adverse decision of the First-tier does not in any event take matters significantly further. The Appellant produces a card indicating he is attending a college but there is no date given as to when that card was applied for. The Appellant argues that the Facebook account has his photographs on it but if the Facebook account is not in fact the Appellant's that too does not take matters significantly further. The only document of any significance the Appellant can point to is a photocopy of a case review conducted by social services in 2016 which mentions the name the Appellant now gives as his surname. Without the context in which this document appeared it is difficult to see how much weight could be placed on it. Although I was told that the name Yusfi had appeared in correspondence from the Appellant's previous solicitors I was not shown any such correspondence and again it is hard to give weight to this without seeing it in context. I would make two points on this aspect of the claim. The first is that the Judge certainly did not see any correspondence and hence made no error of law in concluding that the name Yusfi could not be linked to the Appellant. Secondly it is not at all clear why the Appellant's previous solicitors should use this name when the present solicitors evidently did not.

21. The Appellant did not give the name Yusfi when making his claim for asylum either in his SEF or in his substantive asylum interview. He gives no detail about this alleged surname, for example the full names of his parents or how he comes to know that is his surname. It is difficult to avoid the conclusion which the Judge came to that the *sur place* claim was a wholly opportunistic one in which the Appellant was seeking to bolster his asylum claim by seeking to associate himself with the work of another person or persons opposed to the regime.

22. Having analysed the risk posed to those found in Internet activities contrary to the regime the Judge concluded that the Appellant would not be at risk since it was not his Facebook account. In my view that was a conclusion which was open to the Judge on the evidence before him. The evidence which the Appellant now wishes to put forward to show that he has always been known by the surname Yusfi fails under the principles in **Ladd v Marshall**. The evidence could and should have been put to the Judge at the hearing. Instead the Appellant put in a statement not using the claimed surname.

23. I have grave reservations whether the further evidence the Appellant seeks to put in would in fact make any difference to the result since I do not consider that the further evidence has any probative value of any force. The Appellant told the Judge that he was illiterate. It may well be that the Appellant has a good command of written English given his studies in this country. That does not explain however how he would have been able to put together a Facebook account written in Farsi, a language he can neither read nor write and which he has had no opportunity to study since coming to this country. It is difficult to see how he would know what the Facebook account says and whether it really is critical of the regime. There can be little doubt that others have put that Facebook account together for the benefit of the Appellant's claim as the Judge considered. That too undermines the credibility of the Appellant's claim that it is his Facebook account.

24. I do not consider that the Judge misdirected himself in relation to the authority of **AB**. The Upper Tribunal themselves have not indicated that that case is country guidance because they were not in a position to give a definitive view. The Appellant's motive in setting up a Facebook account, to bolster a weak asylum claim, is irrelevant in considering the risk to the Appellant if the authorities are aware that the Appellant has been engaged in Internet activity contrary to the regime or if such activity becomes exposed upon return. In neither of those eventualities did the Judge consider that the Appellant would be at risk.

25. Firstly, the Appellant could not be identified from the Facebook account because it was not in the Appellant's name. Thus, even though whoever is responsible for the Facebook account has done their best to boost the claim by setting the account to be read by anyone the authorities could not reasonably be expected to be able to link the account with the

Appellant. Secondly, upon return the Appellant is obliged to tell the truth. The truth is that this is not the Appellant's Facebook account but has been set up by others. The Appellant can indicate to the Iranian authorities that he is illiterate in Farsi and could not therefore have prepared the Facebook account itself.

26. I do not consider that the Judge has made any material error of law in his determination. It is not sufficient to reject a *sur place* he claim because it was made in bad faith but it is sufficient to reject the claim on the basis that it cannot be shown that the Facebook account in question is the Appellant's account. The Judge certainly did not have sufficient information before him to safely conclude it was the Appellant's account and he cannot be criticised for remarking in the determination that this account was not in the Appellant's name. It is wholly speculative for the Appellant to seek to set aside a cogently worded determination on the basis that he might have further evidence which he could and should have produced earlier to support the claim. The Appellant's remedy if he has one is to make a fresh claim to the Respondent but that would have to satisfy the appropriate legal test as to whether the Appellant truly has fresh information not previously before the Respondent relevant to the outcome. There is no error in the Judge's determination and I dismiss the Appellant's onward appeal.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal

Appellant's appeal dismissed

I make no anonymity order as there is no public policy reason for so doing.

Signed this 22nd day of September 2017

.....
Judge Woodcraft
Deputy Upper Tribunal Judge

TO THE RESPONDENT
FEE AWARD

No fee was payable and I have dismissed the appeal and therefore there can be no fee award.

Signed this 22nd day of September 2017

.....
Judge Woodcraft
Deputy Upper Tribunal Judge