



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09604/2016

THE IMMIGRATION ACTS

Heard at: Manchester
On: 6th December 2017

Decision and Reasons Promulgated
On: 7th December 2017

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

ZSP
(ANONYMITY DIRECTION MADE)

Appellant

And

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Greer, Broudie Jackson and Canter Solicitors
For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iran, born in 1996. He appeals with permission¹ against the decision of the First-tier Tribunal (Judge Alis) to dismiss his appeal on protection and human rights grounds.

Anonymity

2. This case concerns an application for international protection from Iran, turning in part on whether the Iranian authorities could identify the Appellant as

¹ Permission granted on the 25th October 2017 by First-tier Tribunal Judge Lindsley

someone who has expressed political views in opposition to the regime on the internet. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“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 his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Background and Decision of the First-tier Tribunal

3. When the Appellant claimed asylum on the 11th March 2016 the substance of his claim was he faces a well-founded fear of persecution in Iran for reasons of his political opinion. He stated that he was wanted by the Iranian security services because they had discovered leaflets in his car produced by the banned Iranian opposition group the KDPI. That claim was rejected on credibility grounds.
4. The Appellant appealed and by the time that his appeal came before Judge Alis, it had developed to include what is sometimes called a *sur place* claim. The Appellant produced printouts from his ‘Facebook’ page showing postings which he contended would place him at risk should he be returned to Iran. The postings included ‘shared’ articles about human rights abuses in Kurdish Iran, and a picture of Qazi Muhammad (the founder of the KDPI and the separatist Mahabad Republic) as his ‘profile’ picture.
5. Judge Alis disbelieved the Appellant’s account of involvement with the KDPI in Iran. He gave several reasons for doing so and those findings are not challenged in this appeal. Of the Facebook material the determination says this:

“52. Applying caselaw I accept that there would be an enhanced interest in him because he would be returning on a special passport. The issue for me is whether the extent of his activities would place him at risk of persecution.

53. Mere posting of messages on Facebook does not mean automatically he will be at risk of persecution because his posts would not necessarily come to the attention of the authorities.

54. Mr Greer’s argument is that he could face hostile interrogation but in assessing this risk I have had regard to my findings on whether he was active before he came here. His activities here are limited and the Facebook articles were not written by him and they are limited in number.

55. I do not accept he is politically motivated and his posts are an attempt to bolster his asylum claim and whilst the authorities would not be concerned with his motivation I have to consider whether he is likely to keep his Facebook account active or whether knowing he could face questioning he may choose to amend the settings on his account or delete his account as he has not demonstrated any other inclination to support the Kurdish cause.

56. I have considered all the possible risk factors in his case and had regard to the Tribunal decisions and country evidence.

57. taking those matters into account I find that whilst his sur place activities in the United Kingdom may be viewed as activities against the state it is not reasonably likely he would come to their attention for the reasons I have given above”.

6. The crux of the appeal before me is whether Judge Alis was entitled, as a matter of law, to find as he did in respect of the Facebook posts. Mr Greer relied on the combined effect of three authorities to submit that the approach was unlawful. First, he relied on the findings of the Upper Tribunal in AB & Others (internet activity – state of the evidence) Iran [2015] UKUT 57 (IAC) that there is “clear evidence that some people are asked about their internet activity and particularly for their Facebook password” during the on-arrival questioning at the airport in Tehran. Second, he relied on the evidence of Iran expert Dr Kakhki given to the Upper Tribunal, and recorded in Appendix 1, in the country guidance case SSH & HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 308 (IAC). Dr Kakhki stated that the purpose of the on-arrival screening process was to check if the individual had been involved in any political activities whilst abroad. Finally, he relied on the authority of RT (Zimbabwe) [2012] UKSC 38 to the effect that an individual cannot be expected to lie in order to avoid persecution. It was common ground that the posts, if discovered by the Iranian security services, could lead to a real risk of persecution.

Discussion and Findings

7. I am satisfied that the First-tier Tribunal understood the significance of the Facebook material. I am satisfied that it understood and applied the *Iftikhar Ahmed* principle, noting as it does at paragraph 55 that the Iranian authorities would not be concerned about the Appellant’s motivation ie he would be likely be transferred for ‘enhanced interrogation’ even if he disowned the material or admitted that it had been posted to try and get asylum. I am further satisfied that the Tribunal applied the guidance in SSH & HR, since it proceeded on the basis that as a Kurd returning to Iran on an emergency travel document he would face some questioning on arrival. It is implicit in the reasoning between

paragraphs 52 and 57 (set out above) that the Tribunal also accepted the contention in AB to the effect that this investigation can include perusal of the subject's internet activity. The reason that the appeal is dismissed, notwithstanding all of this, is that the Tribunal was not satisfied, to a standard of reasonable likelihood that this material would in fact still be on the Appellant's Facebook account when he lands in Tehran. As the determination points out at paragraph 55, he can delete the offending images and links, he could apply privacy settings or he could even close down the account altogether. No risk would therefore arise.

8. When I made this point to Mr Greer he made three submissions.
9. First, he contended that the Tribunal's findings were not clear on the point. I accept that the determination does not state in terms "I do not accept, to a standard of reasonable likelihood, that the Appellant will leave this material on his publicly assessable Facebook page when he is returned to Iran" but that this is its finding is tolerably clear from the passages I have set out above.
10. Second, he complained that the Tribunal did not have an evidential foundation for its finding, since the Appellant had nowhere been asked what he might do about the material if he were facing return. I have not had regard to the record of proceedings before the First-tier Tribunal because I do not think I need to. Even if this point was not expressly put to the Appellant no unfairness has arisen. The Tribunal rejected the entire account advanced by the Appellant. It did not even accept that he had any political sympathy for the Kurdish cause. Having found him not to be a credible witness, I find it inconceivable that the Tribunal would have accepted evidence from the Appellant that he would maintain the material in a public forum and thereby place himself at risk.
11. Finally, Mr Greer submitted that the Tribunal made no investigation of whether the material, even if deleted, would be available to the Iranian security services at some stage in the future. He then conceded that there was no material before the Tribunal one way or the other and he was unable to offer me any technical explanation as to how such retrieval might be possible. It follows that there can have been no error on the part of the Tribunal in failing to consider evidence it did not have.

Decision

- 14 The determination of the First-tier Tribunal contains no error of law and it is upheld.
- 15 There is an order for anonymity.

Upper Tribunal Judge Bruce
6th December 2017