Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00733/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 26 September 2018	**On 23 November 2018**

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

RAA
(Anonymity Order Made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Spurling of Counsel
For the Respondent: Mr T Lindsay, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iran born in 1984. He appeals against a decision of the respondent made on 17 December 2017 to refuse his claim for asylum.

2. The basis of his claim is that he fears return due to his ethnicity as a Kurd, due to his sur place activities; he is active on Facebook and has posted articles and videos which demonstrate his pro-Kurdish and anti-Iranian regime political profile. Also, he fears return as an undocumented failed asylum seeker.

3. The respondent noted that his claim to fear return due to his political opinion was considered and dismissed by the Tribunal in a decision promulgated in 2010. He had been found to be not credible about events in Iran. It was not considered that his activities on social media would bring him to the adverse attention of the authorities. Illegal exit was not a significant risk factor. Nor would he be at risk solely because of his Kurdish ethnicity. Expert reports by Dr Joffe did not assist the claim.

4. He appealed.

First-tier Hearing

5. Following a hearing at Hatton Cross on 13 February 2018 Judge of the First-tier Martins dismissed the appeal. Her findings are at paragraph [44] ff.

6. In summary, it was agreed that the issue was whether the appellant was at risk on account of his sur place activities. She took as the starting point the previous determination (2010) where the appellant was found not credible. His evidence on his involvement with Partiya Jiyana Azad a Kurdistane (PJAK) was inconsistent and had his associations with PJAK come to the attention of the Iranian authorities, his family would have found it difficult to remain in their village without experiencing problems from the authorities.

7. In respect of sur place activities those who face difficulties with the authorities regarding Facebook are those who personally post criticisms of the regime and insult religious leaders, and he had not done so; his posts appear to share events which have occurred in Iran. The appellant has not got a significant Facebook profile, he is cautious when using it. He has attended only three demonstrations in his years in the UK. The appellant has involved himself in sur place activities to bolster his asylum claim.

8. There is no documentary evidence to suggest that the demonstrations attracted public interest. There is no independent evidence that the Iranian authorities used surveillance and had the capacity to identify demonstrators simply by their attendance. He has no political profile and will not be at risk on account of his illegal exit.

9. He sought permission to appeal which was refused but granted on 9 August 2018 on re-application to the Upper Tribunal.

Error of law hearing

10. At the error of law hearing Mr Spurling's main attack was that the judge failed to take into account material caselaw on the issue of risk on return in light of the use of social media, evidence which despite adverse credibility findings on other matters, was not disputed. Specifically, she

failed to have regard to ***AB & Others (internet activity – state of evidence)*** **Iran [2015] UKUT 0257** which was before her.

11. A further point was that the judge although she acknowledged the expert evidence before her made no findings on it.

12. Mr Lindsay's response was that the judge had made findings which were open to her on the evidence including that the appellant has no significant levels of political anti-regime activities. As such the case law did not assist the appellant.

Consideration

13. I find merit in Mr Spurling's comments. As indicated it was not disputed that the appellant had used social media to disseminate anti-Iranian government/pro-Kurdish propaganda. The judge's findings on the appellant's social media activities are solely at [46], namely, that his posts "*appear to share events which have occurred in Iran*"; and that his is "*… not the most significant of profiles. Those who are likely to face difficulties are those who personally post anti-regime posts and those who insult religious leaders."*

14. I note the following comments from ***AB***:-

> *"… We find that the authorities do not chase everyone who just might be an opponent but if that opponent comes to their attention for some reason then that person might be in quite serious trouble for conduct which to the ideas of Western liberal society seem of little consequence."* [455]

15. Also, at [457]:-

> *"… There is clear evidence that some people are asked about their internet activity and particularly for their Facebook password. We can think of no reason whatsoever to doubt this evidence. It is absolutely clear that blogging and activities on facebook are very common amongst Iranian citizens and it is very clear that the Iranian authorities are exceedingly twitchy about them… We find that the act of returning someone creates a 'pinch point' so that returnees are 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 a real risk of persecution."*

16. Further, ***AB*** makes express findings on the point that it is not relevant whether or not media use is opportunistic [464] and that a high degree of activity is not necessary to attract persecution [466].

17. The judge did refer to expert evidence which states that being a Kurd may be an exacerbating factor for a returnee otherwise of interest but she considered that having been away for many years and given the "*insignificant level of political involvement in terms of anti regime activities*" he would not be at risk. In that regard, such does not appear to have been considered in the context of the respondent's policy summary (July 2016) CIG *Iran: Kurds and Kurdish political groups* (2.3.3) (which was before the judge and was referred to in the skeleton argument) and which states that for those perceived to be involved in Kurdish political activities the authorities have "*no tolerance for any activities connected to Kurdish political groups*..." which the appellant claims to have been doing through his internet activity. More significantly, as indicated, ***AB*** was before the judge but she made no reference to it and gave no consideration of its analysis. The onus is, of course, on the appellant to establish his claim. However, I consider that in failing to take account of material case law on the issue of possible risk on return the judge materially erred such that the case must be reheard. Mr Spurling said that in the event that error of law was found he would wish to lead further evidence.

18. The decision of the First-tier Tribunal is set aside to be remade. No findings stand. The nature of the case is such that it is appropriate under section 12 of the Tribunals, Courts and Enforcement Act 2007 Act and Practice Statement 7.2 to remit to the First-tier Tribunal for an entirely fresh hearing. The members of the First-tier Tribunal chosen to consider the case are not to include Judge Martins.

19. The First tier Tribunal made an anonymity order. The matter was not addressed in the Upper Tribunal. Anonymity has been preserved herein.

Signed Date

Upper Tribunal Judge Conway