Upper Tribunal
(Immigration and Asylum Chamber) Appeal no: **PA/01079/2018**

THE IMMIGRATION ACTS

At Rolls Building **Decision & Reasons Promulgated**
On 21.05.2018 **On 25.05.2018**

Before:

Upper Tribunal Judge
John FREEMAN

Between:

Kaka ALIZADEH

appellant

and

Secretary of State for the Home Department

respondent

Representation:
For the appellant: Mr Pius Dakora, solicitor, Barnes, Harrild & Dyer, Croydon
For the respondent: Mr Ian Jarvis

DECISION AND REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Edward Lucas), sitting at Taylor House on 21 February, to dismiss an asylum and human rights appeal by a Kurdish citizen of Iran, born 23 September 1998. The appellant arrived here in the back of a lorry and claimed asylum on 7 December 2015: following a leisurely interview programme over the next two years, that was refused on 5 January 2018.

2. The grounds of appeal make the following complaints:

NOTE: (1) no anonymity direction made at first instance will continue, unless extended by me.
(2) persons under 18 are referred to by initials, and must not be further identified.

1. whether or not the appellant's use of social media from this country was opportunistic, as the judge found, or not was irrelevant to the question of whether it would put him at risk on return to Iran;
2. the judge did not have due regard to 'country expert' evidence from the well-known Professor Joffé, nor to the country guidance in *SSH and HR* (illegal exit: failed asylum seeker Iran (CG) [2016] UKUT 308 (IAC);
3. the judge was not entitled, bearing in mind the difficulties for Kurds in leaving Iran lawfully, to reject the appellant's case on this point simply because he had disbelieved his account of political involvement;
4. nor to find that the appellant was "… of no interest to the Iranian authorities because he did not come to the attention of the authorities prior to the shooting incident following which he fled from Iran".

3. Ground 4 is wholly misconceived: what the judge actually said at paragraph 20 was that the appellant "… had no adverse risk profile in Iran …" before the incident in question. That was an uncontroversial point on the facts: all the judge meant that was that the appellant had not till then even claimed to have come to the notice of the authorities. Mr Dakora's attempt to argue that he had a 'risk profile' (to use the fashionable jargon) merely because he was a Kurd would open the door, contrary to the country guidance, to any such person who arrived on these shores: see **11 – 13** for more on this.

4. Ground 3 is little better: while there might have been other reasons for the appellant to make an illegal departure (hard for Kurds to get passports, and military service unwelcome), if the judge had valid reasons for disbelieving him on what he put forward as the crucial part of his history, he was unquestionably entitled also to disbelieve him on this part of his account, subject to what was said in *MA (Somalia)* [2010] UKSC 49 (see **9** onwards).

5. Turning to grounds 1 and 2, Mr Dakora began by placing reliance on *AB and others* (internet activity – state of evidence) [2015] UKUT 257 (IAC). This too was somewhat misconceived: the decision is not reported as country guidance, and see the judicial head-note

> *The material put before the tribunal did not disclose a sufficient evidential basis for giving country or other guidance upon what, reliably, can be expected in terms of the reception in Iran for those returning otherwise than with a "regular" passport in relation to whom interest may be excited from the authorities into internet activity as might be revealed by an examination of blogging activity or a Facebook account. However, this determination is reported so that the evidence considered by the Upper Tribunal is available in the public domain.*

6. The most that could be said about *AB* is that, if referred to it, as I am prepared to accept was the case here, judges are required to deal with it as a matter of evidence, though not to follow the country guidance it does not contain. On this point, the relevant parts are these, and they are worth setting out in full:

> 467. The mere fact of being in the United Kingdom for a prolonged period does not lead to persecution. However it may lead to scrutiny and there is clear evidence that some people are asked about their internet activity and particularly for their Facebook password. The act of returning someone creates a "pinch point" so that a person is 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 at the very least a real risk of persecution.
>
> 468. Social and other internet-based media is used widely through Iran by a very high percentage of the population and activities such as blogging may be perceived as criticisms of the state which is very aware of the power of the internet. The Iranian authorities in their various guises both regulate and police the internet, closing down or marking internet sites although this does not appear to be linked directly to persecution.
>
> 469. The capability to monitor outside Iran is not very different from the capability to monitor inside Iran. The Iranian authorities clearly have the capacity to restrict access to social internet-based media. Overall it is very difficult to make any sensible findings about anything that converts a technical possibility of something being discovered into a real risk of it being discovered.
>
> 470. The main concern is the pinch point of return. A person who was returning to Iran after a reasonably short period of time on an ordinary passport having left Iran illegally would almost certainly not attract any particular attention at all and for the small number of people who would be returning on an ordinary passport having left lawfully we do not think that there would be any risk to them at all.

7. The result, in short, is that it is impossible to say that there is a real risk of social media activity by a teenager, or anyone else, putting him at risk on return to Iran, unless he is exposed by illegal departure to heightened scrutiny at the 'pinch point of return'. In other words, ground 1 must depend on ground 3, and that in turn on ground 2: see **4**.

8. Coming finally to ground 2, there is, as Mr Jarvis pointed out, no basis for any suggestion that Professor Joffé's original 2014 general report on 'Kurds in Iran' could undermine the later (2016) country guidance in *SSH and HR*. That could only be founded on his supplementary report on this appellant (26 August 2016).

9. Before turning to that report, it is worth citing another decision of the highest authority, to which Mr Jarvis referred me. While, as the title makes clear, it is not specifically about Iran, it is, contrary to what Mr Dakora argued, not to be treated as a decision on its own facts, but as providing useful general guidance on all illegal departure cases. It is *MA (Somalia)* [2010] UKSC 49, and the relevant part is this: once again a substantial citation is required, including the Supreme Court's review of the Court of Appeal's reasons

> 28. Dyson LJ agreed that MY's appeal should be dismissed substantially for the reasons given by Laws LJ. At para 61, he said:

> "Unless it can safely be said that exit by *any* 17 year old girl is illegal, whether it is reasonably likely that the exit by an individual 17 year old girl was illegal will depend on the facts of her particular case. Her failure to give a credible account of those facts may lead to the conclusion that she has not shown that there is a reasonable likelihood that her exit was illegal. "

29. Like Laws LJ, he concluded on the basis of the general evidence that "it was entirely possible that MY left Eritrea legally" (para 64).

30. The appeal to this court has been conducted on the basis that the approach adopted by Laws and Dyson LJJ is substantially correct. But Mr Drabble questioned para 54 of Laws LJ's judgment. We think that what Laws LJ had in mind was a case where (i) the claimant's account is rejected as wholly incredible (it is riddled with contradictions and the tribunal is left in a state of being unable to believe anything that the claimant has said); but (ii) there is undisputed objective evidence about conditions in the relevant country which goes a long way to making good the shortcomings in the claimant's own evidence. In *GM (Eritrea),* for example, the AIT did not believe the account given to them by MY as to how she had left the country. They could not, therefore, rely on her account as a basis for concluding that she had left the country illegally. But if there had been objective evidence that *no* 17 year old girls were allowed to leave the country, her appeal would surely have succeeded despite her dishonest evidence. In fact, the objective evidence did not go nearly that far and the appeal was dismissed.

31. What Laws LJ was saying at para 54 was that, where a claimant tells lies on a central issue, his or her case will not be saved by general evidence unless that evidence is extremely strong. It is only evidence of that kind which will be sufficient to counteract the negative pull of the lie. But much depends on the bearing that the lie has on the case. …

10. The result is that, unless Professor Joffé's evidence shows that no young Kurdish man could have left Iran legally, the judge must have been entitled to rely on his reasons for rejecting the appellant's individual history in order to reject his case on that point too. The general evidence on illegal exit by Kurds to which Mr Dakora referred me comes from a Danish report (the joint work of the Danish Immigration Service and Danish Refugee Council). At (7) it refers to comments made to the reporters by a mayor from the border zone about the difficulties for Kurds in getting a passport, or in crossing the border legally even with one, and to the ease of crossing by illegal paths, despite the perils of barbed wire, unexploded mines, or high mountains. However, even taken together, I do not consider that these things could have amounted, in the words used in *MA (Somalia)* to extremely strong evidence that no Kurd could have left Iran legally.

11. As for *SSH and HR*, the country guidance there is very much to the contrary of Mr Dakora's submissions:

> *(a) An Iranian male whom it is sought to return to Iran, who does not possess a passport, will be returnable on a laissez passer, which he can obtain from the Iranian Embassy on proof of identity and nationality.*

> *(b) An Iranian male in respect of whom no adverse interest has previously been manifested by the Iranian State does not face a real risk of persecution/breach of his Article 3 rights on return to Iran on account of having left Iran illegally and/or being a failed asylum seeker. No such risk exists at the time of questioning on return to Iran nor after the facts (i.e. of illegal exit and being a failed asylum seeker) have been established. In particular, there is not a real risk of prosecution leading to imprisonment.*

12. Returning to Professor Joffé's supplementary report, Mr Dakora referred me to paragraph (6) 'Specific examples of repression', which he goes on to give: clearly Kurds who have got into serious trouble with the Iranian régime have suffered very serious consequences. The other passage to which he referred was in Professor Joffé's conclusions, at (16):

> The result is that any Kurd returned to Iran must anticipate the serious risk of official discrimination or persecution simply on the grounds of his membership of an ethnic group, quite apart from any specific threats he or she might face for illegal exit from Iran or because there are specific charges outstanding against her or him.

13. Both appellants in *SSH and HR* were of course Kurds themselves. The incidents in Professor Joffé's supplementary report to which I was referred deal with events in Iran in 2015, and I do not think they can reasonably be put forward as negating that country guidance from 2016, or as casting any doubt on the judge's credibility findings on the individual facts of this case.

14. The passage in the background evidence which might have been of particular relevance to the case in hand comes also from the Danish report, at 1.3.3. The source is a named person: unfortunately the acronym relating to the organization he represents has been cropped by a careless photocopier from [AB 96]. This appellant's role, as related by him (see paragraph 4 of the decision under appeal) has him going out as a look-out while others distributed leaflets for his PJAK organization[1]. Then he heard shots, and fled to a friend of his grandfather's, who told him the next day that he was wanted and had better flee the country. One is no doubt required to assume that one of his friends had been arrested, and given the authorities his name.

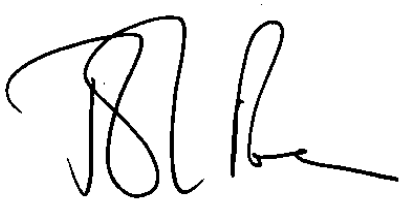
15. What the Danish report says, in short, is that "… if a low profile person is caught with a single flyer, he will be taken in for investigation and can be detained from two to six months depending on whether he confesses, and on the extent to which he co-operates with the authorities. … The investigation is harsh and the person is subjected to torture … however the form and the harshness of torture is different from person to person … If it is the first time the person is arrested, and if he co-operates with the authorities, confesses, fills out and signs a formula of regret … not to engage in further activities, he will in most cases be sentenced to up to a year's probation and then released on bail. If he is arrested again, the probation will be enforced, and the bail will be much higher this time …".

16. While all this would have been background evidence relevant to the appellant's individual history, unlike Professor Joffé's report (or the evidence in *AB* about Internet activity) it

[1] *Partiya Jiyan a Azad a Kurdistanë* ['Party of Free Life for Kurdistan': see Danish report.

was not mentioned in Mr Dakora's skeleton argument on his behalf, and I do not think the judge can be blamed for not dealing with it, amongst a total volume of 211 pages of background evidence. Though it would have been better for the judge to say more than he did about Professor Joffé's report, from my own analysis of the effect of that report at **12 – 13**, I do not think there is anything to show that it would have made any real difference to the result he reached. The consequence is that the appeal is dismissed.

Appeal dismissed



(a judge of the Upper Tribunal)
signed: 24.05.2018