Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10278/2016

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 27 March 2018	**On 5 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

D. H.
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Brakaj, Solicitor, Iris Law Firm
For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq, who entered the UK illegally, and then claimed asylum on 24 March 2016. That protection claim was refused on 16 September 2016. His appeal against that refusal came before the First-tier Tribunal at North Shields on 8 June 2017, when it was heard by First-tier Tribunal Judge Cope. The appeal was dismissed on all grounds in a decision promulgated on 13 July 2017.

2. The Appellant's application for permission to appeal was refused by First tier Tribunal Judge O'Garro on 6 October 2017. The application was renewed to the Upper Tribunal on the basis that the Judge had erred in his

approach to the evidence of the posts that had been made upon the Appellant's Facebook page. It was asserted that the Judge had failed to engage with the evidence before him. Permission was granted by Upper Tribunal Judge Gill on 4 January 2018 on the single complaint that it was arguable the Judge may have misapprehended the evidence, concluding that the Facebook page was not publicly available when the evidence arguably showed that it was. The other complaints advanced in the grounds were dismissed as unarguable. Thus the matter comes before me.

3. When the hearing of this appeal was called on before me it was confirmed that the Appellant did not seek to renew the other grounds, and, that no application had been made to introduce evidence under Rule 15(2A) of the Upper Tribunal Procedure Rules.

4. As Upper Tribunal Judge Gill identified, it cannot be argued that the Judge failed to engage with the evidence that was placed before him in relation to the Facebook page said to have been opened and operated in the Appellant's name. Indeed it is plain that the Judge did engage with the argument that the content of the posts upon the Facebook page left the Appellant exposed to a real risk of harm upon return to Iran. The Judge noted the Appellant's claim to be illiterate, and his claim that this was a Facebook page set up by, and operated by, unidentified friends in his name [30, 63-5, 75-91]. Thus, if true, the Appellant was unable to give evidence about how the account was set up, or its settings. He could of course have given evidence as to his own understanding as to why it was set up given the very limited use the site has had, but as the Judge noted, under cross-examination he seems to have sought to evade doing so.

5. In the circumstances I am satisfied that it is fair to say that the Judge was not assisted with reliable evidence as to why the Facebook page was created, or who physically created it, or, maintained it, or, chose what material to post upon it.

6. Although, if he were indeed illiterate, the Appellant would plainly be unable to read anything that had been posted upon it, the Judge nevertheless correctly identified the Facebook page as providing the potential basis for a sur place claim. Thus he considered whether the existence of the Facebook page in the Appellant's name, and its content, would give rise to a risk of harm upon return to Iran, notwithstanding his dismissal of the Appellant's evidence as to what his experiences were within Iran as untrue.

7. In my judgement the findings summarised [69-72] dispose of any suggestion that the Appellant held a genuine fear of harm at the hands of the Iranian authorities whenever he did in truth leave Iran. On the Judge's findings he had no reason to leave illegally, and the Judge certainly did not accept his claim to have done so. Indeed in my judgement, read as a whole, the decision also rejects that element of the Appellant's evidence.

8. The evidence before the Judge did not suggest that the Appellant's Facebook page had been used for blasphemy, or indeed for the ridicule of any member of the Iranian regime, or indeed the regime itself. The video posts shared from other sites were not put in evidence or translated, and nor was any of the Farsi titles to any of the photographs shared from other sites. The highest the Appellant's case appears to have been capable of being put was that the mere presence of the two photographs of flags posted [24, 25] or the two photographs of the Appellant holding a placard of the KDPI posted [20, 21], or the unspecified posts shared from the Pdki-UK [16, 17] were of themselves sufficient to mean that there was a real risk that the Appellant would have attracted adverse attention from the Iranian authorities, and be perceived as an Kurdish opposition activist. If that was the Appellant's case, then for the following reasons, the Judge was correct to reject that, and gave adequate reasons for doing so. On the face of the evidence that was placed before the Judge the Appellant had done no more than share links and photos that showed that he was a sympathiser with, or supporter of, the PDKI-UK. There was no reliable evidence to show that he had ever held any office within that organisation, or had ever organised any protest or demonstration. Thus his case did not amount to a claim that he was whilst living in the UK a political activist.

9. The complaint set out in the grounds is that the evidence before the Judge showed (i) that a member of staff at the Appellant's solicitors had been able to access the Facebook page, (ii) print off the pages placed in evidence before the Judge [ApB p15-25], and, (iii) that this was therefore a publicly accessible webpage without privacy settings, that was, and would remain, accessible at any time to anyone who cared to search the Facebook website for the Appellant's name. The grounds assert that the Judge failed to engage with that evidence. The difficulty with such a complaint is that, for whatever reason, no witness statement from the member of staff in question was ever prepared or filed in evidence for the hearing of the appeal. As the Judge noted, these were assertions offered not by the Appellant in evidence, but by Ms Brakaj, in the course of her submissions made at the conclusion of the hearing [87].

10. Before me Ms Brakaj accepts that the issue of privacy settings in operation from time to time on the relevant Facebook account was not addressed in the Appellant's evidence, or in the evidence of any other individual. She argued that the content of the screenshots of the Facebook account [ApB p15-25] were enough. I do not agree. Judges are not expected to be experts in, or even users of, all the different social media platforms that are available. It is unreasonable to expect inferences to be drawn about the privacy settings in operation from time to time upon a particular site. Whether or not it is possible to discern from the icon at the header of p15 that "Penny" is the member of staff who created the screenshots, I note that the Judge was prepared to accept that this was the case [89]. What the screenshots do not themselves provide is cogent reliable evidence upon who could from time to time access the Facebook page, and what they would be able to see if they sought to do so. Again, even if the Facebook page was publicly accessible for a time on 2 June 2017 (the date

on the header to the screenshots) it did not follow that it had been publicly accessible on any other date, or, that it would be publicly available in the future. The Judge had taken on board the fact that the screenshot recorded that the Appellant's Facebook page did have on 2 June 2017, 517 "friends", [87]. It did not however follow from this that each of these 517 "friends" represented 517 different people, indeed there was no evidence as to who these "friends" actually were beyond the nine names provided on the screenshot. The Appellant was not asked to identify any of them, or explain who they were. The screenshots show very few "likes" from these "friends" of any of the material shared by the Appellant with them; the highest any gets on his site is 11, with others getting, 5, 4, 3, 2, and 1. None of the "friends" liking such posts were identified.

11. Of course it also has to be borne in mind that the Appellant's oral evidence was that as an entirely illiterate man he was unable to shed any light upon the Facebook page in his name. Thus, in the circumstances of the damage that had been sustained to the Appellant's general credibility, it was in my judgement entirely open to the Judge to conclude that he was not satisfied that anything posted upon this site would come to the attention of the Iranian authorities upon his return to Iran [91]. That finding was properly reasoned, and did not conflict with the country guidance to be found in BA (demonstrators in britain – risk on return) Iran CG [2011] UKUT 36. In my judgement the Judge's findings were consistent with the guidance to be found in BA, they were open to him on the evidence, and were adequately reasoned. They were in summary that the Appellant was not a man who had acquired at any stage any form of political profile, and that there was no reliable evidence that would allow him to conclude that the Iranian authorities would trigger an enquiry into him upon return. That is sufficient to dispose of the ground upon which permission to appeal was granted.

12. In the course of argument before me Ms Brakaj made reference to the decision in AB (internet activity – state of evidence) Iran [2015] UKUT 257. As I understand her argument, it went well beyond the grounds, and the grant of permission, and as such I reject it. The Upper Tribunal has stated expressly that AB does not provide country guidance upon Iran – it is not permissible to ignore that, and to treat that decision as if it did provide country guidance. In any event, I am satisfied that the Judge's decision is not inconsistent with the decision in AB. It was open to him to conclude, for the reasons that he gave, that the Appellant would not attract any adverse attention or enquiry from the Iranian authorities upon return to Iran.

13. In the circumstances, and notwithstanding the terms in which permission to appeal was granted, I therefore dismiss the Appellant's challenge, and confirm the decision to dismiss the appeal on all grounds.

14. The anonymity direction previously made is continued.

Notice of decision

The decision promulgated on 13 July 2017 did not involve the making of an error of law sufficient to require the decision to be set aside. The decision of the First tier Tribunal to dismiss the appeal is accordingly confirmed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 27 March 2018

Deputy Upper Tribunal Judge J M Holmes