



**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Number:  
PA/13128/2018**

**THE IMMIGRATION ACT**

**Heard at Civil Justice Centre  
Manchester**

**On 15<sup>th</sup> April 2019**

**Decision & Reasons  
Promulgated**

**On 31<sup>st</sup> May 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCCLURE**

**Between**

**Rawand [Y]**

**(NO ANONYMITY DIRECTION MADE)**

Appellant

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Jonrose instructed by Broudie, Jackson & Canter  
solicitors

For the Respondent : Mr Bates Senior Home Officer Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge M Davies promulgated on the 8<sup>th</sup> January 2019 whereby the judge dismissed the appellant's appeal against the decision of the respondent to refuse the appellant's claims based on asylum, humanitarian protection or relief otherwise on the grounds of Article 2 and 3 of the ECHR. Article 8 of the ECHR.
2. I have considered whether or not it is appropriate to make an anonymity direction. Having considered all the circumstances I do not consider it necessary to do so.
3. Leave to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge O'Garro on 5<sup>th</sup> February 2019. Thus the case appeared before me to determine whether or not there was a material error of law in the decision.
4. The material part of the grant of leave provides:-

*3 The findings of the judge that the appellant was not credible are properly reasoned applying the correct standard of proof. In respect of the judge's findings on risk of return, it is noted that he did not take into account the recent CG case HB (Kurds) Iran CG [2018] UKUT. The appellant is of Kurdish ethnicity and paragraph 76 the judge makes reference to the appellant's "Facebook posts" and that it had been put up to bolster his case. However, in HB (Kurds) Iran CG [2018] UKUT the Tribunal said this at paragraph 116:-*

*"We are satisfied that the content the appellant's Facebook page would become known to the authorities on return as part of the process of investigation of his background. That is the effect of the expert background evidence before us. It is then, no step at all to the conclusion that this would involve a real risk of persecution and Article 3 ill-treatment in his case"*

*4 In light of what he said in HB about what can occur at the airport in Iran on return is arguable that the judge in failing to consider this made an error of law. Permission is granted.*

5. That is the extent of the leave granted in respect of the judgement by Judge Davies.
6. Before me the appellant's representative sought to argue that the whole of the decision was flawed.
7. It is to be noted that the appellant has had a previous asylum appeal, Appeal number PA/07462/2016. That asylum appeal was also based on the appellant's claimed conversion to Zoroastrianism and a number of incidents occurring in Iran. That appeal was dismissed on 19 December 2016. Before me the issue of that previous decision was raised and what the impact of the findings in those proceeding

was. The representative for the respondent seeking to raise adverse credibility findings as being material, whilst the appellant's representative's claim it was not part of the case that the appellant had fabricated parts of his account.

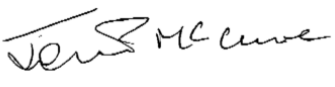
8. In approaching the previous judgement Judge Davies has properly applied the guidance in the case of **Devaseelan** 2002 UKIAT 00702. As indicated by Judge O'Garro. Judge Davies has given valid reasons for reaching the conclusion that the appellant is not genuinely a convert to Zoroastrianism. The judge has also given valid reasons for finding that he did not believe the appellant's account that his family had become aware of his involvement in Zoroastrianism by reason of posts on line including his Facebook posts and posts on YouTube.
9. With regard to the submissions by the respondent's representative credibility is to be determined on the basis of the evidence before Judge Davies. Previous findings of fact stand unless the criteria in Devaseelan are met. However the fact that an individual may not have been truthful in the past does not mean that they are not being truthful now. The judge has properly approached the issue of credibility in making findings of fact and properly applied the guidance in the case law. With regard to the assertion by the appellant's representative that it was not suggested that the appellant had fabricated an account, the judge on the previous occasions had given valid reasons for finding the appellant's claims were not true. If the account were not true the appellant must have created the account to substantiate his claim for asylum.
10. In the circumstances Judge Davies was entitled to approach the issues in the case in the manner that he has. The judge has given valid reasons for finding the appellant's account was not credible. The judge has also considered the witnesses and given valid reasons for discounting their evidence.
11. At Paragraph 115 of the decision the judge has started to consider the issue of the Facebook posts. The judge noted despite the fact that the appellant's account was that he had fled Iran by reason in part of threats from his family the appellant claims to have made friends of his family on Facebook. The judge has identified that this was a deliberate attempt by the appellant to fabricate a claim. That was a finding that the judge was entitled to make on the evidence presented.
12. The judge has given valid reasons for the finding that the appellant was not a genuine convert to Zoroastrianism. There is therefore no material error on the part of the judge in assessing whether the appellant had genuinely converted to Zoroastrianism.
13. The issue thereafter is what would happen to the appellant on return and would the appellant be at risk because of his Facebook posts. On the basis of the findings of fact the judge was entitled to conclude that the Facebook posts were deliberately put out by the appellant in

an effort to fabricate account of being a convert, see **Danian** 1999 EWCA Civ 3000 and that there would be no reason for the appellant not to delete the posts. The judge was entitled to conclude that there would be no reason for the authorities in Iran to be checking the appellant's Facebook posts prior to his returning there.

14. The sole issue to be determined is whether or not the appellant would on return be viewed or perceived by the authorities in Iran as a person that has renounced Islam by reason of his Facebook posts at the point of re-entering the country. The issue not being whether or not the appellant was a genuine convert, but whether the authorities in Iran on his return would, irrespective of whether he is a genuine convert, wish to see his face book posts and by reason thereof view him as an individual that had converted or had renounced Islam and would the appellant in those circumstances be at risk.
15. It does not appear that Judge Davies has dealt with that potential risk on return. In that respect Judge Davies has failed to make material findings on the risk on return. However that does not impact upon the rest of the determination. It is a separate issue that can be considered as a discrete issue. It is merely a matter for Judge Davies to make further findings of fact in accordance with case law cited, that is FSH and HB.
16. The judge would have to make findings as to whether or not the Facebook posts would have come to the attention of the Iranian authorities including at the point of return; what the consequence of such would be; whether the post could be deleted; and if the posts could be deleted what would be the reaction of the Iranian authorities.
17. It appears to me that the appropriate step is to direct that this matter be remitted back to Judge Davies for Judge Davies to complete the judgement in accordance with the case law referred to. The issue is whether or not the appellant by reason of his Facebook page would be viewed by potential persecutors as a person that has rejected Islam and viewed by them as a convert even though the appellant has not genuinely converted. Further whether the posts are a true reflection of his opinion or not is not the issue but whether given the posts the appellant would be at risk from the authorities in Iran by reason of their perception of his conduct.
18. For the reasons set out I find that there is a material error of law and that the appropriate course is for this appeal to be remitted for Judge Davies to make findings as to whether if the appellant were returned to Iran on return he would be at risk because of the authorities' perception of the appellant given his Facebook posts.
19. On that basis the appropriate course is for the case to be remitted back to the First-tier for Judge Davies to determine the issues set out

### **Notice of Decision**

20. I allow the appeal to the extent indicated and remit the appeal to the First-tier for Judge Davies to determine the issues identified.

Signed 

Deputy Upper Tribunal Judge McClure  
May 2019

Date 22<sup>nd</sup>