Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/09192/2014

THE IMMIGRATION ACTS

Heard at Manchester
On 13th May 2016

Decision & Reasons Promulgated
On 25th May 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

MS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms R Chowdhury of Counsel, instructed by Freedom Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appealed against a decision of Judge M Davies of the First-tier Tribunal (the FTT) promulgated on 20th March 2015.

2. The Appellant is a male Iranian citizen who claimed asylum on 24th July 2014. His application was refused on 9th October 2014 and his appeal

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heard by the FTT on 10th March 2015. The appeal was dismissed on all grounds.

3. The Appellant was granted permission to appeal to the Upper Tribunal.

Error of Law

4. On 10th March 2016 I heard submissions from both parties in relation to error of law. Permission to appeal had been granted only in relation to the consideration by the FTT of the Appellant's Facebook page which contained entries which may be perceived by the Iranian authorities as being opposed to the Iranian regime.

5. I found that the FTT erred in its consideration of this aspect of the appeal and the decision was set aside. The FTT did not adequately engage with the background information contained within the Respondent's OGN dated October 2012, which confirmed that the Iranian government monitored internet communications, and that individuals returning could be asked to log into their YouTube and Facebook accounts. The important aspect that needed to be considered was how the Facebook entries would be perceived by the Iranian authorities. The FTT had not adequately considered the background evidence, and had not adequately considered that the background evidence indicated that if questioned about internet activity, an individual could not be expected to lie, and if internet activity was exposed that was deemed to be opposed to the Iranian regime, this could lead to a real risk of persecution. Permission to appeal had not been granted in relation to any other findings made by the FTT, and therefore those findings, which included an adverse credibility finding against the Appellant, were preserved.

6. The hearing on 10th March 2016 was adjourned so that further evidence could be given so that the decision could be re-made. Details of the grant of permission, the submissions made by the parties, and my findings are contained in my error of law decision promulgated on 18th March 2016.

Re-Making the Decision

The Law

7. The Appellant is entitled to asylum if he is outside his country of nationality and is recognised as a refugee as defined in regulation 2 of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 as a person who falls within Article 1A of the 1951 Geneva Convention. The onus is on him to prove that he has a well-founded fear of persecution for a Convention reason (race, religion, nationality, membership of a particular social group or political opinion), and is unable or, owing to such fear, unwilling to avail himself of the protection of the country of his nationality. The Appellant would be eligible for humanitarian protection under paragraph 339C of the Immigration Rules if he does not qualify as a refugee and establishes

substantial grounds for believing that if he was removed from the United Kingdom, he would face a real risk of suffering serious harm, and is unable or, owing to such risk, unwilling to avail himself of the protection of the country of return.

8. The Appellant also claims that to remove him from the United Kingdom would breach Article 3 of the 1950 European Convention on Human Rights (the 1950 Convention). The Appellant must therefore establish that there are substantial grounds for believing that returning him to Iran would create a real risk that he would be subjected to torture or inhuman or degrading treatment or punishment.

9. In relation to risk on return, the burden of proof is on the Appellant and can be described as a reasonable degree of likelihood, which is a lower standard than the normal civil standard of the balance of probabilities. The Tribunal must consider the circumstances as at the date of hearing.

The Appellant's Claim

10. In summary the Appellant claimed that his brother had been involved with a political group that was opposed to the Iranian regime. The Appellant arrived in the United Kingdom as a student on 17th September 2010. He returned to Iran for two or three weeks at Christmas 2010.

11. The Appellant returned to Iran for a second time in January 2013 and stayed for six months. The Appellant and his brother made a DVD which was anti-regime and distributed copies of this.

12. Just before the election in June 2013 the Appellant's brother was attacked by Basiji and also received threatening telephone calls.

13. The Appellant's brother was expelled from university due to his political activities. The Appellant returned to the United Kingdom and passed information back to his brother using Skype and WhatsApp.

14. On 11th July 2014 the Appellant's brother was arrested by the authorities and his father was also detained for four days and his assets frozen. The Appellant was advised not to return to Iran.

15. The Appellant had been publishing anti-regime information on his Facebook page and a web blog.

Preserved Findings of the First-tier Tribunal

16. The FTT did not find the Appellant to be a credible witness. It was not accepted that the Appellant and his brother distributed DVDs critical of the regime. The Appellant had little or no knowledge of the contents of leaflets and DVDs produced by his brother and his brother's group. The Appellant had never come to the adverse attention of the Iranian authorities. The Appellant had not given a truthful account of why he

feared returning to Iran. It was not accepted that the Iranian authorities had arrested the Appellant’s father and detained him for four days.

The Hearing – 13th May 2016

Preliminary Issues

17. The Appellant attended the hearing. There were no difficulties in communication between the Appellant and interpreter in Farsi.

18. I ascertained that I had received all documentation upon which the parties intended to rely and that each party had served the other with any documentation upon which reliance was to be placed. I had the Respondent's bundle that had been before the FTT with annexes A-B and the reasons for refusal letter dated 9th October 2014. I also had the Appellant's bundle which had been before the FTT comprising 429 pages and a supplementary bundle comprising 15 pages.

19. I had a further supplementary bundle submitted on behalf of the Appellant comprising 40 pages under cover of a rule 15 notice dated 3rd March 2016, and further evidence submitted by the Appellant under cover of a rule 15 notice dated 4th May 2016 comprising 53 pages. I received from Ms Chowdhury a skeleton argument.

20. Both representatives confirmed that they had received a copy of my error of law decision promulgated on 18th March 2006, and understood the issue to be decided by the Upper Tribunal related to the Appellant's internet activity and whether this would put him at risk. I was therefore considering asylum based upon the Appellant's political opinion, humanitarian protection, and Article 3 of the 1950 Convention.

Oral Evidence

21. The Appellant gave oral evidence and adopted his witness statement dated 28th April 2016. In very brief summary the Appellant in this statement confirms that he has been using Facebook since 2011 both for personal reasons, and to express his political views against the Iranian regime. His Facebook page is publicly accessible.

22. His aim in posting information on his Facebook page is to inform people both inside and outside Iran about how the Iranian government oppresses and persecutes opponents, restricts women's rights and mistreats prisoners.

23. The Appellant attached to his statement some recent posts which are political in nature.

24. In addition to his Facebook page the Appellant has been writing a weblog called Iranibehtar (which in English means better Iran). The Appellant has been writing this blog since 2014. Sometimes it is possible to access weblogs when it is not possible to access Facebook inside Iran.

25. The Appellant attached to his statement some examples of what he had written and confirmed that his purpose was to raise awareness of political issues in Iran and how the government is persecuting its own people.

26. The Appellant fears persecution by the authorities if returned to Iran, and fears that his internet activity may have been monitored, or even if it is not, he would be questioned when he returned, and the authorities would discover his internet activity which would put him at risk.

27. When cross-examined the Appellant confirmed that his Facebook page and his weblog are both publicly accessible, and could be accessed in Iran. The Appellant confirmed that he had not left Iran illegally, but had travelled using his own passport, and that he had been granted a student visa to enable him to study in the United Kingdom.

The Respondent's Submissions

28. Mr McVeety submitted that the appeal should be dismissed. The Appellant relied upon AB and Others (internet activity – state of evidence) Iran [2015] UKUT 0257 (IAC) and I was asked to note that this was not a country guidance decision.

29. I was also asked to note that the translations of the Appellant's Facebook posts and weblog are very brief. Mr McVeety submitted that the Appellant's website is a British website and I was asked to find that the Appellant had left Iran legally, the preserved findings of the FTT meant that he was not at risk because of any activities he claimed to have undertaken in Iran, and that his internet activity would not put him at risk if returned.

The Appellant's Submissions

30. Ms Chowdhury relied upon her skeleton argument. I was asked to accept that the Appellant's internet activity would be regarded as derogatory by the Iranian regime and would put him at risk.

31. The Appellant no longer had a valid Iranian passport as his expired in 2015 (Mr McVeety indicated that this was accepted) and therefore the Appellant would need a special travel document and would not return to Iran willingly.

32. I was referred in particular to paragraph 107 of AB, which referred to Iranian citizens returning to Iran being interrogated at the airport and asked to give their Facebook passwords and indicated that a Google search could be carried out to reveal if an individual had a Facebook account.

33. Miss Chowdhury relied upon the background evidence to indicate that the Iranian authorities monitored internet activity and AB indicated that an Iranian returned to Iran, would be asked about internet activity, and if any such activity was discovered which indicated opposition to the regime, this

would lead to a real risk of persecution. I was therefore asked to allow the appeal.

34. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

35. I have taken into account all the oral and documentary evidence placed before me, together with the oral submissions made by both representatives. I take into account the lower standard of proof that applies, which can be described as a reasonable degree of likelihood.

36. I have considered the evidence in the round and with anxious scrutiny, and considered this appeal in the light of the provisions of paragraph 339L of the Immigration Rules.

37. The issue that I have to decide is whether the Appellant has proved to a reasonable degree of likelihood that his internet activity would put him at risk of persecution or treatment that would breach Article 3 if he returned to Iran.

38. I accept that the Appellant has a Facebook page and weblog. I accept that both the Facebook page and the weblog do contain posts that would be regarded as voicing opposition to the Iranian regime. There are Facebook entries going back to February 2014. By way of example the most recent posts in March and April 2016 refer to a teacher receiving a prison sentence, the Iranian regime discriminating against a female kick boxer, an Iranian journalist committing suicide after enduring years of imprisonment, and a journalist being tortured, and sentenced to ten years' imprisonment.

39. The Appellant has provided translations of weblog posts in March 2015, which made reference to the Iranian regime executing 753 people in 2014, trade union activists being sentenced to imprisonment by an Islamic revolutionary court, and the International Campaign for Human Rights in Iran claiming that the authorities have created a favourable climate in society for acts of violence against women. There was also reference to a blogger on hunger strike, having been imprisoned.

40. I have taken into account all the background evidence that has been provided and I note the Respondent's own Operational Guidance Note on Iran produced in October 2012 and I set out below, in part, paragraph 3.6.8;

> "3.6.8 Through the Cyber Army and Cyber Command the government monitored internet communications, especially social networking websites, such as Facebook, Twitter, and YouTube, and collected individuals' personally identifiable information in connection with peaceful expression of views. Freedom House and other human rights organisations reported that authorities sometimes stopped citizens at Tehran International Airport as they arrived in the

> country, and asked them to log into their YouTube and Facebook accounts. In September 2012, Freedom House reported that Iranian internet users suffer from routine surveillance, harassment, and the threat of imprisonment for their online activities, particularly those critical of the authorities. Since June 2009, the authorities have cracked down on online activism through various forms of judicial and extralegal intimidation. An increasing number of bloggers have been threatened, arrested, tortured, kept in solitary confinement, and denied medical care, while others have been formally tried and convicted."

41. I accept that AB is not a country guidance decision, but it gives useful and helpful guidance on the attitude of the Iranian government towards individuals who undertake internet activity, having carried out a comprehensive assessment of background evidence.

42. The Tribunal found at paragraph 470 that a person returning to Iran after a reasonably short period of time on an ordinary passport having left Iran illegally will almost certainly not attract any particular attention at all. That however is not the case with the Appellant, as his passport has expired, and he would therefore have to obtain a special travel document. The Tribunal in paragraph 471 stated that where a person's leave to remain had lapsed, and who might be travelling on a special passport, there would be enhanced interest. The more active the person had been the more likely the authorities' interest could lead to persecution.

43. The Tribunal in paragraph 472 indicated that the more active a person had been on the internet the greater would be the risk. It was not relevant if a person had used the internet in an opportunistic way as the authorities are not concerned with a person's motivation. In cases in which the authorities had taken an interest, claiming asylum is viewed negatively which may not of itself be sufficient to lead to persecution, but it may enhance the risk.

44. I set out below paragraph 467 of AB;

> "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."

45. It is established law, that if a person is questioned by the authorities on their return to their home country, that person cannot be expected to lie about their activities.

46. In my view, the evidence proves to the lower standard, that being a reasonable degree of likelihood, that the Appellant may be questioned when returned to Iran. The evidence also indicates that the Appellant may be questioned about his internet activity. When that internet activity is revealed, it would be regarded by the authorities, as indicating opposition to the Iranian regime.

47. The background evidence, and the decision in AB, indicates that in a case such as this, the Appellant would therefore be at real risk of persecution.

48. I therefore conclude that the Appellant is entitled to a grant of asylum because of his internet activity. He is therefore not entitled to a grant of humanitarian protection. The evidence indicates that the Appellant would be at risk of treatment that would breach Article 3 of the 1950 Convention.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and was set aside. I substitute a fresh decision as follows.

I allow the appeal on asylum grounds.

The Appellant is not entitled to humanitarian protection.

I allow the appeal on human rights grounds in relation to Article 3 of the 1950 Convention.

Anonymity

I make an anonymity order pursuant to 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 21st May 2016

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT
FEE AWARD

It appears that no fee has been paid or is payable and therefore there is no fee award. If a fee has been paid or is payable, I would not make a fee award, as

the appeal has been allowed because of evidence considered by the Tribunal that was not before the initial decision maker.

Signed Date 21st May 2016

Deputy Upper Tribunal Judge M A Hall