First-tier Tribunal
Asylum and Immigration Tribunal Appeal Number: PA/05803/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision and reasons Promulgated**
On 10 August 2017	**On 18 August 2017**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

MR AWAT IBRAHIMI
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the appellant: Mr Palmer of Counsel
For the respondent: Mr C Avery, Senior Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Iran, born on 1 August 1981, appealed to the First-tier Tribunal against the decision of the respondent dated 20 May 2016 to refuse his claim for asylum and humanitarian protection in the United Kingdom. First-tier Tribunal Judge Pooler dismissed the appellant's appeal on 29 March 2017 relying on the previous decision by the First-tier Tribunal dated 29 June 2010.

2. Permission to appeal was granted by First-tier Tribunal Judge Nightingale who said that it was arguable that the judge failed to properly apply the case law of **AB** regarding Internet activity. The

Judge also erred in finding that the appellant had exited Iran legally or that he could be returned on a passport with an exit visa when the appellant's claim was that he will be an unwilling returnee to Iran.

3. Thus, the appeal came before me.

The First-tier Tribunal Judge's findings

4. The Judge made the following findings which I summarise. The Judge accepted the findings of First-tier Tribunal Judge in a decision dated 29 June 2010 under the principles of **Devaseelan** and found that was his starting point.

5. The Judge set out appellant's immigration history in that he entered the United Kingdom on 16 March 2008 and claimed asylum. His application was refused and his appeal against the decision was refused on 29 June 2010. The appellant made further representations following which there were proceedings for judicial review which were considered by the respondent and refused which is now the decision under appeal.

6. The judge stated that the appellant's claim as put by Miss Wilkins in her skeleton argument is that the appellant fears persecution in Iran because he supported and sympathised with Kurdish opposition entities, in particular the KDPI and the Peshmerga. He left Iran illegally and would be returned as a failed asylum seeker. In his witness statement dated 7 November 2016 the appellant stated that he has been a KDPI supporter since 2006. He was politically active in Iran until he left in 2008. He re-established his contact in the United Kingdom with a KDPI branch in 2014. Although unable to attend KDPI events, he was politically active on Facebook, having shared politically motivated content relating to the Kurdish cause since December 2012. He has attended demonstrations in Birmingham and London since 2014.

7. The Judge relied on the first-tier Tribunal's decision and found that the previous Judge who heard the appellant's appeal on the same bases did not find the appellant's claim was at all credible. The previous judge found that the appellant has not demonstrated or that he was involved with the KDPI to any significant extent, or that he came to the adverse attention of the Iranian authorities through his membership of that group. The previous Judge was not satisfied that he will be of adverse interest to the Iranian authorities on his return. He also found that given the appellant's general lack of credibility, he cannot be satisfied that, although the appellant entered the United Kingdom illegally, he left Iran illegally. Even if he did, the previous Judge was not satisfied that the appellant would face persecutory ill-treatment on his return to Iran as a failed asylum seeker. In conclusion, the previous Judge stated that the appellant would not be

at risk on his return to Iran because of his political opinion or for any other reason.

8. The Judge stated that now it was necessary only to consider evidence of facts which occurred after the hearing on 17 June 2010, which was the date of the previous decision. He took into account the the objective evidence available and the country guidance relating to Iran as that now stands.

9. The Judge considered the evidence of the appellant's activities in the United Kingdom which consisted of demonstrations outside the Austrian embassy in London in 2015 and July 2016. He also claimed to have been KDPI meeting in 2017 but could not give a specific date. The judge found that given the photographic evidence, he accepts that the appellant has attended two demonstrations and a KDPI party. The Judge found that the appellant had failed to adduce any supporting evidence of his movement in the KDPI since 2014 or his attendance at demonstrations beyond the photographic evidence on his Facebook account. The Judge found that moreover the appellant has offered no explanation for the absence of any such evidence relating to events, which it would be reasonable to assume, were attended by other people. He further noted that there was as Mrs Bowden submitted, no attendance at the hearing by any representative of the KDPI in the United Kingdom.

10. The considered the appellant's Facebook account printed on 7 November 2016 where he has posted material to his Facebook account which plainly invites the viewer or reader to link him to Kurdish issues. The Judge found that the appellant's attendance at KDPI events in the United Kingdom are limited to three or possibly four occasions which must be regarded as extremely limited. He stated that the appellant's motives are immaterial and the issue remains whether the appellant's action will place him at real risk on return to Iran. This assessment must be made in the context of a finding by the previous Judge in 2010 that the appellant had failed to prove that he had, while in Iran, been involved with the KDPI to any significant extent or that he had come to the adverse attention of the authorities before his departure. In addition, he failed to prove that he had left Iran illegally.

11. He stated that Miss Wilkins relied on paragraph 457 in the case of **AB and others (Internet activity – state of evidence) Iran [2015] 0257 (IAC)** but it was stated that it is clear evidence that some people are asked about the Internet activity and particularly for their Facebook password. 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. 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 is likely that they will be asked about their Internet activity and lightly 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. The Iranian authorities in their various guises both regulate and police the Internet. Their capability to monitor outside Iran is not very different from there capability to monitor inside Iran as the Internet is the World Wide Web. A person who is returning to Iran after a reasonably short period of time on an ordinary passport left Iran illegally would almost certainly not attract any particular attention at all. However very few people who come before the Tribunal are in such a category. At the very least people who would be before the Tribunal can expect to have had their leave to be in the United Kingdom to have lapsed and may well be travelling on the special passport. Nevertheless, for the small number of people would be returning on an ordinary passport having left unlawfully we do not think that there would be any risk to them at all.

12. The Judge stated that Miss Wilkins relied on expert reports which he acknowledged were generic and not written specifically in relation to this appellant. Nevertheless, their authors are experts whose evidence must be afforded proper weight. In one experts opinion, that if a Kurdish returnee had given rise to suspicions of anti-regime behaviour, whilst abroad by applying for asylum or before he left Iran, his prospects of avoiding persecution upon return would have been significantly diminished.

13. In respect of the Facebook posts, the expert noted that it is reasonably likely the appellant if these came to the attention of the Iranian authorities, his link to the Kurdish cause would be noticed and that his certain posts would be seen as making fun of former Iranian leaders. The judge stated that the appellant's activities in the United Kingdom are unlikely to have been brought to the attention of the Iranian authorities. He has no leadership role in the KDPI in the United Kingdom and has not regularly attended KDPI events. The Judge stated that as for his posts on Facebook the appellant appears to have so few followers that I regard it is almost unlikely that his posts have come to the attention of the Iranian authorities.

14. The Judge concluded that the appellant's claim to have left Iran illegally was not accepted by the First-tier Tribunal in 2010 and no evidence has been adduced which leads him to form a different view. The appellant has failed to persuade that he would not fit within the category of those returning on an ordinary passport having left Iran lawfully who would be at no real risk. For this reason, the appeal on asylum grounds must fail.

Grounds of appeal

15. The grounds of appeal essentially argued that the Judge did not apply the case of **AB and others** properly to the facts of this case. It is also argued that the Judge did not properly take into account that the appellant is a Kurdish and that the appellant's Internet activity would be found to be derogatory of the Iranian regime by the Iranian authorities, which would put him at risk on his return. It is further argued that the Judge made a material error of law as he speculated that the appellant left Iran legally when the evidence was that he had not.

The respondent's Rule 24 response

16. The respondent in her rule 24 respondent stated the following. The respondent opposes the appeal and in summary she submits that the Judge of the first-tier Tribunal directed himself appropriately. The Judge given anxious scrutiny to all the evidence and properly considered the case of **AB and others** and sites sustainable reasons as to why the appellant would most likely not come to the attention of the Iranian authorities including his limited role in Kurdish activity in the United Kingdom having so few followers on Facebook. The decision is detailed and the grounds have no merit and merely disagree with the adverse outcome of the appeal without identifying any arguable material error of law.

The hearing

17. At the hearing, I heard submissions from both parties have considered the skeleton argument provided.

Findings as to whether there is a material error of law in the determination.

18. Essentially, the point been taken by counsel on behalf of the appellant is that the First-tier Tribunal Judge materially erred in law by finding that the appellant will be returned to Iran on an ordinary passport and therefore will not attract the interest of the Iranian authorities or be questioned by them on his arrival. It was also argued on behalf of the appellant that the Judge materially erred in not applying the case of **AB and others** to the appellant circumstances and failed to appreciate that the appellant was a Kurdish.

19. It was clear from the decision of the first-tier tier Tribunal who dismissed the appellant's appeal in 2010 stated that he did not find the appellant credible and on those bases found that in all probability, the appellant left Iran legally because he does not believe his narrative. However, the respondent in her refusal letter did not raise the issue that the appellant left Iran legally. Furthermore, at his

original screening interview, the appellant said that he had left Iran illegally.

20. Therefore, the Judge failure to failure to appreciate that the appellant will be returned to Iran as an unwilling returnee who has claimed asylum in the United Kingdom and who has been away from Iran for eight years. This is also a factor to be taken into account when determining whether the appellant will be questioned on his return which is when the problems for a returnee normally start.

21. The Judge was entitled to find that the appellant is not a credible witness and did not have a political profile in Iran. He correctly stated that the appellant's motives about his Internet activity are not relevant and that he must still consider whether the appellant will be at risk on return to Iran. This would include the appellant's political activities in the United Kingdom, notwithstanding what he found them to be a deliberate attempt to lay the basis of has asylum claim.

22. The Judge considered the guidance in the case of **AB and others** and placed undue reliance on the appellant's level of activity and attendance at KDPI events in the United Kingdom which he said were limited to three or possibly four occasions. The issue in appeal was not the extent of the appellant's political activities in the United Kingdom but whether his Internet activity in the United Kingdom would come to the attention of the Iranian authorities where he would be questioned on return. The Judge was aware that the appellant "posted material to his Facebook account which plainly invites the viewer or reader to link him to Kurdish issues".

23. Having clearly accepted that the appellant's Internet activity will lead to the appellant being questioned on his return to Iran and that in every likelihood his Facebook and Internet activity would be revealed, the conclusion that he will not come to the adverse attention of the authorities was not available to the Judge. There is no doubt that the appellant deliberately and opportunistically created his Internet activity ensuring that anyone who looks at his Facebook page, would lead the person to the link of his Kurdish affiliations.

24. The Judge was influenced by the evidence that the appellant's Facebook page has very few followers and the implication was that somehow that limited following would not bring the appellant to the adverse attention of the authorities. The background evidence is that the Iranian regime wants to pick out people with Kurdish loyalty and affiliation. It is equally clear that if his Kurdish affiliation is discovered by the Iranian authorities, the appellant would be at risk, notwithstanding how few followers he has on Facebook. The Judge failed to appreciate that the Iranian authorities are looking for people with Kurdish affiliation and that the Iranian authorities institutionally discriminate against them although in general terms the level of

discrimination faced by Kurds in Iran is not such that it will reach the level of being persecutory or other was inhuman or degrading treatment.

25. However, the country guidance case of **SSH and HR (a legal exit: failed asylum seeker (CG) [2016] UKUT308 (IAC)** dated 29 June 2016 clearly states that the situation is different for those who become or are perceived to be involved in Kurdish political activities. The authorities have no tolerance for any activities connected to Kurdish political groups and those involved are targeted for arbitrary arrest, prolonged detention, and physical abuse. Even those who expressed peaceful dissent are at risk of being accused of being a member of a banned Kurdish political group. Those involved in Kurdish political activities also face a high risk of persecution on vague charges such as "enmity against God truth" and "corruption on earth. "

26. It may be the case that the Iranian authorities know that failed asylum seekers deliberately post adverse material on the Internet to lay a basis for an asylum claim even though they have no genuine political affiliation or loyalty. However, there is no evidence that the Iranian authorities take this into account.

27. I find that there is a material error of law in the decision of the First-tier Tribunal based on the guidance given in **AB and others** and **SSH and HR**. Applying the principles in these cases and on the evidence, no other conclusion can be reached other than to find that the appellant would be at risk on his return to Iran due to his Internet activity in the United Kingdom, which will come to the attention of the Iranian authorities when he is questioned at the airport, which he will be, as he left Iran illegally and has been in the United Kingdom for eight years. The appellant will be perceived to be a Kurdish sympathiser from his Internet activity, opportunistic as it is.

28. I find that there is a material error of law in the decision of the First-tier Tribunal and I set it aside. I remake the decision and allow the appellant's appeal. This decision disposes of the appeal.

DECISION

The First-tier Tribunal's decision is set aside.
The appeal is allowed under Humanitarian Protection grounds.

Signed by

A Deputy Judge of the Upper Tribunal
Mrs S Chana

Dated this 16th day of August 2017