Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/10465/2014
AA/10469/2014
AA/10470/2014

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision and Reasons Promulgated**
On 5 August 2015	**On 18 August 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

MR MORTEZA NASRIAN
MRS KATAYOON ZARE
MASTER NASRIAN KASRA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Ms M Benitez, Counsel
For the respondent: Ms M Tanner,, Senior Presenting Officer

DETERMINATION AND REASONS

1. The appellant in this appeal is the Secretary of State for the Home Department. However for the sake of convenience I shall continue to refer to the Secretary of State as the respondent and the Mr Morteza and his family as the appellants which are the designations that they had in the proceedings before the First-tier Tribunal. I shall also consider the appeal of the first appellant who I shall referred to as "the

appellant" because of the appeals of the second and third appellant, who are his wife and son, rests or falls with the appeal of the first appellant.

2. The appellant is a national of Iran born on 21 September 1975. He appeals to the Upper Tribunal against the decision of the respondent dated 17 November 2014 to refuse to grant him asylum and humanitarian protection in the United Kingdom. In a determination dated 9 Februarys 2015, First-tier Tribunal Judge V.A. Lowe allowed the appellant's appeal on asylum grounds. Permission to appeal was granted by Judge JM Holmes of the First-tier Tribunal on 2 March 2015.

3. The Judge in his determination made the following findings which I summarise. The appellant had a blog on the Internet in which the last entry is on 19 May 2014. The blog accuses the Revolutionary Guards at the Iranians Embassy of being involved in drug dealing, a matter of obvious interest to the Iranian Security forces. The previous entry of 15 May 2014 refers to Amnesty International and criticises the conditions at Evin prisons. On 10 April 2014 the blog quotes the US Foreign Secretary as calling the Revolutionary guards and the intelligence services terrorists. The site was definitely blocked by the Iranians cyber police as set out at paragraph 26 of the respondent's reason for refusal letter. The respondent suggests that whilst the blog site had existed, the pages were a concoction with a rogue log address. The respondent also contends that it was not possible from the documents to verify the identity of the creator of the blog, or whether it was the appellant. In fact as indicated at paragraph 15 of the determination, every post bears his name and the margin of the pages dated 20 February and 19 May 2014 and 8 August 2013 have the Farsi page with the appellant and his son's photo ending in "view my complete profile". This evidence was produced at the hearing.

4. I accept that the blog existed and has been blocked by the Iranian cyber police, unless the first appellant has created a very clever forgery of a website which is beyond my technical ability to discern, it is clear that the appellant had no problems with the Iranians authorities whilst he was in Iran, which he confirmed at question 101 of his asylum interview. The appellant started in his blog on 27 July 2013. After President Rohani was elected, he posted on his blog on 8 August 2013 and attached a photograph of himself and his son as his profile. The appellant explained at his asylum interview that he deliberately posted his photograph and that of his son, because he wanted people to know who he was. He took no security precautions which is somewhat at odds with his answer that the authorities checked websites randomly. Many bloggers would presumably use pseudonyms not their own name and photograph and it is surprising that the appellant chose to do so openly particularly as he already knew of the sad fate of Sattr, the blogger who died in prison in 2012 in Iran. The appellant explained the reason that he posted his name on the blog was that he was relying on the promise of president Rohani to be open to criticism. That may suggest a high level of naiveté but nevertheless, he did not attract the attention of the authorities whilst in Iran. Indeed he had travelled in Europe in what appears to have been in 2013, went to Istanbul to apply for his Tier-4 application in November 2013 and was able to leave Iran with no problems. His blog

must therefore have been seen as relatively anodyne during 2013, and not falling within the 5 million sites which are blocked by the Iranian cyber police.

5. The appellant arrived in the United Kingdom on 15 February 2014 and only three of the translated extracts from the website predate 8 August 2013. He wrote blogs about former political prisoners writing to President Obama that sanctions hurt the Iranian people not the regime. On 11 December 2013 he posted a blog about the son of a moderate reformist politician publishing sex crimes by the Iranians authorities and 8 January 2014 he wrote about Amnesty International's concern about Kurdish prisoners on hunger strike. Some of the blogs are accompanied by photographs and although the copies are very poor they do not appear to be as contentious as the stream of photos and cartoons, which the blog features after the appellant arrived in the United Kingdom. For example, on 20 February 2014 he posted a photograph and a critical article on a man condemned to death for blasphemy and intentionally "insulting the Profit" in a private film. On 25 February 2014, the appellant posted a close-up photo of a man's face after a severe beating by members of the Iranians intelligence services. On 12 March 2014 he posted 14 cartoons, mostly of men in clerical dress as potentially the supreme leader, the president or other influential clerics as a puppeteer playing chess with people, having a long nose like a liar. On 15 March 2015 he posted photograph of two ropes from a gallows with the post that there were the highest number of executions in Iran in 2013. On 16 March 2014, he posted that the supreme Leader Khamenei was a dictator using Islam as a tool with an unflattering cartoon of him as two-faced or using the current president as a puppet, another showing him cutting of the shoots of democracy with the Iranian president or other influential clerics in unflattering or menacing poses. Six more cartoons followed on 31 March 2014 about hanging of people including, children. Six more cartoons apparently were on prison conditions which followed on 24 April 2014. The final post was on 19 May 2014, as already mentioned, was about the Iranians Revolutionary guards being drug dealers.

6. The reality is that these highly contentious articles, cartoons and photographs were being posted once the first appellant arrived in the United Kingdom. The appellant says he was excited by the access to previously forbidden unavailable material but as an educated professional man, he must have known that he was posting material which showed him as hostile to the regime. He would have known that the post on 20 February 2014 that blasphemy and insulting the State religion carry severe penalties. Calling the supreme leader a dictator using Islam as a tool appears to be his most risky move. The appellant had already apparently signed an undertaking in 2011 not to indulge in anti-regime activities.

7. However, the appellant also claimed that he intended to return to Iran for two or three months in July 2014, and then come back to the United Kingdom. Not only was he content to return to Iran but it seems blindly naive to do so if he had posted this material on his blog in the knowledge that his name and photograph was on it, the authorities monitored the blogs, and there are also informers who may be among his

friends and contacts there. The alternative is that he was not telling the truth about intending to visit Iran.

8. As a graduate accountant who had been a finance director or manager for 10 years, one would expect him to be able to calculate the effect of his actions, including on his wife and son and used to doing so. That implies that he deliberately created an inflammatory blog for the purpose of an asylum application, did not intend to return to Iran in July 2014, and did not panic on 20 May 2014 as he has claimed. He also conveniently mislaid the family's passports a few days before then. I have already noted that he handily backed up his blog on the day before he claimed that Milad called him from Iran to say that the site had been blocked by the Iranian cyber police and a raid had taken place. On the other hand, an educated professional family man can behave stupidly and naïvely. It appears to be a dramatic move to claim asylum on a false premise when he and his family had lawfully leave until 31 July 2015 with at least the possibility of his wife applying for a further leave pursuant to Tier 1 or 2 if they wished to stay longer in the United Kingdom. The only other consideration is whether something had gone wrong with his marriage at that stage which is why his wife surprisingly did not provide any evidence for the appeals. She is not in the position of an uneducated person dependent of the first appellant for leave to be in the United Kingdom with little evidence to offer. Her future also depends upon these appeals, and she has her son's welfare to consider. However this was not explored.

9. In my opinion, the first appellant deliberately created an inflammatory blog for asylum purposes, or at the very least, got so carried away with the freedom of information that he recklessly added knowing the risks he would be running.

10. The site is certainly blocked, and I accept it was his blog. Whether or not Milad called him on 20 May 2014, nothing can detract from the fact that the site is blocked. According to the translation of the screenshot, a prosecution is planned or underway, although Milad has not called the first appellant to say that an arrest warrant or summons has been served. It appears reasonable that he would do so from a public phone if he made the earlier to calls for the first appellant. I do not regard the issue of whether there was a second raid as more than a minor discrepancy as the first appellant explained it, that the existence of a second raid adds nothing to the fact that the site is blocked in the stated terms. Whether or not Milad actually phoned, or that is an invention by the first appellant, it again adds nothing to the actual block of the blog by the cyber police. The fact that there is no further official documentation may simply be that the cyber police are very busy with keeping control of social media including Facebook and Twitter.

11. Background evidence states that the Iranian authorities scrutinise and sensor published material and it states that 5 million sites in Iran are blocked. At paragraph 1.3.4 it is stated "the Iranian authorities to harass, detain, abuse, torture and use vaguely worded criminal provisions such as to prosecute and severely punish those involved in the Internet based media, such as bloggers and users of social media where their reporting is perceived to be to be critical of the government. Perceived

critics… Are likely to be held in detention conditions, some of which are capable of breaching the article 3 ECHR threshold".

12. The guidance in the COIS on how wide is the publication, in this appeal that becomes less important than the blocking of the site by the cyber police. The fact that they have seen it renders nugatory the number of others which have actually seen it or have been influenced by it. The guidance also accepts that a credible applicant in this situation cannot obtain effective protection in Iran, and cannot relocate internally.

13. Paragraph 1.3. 6 and 137 also refers to those who indulge in anti-government activities in the United Kingdom and the assessment of sur place risk. It notes that the Iranian authorities in the UK cannot physically monitor the large number of demonstrators so the level of actual involvement must be considered. The appellant is in a different situation in that he has been monitored by the cyber police in Iran. The country guidance case of **BA [2011] UKUT 00036 (IAC)** gives guidance on demonstrators and surplus activity. It states that returnees are screened on arrival and someone who fits the profile of a known activist is likely to be detained, questioned and transferred to a special court near the airport. However, the success or otherwise of the surveillance by the Iranian authorities does not appertain here as the appellant's would be returning under his own name and having had travel documents arranged for him and his family. It is not a question of how thorough surveillance is as the cyber surveillance has already taken place, in the appellant's case.

14. The appellant has brought this on himself either deliberately or recklessly, and in so doing has jeopardised his wife who has given lawful leave to study in the UK, and the best interests of the welfare of his five-year-old son. The appellant and his family may be let free at their home airport but that is not a foregone conclusion for the second appellant and not quite the point when the first appellant is likely to be detained, questioned and subject to prosecution. I am also concerned that it is relatively easy for a blogger to post inflammatory material once in the United Kingdom and become the cyber equivalent of the demonstrator who stands up in front of a crowd with a loudhailer and wearing a brightly coloured clothing for a U-tube photo shoot. There must be markedly more than 1 million individual people in Iran with blocked accounts, and they cannot all come to the United Kingdom, hence my comment about a country guidance case being needed to reflect how the means of publishing criticism of regime has changed, with particular relevance to Iran with its repression even under President Rohani of social media and what might in other societies be regarded as fair comment.

15. The Judge allowed the appeals and stated that he accepts that the first appellant is at risk of persecution in Iran for his political opinion and breach of his rights under Article 2 and 3 of the Human Rights Convention. He stated that the other two appellants, his wife and dependent may also face persecution for the appellant's imputed political opinion and treatment in breach of her Article 3 rights by her

intimate association with the first appellant. The appeals were then allowed on "asylum grounds".

16. The grounds of appeal stated as follows which I summarise. The appeal concerns an Iranian blogger in the United Kingdom as a Tier 4 student dependent who the Judge found has either created in inflammatory blog for asylum purposes or has recklessly added to it knowing the risks he would run. The appeal relates to the main appellant, his wife and child, all of whom have been served with refusal to vary leave and removal directions under section 47.

17. The Judge erred in her consideration of the evidence that the appellant's website had been blocked by the Iranian cyber police. It appears to have been accepted by the Judge throughout the determination that the website had indeed been blocked by the Iranian cyber police. This appears to have emanated from the appellant's representatives contention that the refusal also admitted that its own enquiry showed that the block had been blocked by the cyber police" this is further referenced at paragraph 29 when it was stated that "the decision maker also did not place sufficient weight on the fact that she had herself verified that the blog address was blocked by the cyber police".

18. The respondent did not make a concession that the Iranian cyber police have blocked the appellant cyber account. It only accepted that the site displayed that it was blocked. The evidence should have been considered within the guidance set out in **Tanveer Ahmed** principles and this should have been looked in the round with the rest of the evidence. By treating the comments of the respondent at paragraph 6 of the refusal letter as a concession has prevented the Judge from assessing the evidence that the blog has been blocked by the Iranian cyber police in the round. If the Judge had done that, she may well have considered that the appellant had indeed "created a very clever forgery of a website that is beyond [her] technical ability to discern". Given that the Judge found that the appellant has deliberately created the blog for asylum purposes or has otherwise acted recklessly her credibility findings at paragraph 29 are also contingent upon her acceptance that the Iranian cyber police had blocked the website when the Judge stated at paragraph 32 that the blocking of the site renders nugatory the question of the degree of publication.

19. The Rule 24 response stated the following which I summarise. The respondent has not identified any distinct legal error from among the recognised categories of legal error: perversity, poverty of reasoning, failing to take account of a material matter, taking immaterial matter into account, failing to resolve a dispute or fact or opinion, making material misdirection in law, procedural irregularity, or making an inconvertible mistake of fact: in the case of **R (Iran) v SSHD [2005] EWCA Civ 982** at paragraph 9, the Judge found as a fact after considering all of the evidence in the round that the Iranian authorities had blocked the appellant's blog. In particular the Judge considered whether the appellant was incredible at paragraph 26 and 28 but found at paragraph 35 that he was at risk of persecution. Alternatively, the appellant stated that the uncontested translation of the screenshot provided dated 9 June 2014

confirming that the appellant's blog was blocked by the Iranian authorities is decisive of his asylum claim and it precludes the respondent by rule of law from further seeking to conduct an assessment of the appellant's credibility under 339L or article 4 (5) (e) of directive 2004/83 as a means of confirming the truth of his asylum claim. The appellant say that it is for the respondent to disprove the case that the blog was blocked by the Iranian authorities in order to dispel all doubt that the appellant would not be persecuted for political opinion on return. **RC v Sweden 41827/07 [2010] ECHR 307** at paragraph 50 and 53.

20. At the hearing I heard submissions from the parties as to whether there is a material error of law in the determination. Mr Tenner stated that the Judge misunderstood the respondent's position as to the issue as to whether the appellant's blog was blocked by the Iranian cyber police. The respondent only accepted that the appellant had a blog on the Internet but did not accept that the Iranian cyber police blocked it.

21. Ms Ahmed stated that there was no material error of law in the determination which is clear and has taken all the evidence into account. He said that the Judge has given careful consideration to the evidence and made sustainable findings of fact. The Judge took into account the evidence of the photo shoot of the computer which was provided which demonstrates that the appellant's website was blocked by the Iranian cyber police as stated on the photograph of the website.

22. I have given anxious scrutiny to the determination of first-tier Tribunal Judge to see whether there has been an error of law which is material. The main ground of appeal is that the Judge was under the false impression that the respondent had accepted that these Iranian cyber police had blocked the appellant's website account. This is the website where the appellant claims that he had posted material critical of the Iranian authorities and their supreme leaders.

23. From the reading of the determination, it is clear that the Judge accepted, without any analysis that the appellant's website had been shut down by the Iranian cyber police. This could possibly have been because he was misled by the previous counsel's during his submissions that the respondent had accepted that the appellant had an account on the Internet which was blocked by the Iranians cyber police.

24. It is clear from the respondent's reason for refusal letter at paragraph 26 that the respondent took issue with this fact. The refusal letter states the following. "When a separate search was done the bloggafa.com it was displayed as a www.blogafa.com. This is very different to the web address that the appellant provided as his supporting documentary evidence. It is clear from the reading of the reasons for refusal letter that the respondent did not accept that the Iranians cyber police had blocked the appellant web site and thereby come to the attention of the Iranian authorities for a successful sur place asylum claim.

25. The Judge found that the evidence suggests that the appellant created an inflammatory blog on the Internet for the purpose of an asylum application as he did not have a profile of an activist while in Iran. It was only when he came to the United

Kingdom that he posted inflammatory information about the Iranian regime including cartoons depicting the president and Iranian clerics in a very negative manner. The Judge having accepted that the appellant's blog had been shut down by the Iranian cyber police, all analysis and the guidance in **BA** as to the realistic chances of the appellant blog being discovered by the Iranians cyber police, he said was rendered nugatory because the appellant has provided proof that his website was seen by the Iranian cyber police who intend to prosecute him. I agree with the respondent that had the Judge not made this mistake of fact, that the respondent had accepted that the appellant's blog was shut down, she may well have considered that the appellant had indeed "created a very clever forgery of a website that is beyond [her] technical ability to discern". The Judge's failure to make her own findings as to whether the Iranian cyber police had blocked the appellant's website, led her into material error.

26. The Judge did not find the appellant's evidence credible or plausible on many issues, nevertheless found that the appellant would be at risk on his return to Iran on the sole basis that the Iranian authorities had shut down the appellant's blog and therefore were aware of the appellant's activism while in the United Kingdom.

27. I find there is unreasonableness and or perversity in the Judge's analysis of the evidence and the conclusions that he came to upon it. I find that a material error of law has been established in the determination.

28. I therefore set aside the determination in its entirety and preserve none of the findings. I direct that the appeal be placed before any Judge of the First-tier Tribunal for redetermination other than First-tier Tribunal Judge V.A. Lowe.

DECISION

The Secretary of State's appeal is allowed

Dated this 10th day of August 2015

Signed by
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A Deputy Judge of the Upper Tribunal
Mrs S Chana