



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/11587/2014

THE IMMIGRATION ACTS

**Heard at Birmingham Employment
Centre
On 5 January 2016**

**Decision Promulgated
On 7 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

MN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Sidhu, Harbans Singh Solicitors

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant challenges the decision and reasons statement of First-tier Tribunal Judge Andrew that was promulgated on 12 June 2015. Having heard from both representatives, as I indicated at the end of the hearing, I find there is no legal error in Judge Andrew's decision and it shall stand. I reserved my reasons, which I now give.
2. The primary argument advanced by the appellant is that she has a well-founded fear of persecution on return to Iran because it is possible that

the Iranian authorities would be aware of her participation in an anti-Iranian demonstration in London on 30 May 2015 and that she posted pictures of herself taking part in that demonstration, including holding a banner or banners on her Facebook page.

3. Mr Sidhu conceded that the appellant does not seek to challenge Judge Andrew's other findings and the argument pursued is that the judge failed to give appropriate weight to the evidence of *sur place* activities. In the alternative, the appellant argues that Judge Andrew gave inappropriate weight to her finding that the appellant had acted in bad faith when participating in the demonstration at the end of May 2015 and this distorted the outcome.
4. The appellant's arguments are unsound for the following reasons.
5. It was open to Judge Andrew to find that the appellant had acted in bad faith. She anxiously considered the evidence presented and found it to be lacking in credibility for the reasons she gave. Those findings are unchallenged for the most part and where they are challenged it is not so much the findings that are challenged but what weight should have been given to the findings relating to the appellant's activities since arriving in the UK.
6. In light of the guidance of the Court of Appeal in YB (Eritrea) Mr Sidhu is correct in saying that it was not open to Judge Andrew to find that political activity undertaken in bad faith to bolster an asylum claim was a reason to find the appellant was not a refugee. But despite the implied accusation that Judge Andrew erred in this way, her decision and reasons statement is clear. At no point does Judge Andrew make such a finding. Her approach focuses on risk on return.
7. It is evident from paragraphs 34 to 41 of her decision and reasons statement that Judge Andrew asked herself the proper question, would the appellant face a real risk of serious harm if she were returned to Iran?
8. Judge Andrew found that the appellant's behaviour at the demonstration was marginal and that the photographs did not reflect her claimed level of involvement. Reviewing the photographs myself, and discussing them with Mr Sidhu and Mr Mills, I noted that they reveal a demonstration that took place in Parliament Square and not outside the Iranian Embassy. The photographs do not show a demonstration against Iran but a demonstration in favour of the Kurdish people as a whole. Judge Andrew found as much when she found the appellant's evidence (and that of her witness) to be unreliable.
9. Judge Andrew was right to take into consideration her findings as to the lack of reliability of the evidence presented by the appellant and her witness and to infer from that evidence how the appellant was reasonably likely to behave. The appellant had failed to provide any evidence to show that the demonstration was monitored. The appellant relied on posting

photographs on her Facebook account but that account was opened shortly before the hearing and the evidence showed she had only 25 friends. Judge Andrew considered whether the account was likely to be available for all to access and concluded that it was unlikely given the other evidence (see paragraph 41).

10. It follows from these findings that there is no reasonable likelihood that the Iranian authorities would have identified the appellant as someone against the regime and as a result it is mere possibility that the Iranian authorities might have hacked the appellant's Facebook account to see the photographs she posted. Mere possibility is, of course, well below the low threshold applicable to assessing evidence in asylum claims. Nothing in AB and others (internet activity – state of evidence) Iran [2015] UKUT 00257 suggests otherwise despite Mr Sidhu's reliance on a number of points therein. Judge Andrew found the appellant would not come to the attention of the Iranian authorities and gave good reasons for so finding.
11. As a result, I do not find against Judge Andrew on either issue raised by the appellant.

Decision

There is no legal error in Judge Andrew's decision and reasons statement and her decision is upheld.

Signed

Date

Judge McCarthy
Deputy Judge of the Upper Tribunal