Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/12598/2015

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination Issued**
on 16th May 2016	**on 19th May 2016**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

AB

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr K Forrest, Advocate; McAuley McCarthy & Co, Solicitors

For the Respondent: Mr M Matthews, Senior Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Iran, aged 60. His case is subject to an anonymity direction made in the First-tier Tribunal, which remains in place. He has unsuccessfully sought asylum in the UK through various proceedings from 2005 to date.

2. In a decision promulgated on 20th January 2016 Judge J C Grant-Hutchison took determinations made in 2006 and in 2011 as her starting point; gave further reasons for rejecting the appellant's contentions; declined to find

that he is homosexual (paragraph 22); noted that he was convicted of lewd, indecent and libidinous practices towards two 12 year old children in 2006; declined to find that the Iranian authorities would be aware of UK newspaper reports mentioning those convictions, published in December 2011; declined to find that he had any online profile on a gay website; and dismissed his appeal.

3. In the Upper Tribunal, Mr Forrest advanced two essential grounds of appeal.

4. The first is that it was perverse to hold on all the evidence that the appellant does not show that he is homosexual. Mr Forrest recognised that this represents a high hurdle, but submitted that the appellant was convicted in 2007 of offending which is at least consistent with his claimed orientation; that he has now advanced this contention consistently over a period of many years; that he sought in 2012 to rely upon video evidence of his engagement in homosexual activities; that he submitted evidence of his membership of a gay website; and that there was such a plethora of evidence over such a long period, consistent with his claimed orientation, that it was perverse of the judge to come to any other conclusion.

5. The second ground of appeal is that the judge erred in relation to the risk to the appellant at the "pinch-point" of return, based on information that might be accessed by the Iranian authorities from the internet, as well as the circumstances of his exit from Iran and the length of time he has been absent from the country, in the light of *AB and Others (internet activity – state of evidence) Iran* [2015] UKUT 0257. Mr Forrest acknowledged *AB* is not a country guidance case and that the present case, unlike *AB*, does not have political overtones. He also accepted the distinction that the alleged risk here arises from print media rather than the internet. However, he submitted further as follows: the circumstances are analogous; the Iranian authorities are unpredictable; they are known to research the activities of their nationals abroad, and to be particularly suspicious if one has spent some years in the UK; the judge grappled inadequately with the combination of factors which might focus on the appellant at the point of his return – the fact of his conviction, his assertion of his homosexuality by production of video evidence, his persistence in his allegations of his sexuality, his likely perception on return, and the availability of information about him on the internet.

6. Finally, it was submitted that the errors were sufficient to require the decision to be set aside.

7. Mr Matthews argued as follows. Although *AB* was relied upon in the grounds of appeal to the UT, it was not mentioned in submissions to the First-tier Tribunal. It is not reported as a country guidance case or otherwise formally binding upon the First-tier Tribunal. The judge correctly noted at paragraph 28 of her decision that the appellant provided no expert, background or other evidence in support of his contention that the authorities might use "Google" to find out about him. Not having

produced any evidence, and not having cited *AB*, which had by then been reported, there was no error by the judge. This is particularly so as the present case was conceded not to be precisely in point. The appellant was not involved in political polemic on the internet. The challenge to the finding on the appellant's sexuality fell well short of showing perversity. The judge was entitled to take previous determinations as her starting point. She gave clear reasons for not departing from earlier conclusions. For example, the appellant sought to rely upon a profile on a gay dating site, but the evidence did not show that the material belonged to the appellant; it did not have his correct date of birth (which could easily have been changed, if, as he maintained, this was an error); the appellant said he visited the site daily, yet it showed membership as having expired on 10 November 2011; and the site recorded 3,254 messages sent, not one of which was lodged in evidence. Those were good reasons for the judge's conclusions against the appellant.

8. I reserved my decision.

9. Broadly, I prefer the submissions for the respondent on both grounds, for the reasons Mr Matthews advanced, as summarised above.

10. The judge had to decide whether the appellant is gay. She took two previous adverse determinations on that issue as her starting point. She gave strong reasons for not accepting much of the further evidence upon which the appellant sought to rely. His convictions for lewd and libidinous behaviour and the DVD material he created in 2012 did not compel a conclusion to the contrary. The outcome is far from perverse. It was plainly open to the judge, and she gave several clear and sensible reasons.

11. The second ground strains the significance of *AB*. The judge properly disposed of such submissions as were made to her about suspicion of the appellant arising through enquiries made at the point of return. His case is not particularly analogous to *AB*. The judge was entitled to conclude at paragraph 26 that the prospect of his convictions coming to light on return were exceedingly remote.

12. Neither of the grounds shows that the First-tier Tribunal erred in law. Its decision shall stand.

17 May 2016
Upper Tribunal Judge Macleman