



**Upper Tribunal
(Immigration and Asylum Chamber)**
PA/05479/2016

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Birmingham
Employment Tribunal
on 11 May 2017**

**Decision & Reasons Promulgated
On 24 May 2017**

Before

**UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE ROBERTSON**

Between

**GB
(anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Bradshaw instructed by Bankfield Heath Solicitors
For the Respondent: Mr C Bates Senior Home Office Presenting Officer.

ERROR OF LAW DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Row ('the Judge') promulgated on the 2 November 2016 in which the Judge

dismissed the appellant's appeal on both protection and human rights grounds.

2. The appellant is a national of Iran born in 1978 who claims to have entered the United Kingdom in November 2015. The appellant claimed asylum which was refused on 13 May 2016 as it was not accepted by the Secretary of State that the appellant will face a real risk of persecution or harm if returned to Iran. The application for leave under the European Convention of Human Rights was also considered and refused.

Background

3. The Judge sets out the correct self-direction in relation to the burden and standard of proof at [4] - [6] before summarising the appellant's and respondent's cases. In relation to the appellant's case the Judge records at [8] - [12]:
 8. The appellant says that he is an Iranian national. He was employed as a mechanical engineer in the oil industry. In the past he has been an amateur boxer of some repute and after retiring worked as a boxing coach in Iran.
 9. He is an atheist. On a date which he initially said was 1 November 2015 but now says was 31 October 2015 he gave some leaflets concerning his atheistic views to some of his boxing pupils. This attracted the attention of the security police who next day came to the gym, took away his locker, and subsequently raided his home. The appellant was working away at the time.
 10. Hearing the news the next day 2 November 2015 he arranged to travel to the United Kingdom by land via Turkey arriving in the United Kingdom on 14 November 2015.
 11. He fears that if he returns to Iran he would be persecuted. The appellant says that he has expressed some of his views on Facebook and has received a warning from the Iranian authorities.
 12. If the appellant returned to Iran he would do so as a failed asylum seeker. Two matters would bring him to the attention of the authorities at the airport. Firstly the fact that he has come to the adverse attention of the Iranian authorities in Iran. The second is that his Facebook entries purporting to criticise Islam and the Iranian authorities would also bring him to their attention. He is thus at risk of arrest and mistreatment on return.
4. The respondent accepted the appellant is Iranian and has been a boxing coach but nothing more. The respondent's case is that the appellant travelled to the United Kingdom as an economic migrant which is said to be evidenced by the fact he failed to claim asylum in any of the countries he travelled through on his way to the United Kingdom. The Judge noted the respondent did not dispute that if the appellant had come to the adverse attention of the authorities whilst he was in Iran and due to his Facebook activities for anti-Islamic and anti-state views he will be at risk of persecution and harm on return.

5. The Judge noted at [14] that the issue is whether the appellant is telling the truth about his activities or whether they have been fabricated to establish an asylum claim.
6. In relation to the credibility of the accounts, the Judge sets out his findings at [15] to [37] inclusive which can be summarised in the following terms:
 - a. There are matters which affect the appellant's credibility. There are minor matters concerning the date when he says that the authorities came to his gym. The appellant explains this by saying he was using two different calendars. The discrepancy is not significant as a mistake could easily have been made about the date [15].
 - b. Issues concerning the Facebook entries and warnings said to have been sent by the Iranian authorities raise significant issues [16].
 - c. The appellant claims to have posted a number of entries on his Facebook account criticising the government and Islam and to have been sent warnings by the Iranian authorities, the first of which was sent on 9 December 2015. The appellant claimed at the hearing to have been sent another warning 15 days later which he deleted as he did not think it was of any significance. [17 - 18].
 - d. The Facebook entries cover a period from early 2014 to the end of 2015. The appellant gave evidence there were additional entries relating to 2016 which did not have a year on them, which the Judge accepted to be the case [19].
 - e. The appellant was interviewed by the immigration authorities in the United Kingdom on two occasions, the first on 18 November 2015 for the screening interview when he was asked why he could not return to Iran. His reply makes no mention of a real risk arising from entries on his Facebook account. The only explanation provided was that the appellant had given his pupil some leaflets and that the authorities had become involved. The second interview on 22nd of April 2016, after the appellant had had the opportunity to take legal advice, contains no mention of any Facebook entries and no mention of the appellant having received a warning from the Iranian authorities. Again, the appellant only mentioned leaflets he had given to his pupils. When asked specifically if he had any evidence that the authorities were interested in him the appellant is stated to have replied "no" [20 - 21].

- f. The failure to mention Facebook entries is a significant omission [22].
- g. The appellant's explanation that he never thought he could use the Facebook entries and related warnings in support of his asylum claim was not believed. The appellant was represented by solicitors who are said to have prepared his case meticulously, including pointing out corrections after the interview of 27 April 2016. [24].
- h. The appellant's solicitors were not aware of any Facebook entries or any warning from the Iranian authorities which would have been of fundamental importance to the appellant's claim [24].
- i. The first time these documents were disclosed to the Home Office was when the appellant's bundle was submitted on 6 October 2016 for which translations were not submitted until 20 October 2016 [24].
- j. The Judge did not accept the appellant's explanation. The documents arrived late. The Judge finds "the clear implication of the fact that they were not disclosed in April 2016 is that they did not come into existence until after that date. Otherwise the appellant would have mentioned them. He is an intelligent man. He has a degree in mechanical engineering. He would have been fully aware of the importance of those documents" [25].
- k. The appellant has not shown that the documents are what he claims them to be [26].
- l. The appellant claimed at the hearing that he has Facebook entries revealing his religious and political views which were posted whilst he was in Iran, dated from the beginning of 2014, almost two years before he left Iran. [27].
- m. The appellant claims to have received a warning sent on 9 December 2015 [27] but no warning was sent to him whilst he was in Iran; his claim was that despite expressing adverse views openly for two years he had not attracted the adverse attention or warnings from the authorities [28].
- n. The Judge found it difficult to see why the authority should show the alleged interest in the appellant, evidenced by the warning sent within three weeks of his arrival in the United Kingdom, if they had not shown any interest in him whilst he was in Iran [28].

- o. The appellant claimed he had been an atheist for at least the last 15 years and having remained quiet on the subject the Judge questioned why it is that he should decide to distribute leaflets to a group of young men in October 2015 and put himself at risk with the Iranian authorities [29].
- p. The appellant is specific about who came to the gym, that they were plain-clothed officers but the Judge questioned how he would know this if he was not present and found that if the authorities knew where his gym was and where he lived it is likely they would have known where he worked as well and sought to arrest him there, but there is no evidence that they did [30].
- q. Since coming to the United Kingdom, and although claiming to be an atheist, the Judge finds the appellant has shown a sudden interest in Christianity. It was noted that the Appellant does not claim that he is Christian convert [31].
- r. The appellant has not produced any evidence from his wife who is said to have been present when the police came and who was arrested although then released and who the Judge assumed would be willing to provide a statement. The appellant is in contact with his wife [32].
- s. It is argued the appellant is not a typical Iranian asylum seeker as he is married with a child, comes from a middle-class background and was relatively wealthy in that country although the Judge finds he has produced little evidence of this. Two contracts of employment dated 2010 and 2011 had been disclosed but nothing more to prove his family circumstances in Iran [33].
- t. The appellant claims to have handed out leaflets on 31st October, been sought by the authorities on 1 November, and to have left Iran on 2 November 2016, meaning inside two days he managed to leave Iran illegally having contacted those who would know how to do this and arrange for money to be paid to them. The appellant claims that his brother paid the money [34].
- u. The appellant travelled to Turkey. He travelled by land. He passed through possibly half a dozen countries in Europe in any of which he could have claimed asylum. The appellant's claim that he did not know which countries he was in was not believed by the Judge as he would have known where he was travelling to and what countries. The appellant claimed to have travelled alone but when he arrived in the United Kingdom there were four people who travelled with him

some of whom would have known where they were going [35].

- v. The circumstances of the appellant's journey were found to indicate that it was a planned journey. Timescale indicates it would have been planned for some time and not done on the spur of the moment. If the sole intention was to find somewhere safe the appellant could have done this by travelling to a nearby country at less expense and less risk than travelling to the United Kingdom involved [36]. This is not the conduct of somebody fleeing his safety - it is the conduct of someone travelling to the United Kingdom for economic purposes [37].
7. The Judge concludes at [38] - [45], having taken the lower standard of proof into account, that he did not believe what the appellant says. The Judge does not find that the Facebook entries have been shown to be genuine, did not find the warning which had been exhibited is genuine, and that the appellant had not shown that it is what he says it is [38].
 8. The Judge found the appellant would have disclosed the existence of the documents in his asylum interview had they existed at that time [39].
 9. The Judge did not find the appellant had ever expressed any views about atheism that even if he is an atheist he had never expressed any views about this and certainly not expressed them either on Facebook or in leaflets. The Judge found the account is fabricated and did not find the authorities came to arrest the appellant or that they took away his locker or that his wife was arrested or his house searched. The account was found to be a fabrication [40].
 10. The Judge found the appellant came to United Kingdom for economic or for other purposes not associated with any fear of persecution or harm in Iran [41] and did not find the appellant would be at risk of persecution or harm because of anti-Islamic or anti-state views as he has never expressed any such views and has not come to the adverse attention of the Iranian authorities [42].
 11. The Judge, having dismissed the credibility of the claim, considered risk on return at the airport as a failed asylum seeker. The Judge found that on the appellant's evidence as he has a passport that he left in Iran and that as he is in contact with his wife she will be able to send it to him. The Judge concluded that the appellant had never been and is not likely to come to the adverse attention of the authorities in Iran.

Grounds and submissions

12. The appellant sought permission to appeal to the Upper Tribunal asserting (i) that the Judge made inadequate or inconsistent findings on material matters relating to the Judge's findings on the appellant's Facebook posts, claiming the Judge has not examined the posts

themselves, including such factors as the appellant's name being on each one, his photograph appearing in the top corner of each post and the appellant appearing in a different photograph within one post shown in the supplementary bundle. It is asserted the Judge's approach to the evidence is inconsistent and confusing (ii) that the Judge failed to have regard to material matters namely the appellant's claim he was only allowed out of the lorries he was travelling in at night when it was dark and could not recognise areas or identify where he was. The Judge does not explain why he rejects the evidence in reaching his finding that the timescale indicates that the journey must have been planned for some time, (iii) that the Judge failed to have regard to material evidence referring to the ability of the appellant to contact his wife when it was known the Iranian authorities monitor telephone conversations and Internet communications and open mail without Court authorisation, indicating the Judge failed to consider whether the appellant contacting his wife to obtain further evidence was a realistic course of action.

Error of law

13. The criticism of the Judge for adopting an inconsistent and confused approach to the evidence has no arguable merit. The Judge was aware of the issues he was being asked to consider and clearly considered the evidence made available with the required degree of anxious scrutiny.
14. The primary challenge is to the Judge's findings in relation to the Facebook account. In granting permission to appeal to the Upper Tribunal First-tier Tribunal Judge Grant-Hutchison stated:

"It is arguable that the Judge has misdirected himself by (a) failing to consider (i) the Facebook posts to show that not only had the Appellant opened a Facebook account in 2012 but had posted many pages before he left Iran, (ii) the postings he has made since his arrival and (iii) whether he would be at risk on return as a result. The case of AB and others (Internet activity - state of evidence) [2015] UKUT 257 is relied upon for its terms; (b) the amount of weight given to the Appellant's journey in assessing his credibility and (c) by failing in light of the aforesaid to consider whether the Iranians authorities will be monitoring the Appellants telephone conversation or Internet communications or mail if the Appellant were to approach his wife for supporting evidence or his passport. As such these considerations may have made a material difference to the outcome or fairness of proceedings.

15. On behalf of the appellant Mr Bradshaw argues the Judge's findings that the Facebook entries had been manufactured had not been put to the appellant. To support the reliability of the Facebook entries, it was submitted that when someone responded to a post made by the appellant, the date would be shown as the headline for the post.
16. Mr Bradshaw was asked about the date appearing on Facebook entries that do not appear to be in the appellant's name to which he claimed they were in the appellant's brother's name, PB, which he had adopted, as his brother had died when he was much younger. It is

- accepted that all the Facebook posts are in this other name, although this topic was not explored before the First-tier Tribunal.
17. We take judicial notice of the fact that Facebook is not a communication tool designed to require an understanding of complex IT principles to operate but rather a social network used to connect with others. Facebook has stated in news releases that its mission is to make the world "more open and connected" by connecting people and facilitating communication between them. The systems employed to create a Facebook account and to upload and communicate messages reflects this desire to facilitate communication.
 18. When opening a Facebook account, the appellant would have created a personal profile. He claims to have opened his Facebook account in 2012. It is known the Iranian authorities monitor social media and that a number have been arrested and subjected to ill-treatment for messages posted on their Facebook and other accounts at times of civil unrest in Iran or if they have published articles deemed contrary to the interests of the Iranian state. It is known the Iranian authorities have denied access to individuals who have used social media in an "unacceptable" manner, as judged by the standards of the Iranian authorities, and blocked access to other Internet sites. There is however no suggestion before the Judge that the Iranian authorities have imposed a 'denial of service' upon this appellant in relation to his Facebook account.
 19. It is also known that Facebook users can add other users as "Facebook friends" and share information with them in many ways. This is normally achieved after signing up and adding friends by sending private, semi-private or public messages. Messages can take the form of a "status update" (also called a "post"), a private Facebook message, a comment about a friend's post or status, or a quick click of the "like" button to show support for a friend's update or a company's Facebook page. It is also possible to upload information onto an individual's Facebook account that is seen only by the registered user of the account in question and not shared with any third party.
 20. When opening a Facebook account an applicant ordinarily gives their real first and last name along with their email address and completes a form, although the evidence in this appeal shows that the appellant did not use his real name to open his Facebook account. Once completed an individual will click the green "sign up" button at the bottom after which Facebook will send a message to the email address provided with a link asking the applicant to confirm their mail address.
 21. Facebook uses specific technology such as calling its profile area your Timeline because it arranges your life in chronological order and displays a running list of your activities on Facebook. The Timeline page is also where you can upload basic biographical information about yourself such as your education, work, hobbies, interests. This Timeline/profile area is where other people will go to see information about you on Facebook and is also where a user can go to check out his or her friends because each of them has a Timeline/profile page.

22. "Status update" is what Facebook calls a message that is posted via the publishing box. People use status updates to communicate their activities or share entries.
23. It is possible with Facebook to send Internal Messages. Messages are private notes a user can send any friend they are connected with on Facebook. Such private messages are viewable only by the person to whom they are sent and do not go into the news feed or other places which would enable them to be viewed by a user's network of friends. Such messages go into the recipient's Facebook inbox which functions like a private email address. Facebook privacy controls let a user select who can see each item posted.
24. It is not therefore a case that any item posted to an individual's Facebook account is automatically viewable by the world in general, as recognised in the case law of the Upper Tribunal referring to requests by the Iranians authorities on return for those with a Facebook account, in whom there may be interest or desire to question, to furnish their passwords to permit access to the content of that account. This supports the commonly known position that Facebook lets each user control who can see their personal information and content they post to their account.
25. The fact there were Facebook entries provided to the Judge is therefore not determinative of the appellant's claim. The appellant was required not only to establish a credible aspect of his claim that gives rise to a real risk, such as an adverse political or religious opinion which genuinely represents an individual's fundamental belief, but also to demonstrate that material reflecting such a fundamental belief (actual or that may be imputed) is reflected on the Facebook account, and to establish the nature of the posts i.e. whether only uploaded for the appellant's own information, whether shared with a limited number of others as a private message or whether posted without active privacy setting, and in all cases as those who access such messages are recorded on the Facebook account, evidence of who may have seen such messages.
26. There appears to have been no credible evidence before the Judge to show that those entries appearing on the Facebook account were not either posted to the appellant's account for his private viewing, were not subject to privacy settings, or had been viewed by others outside his chosen audience. There also appears to be the fact the entries the appellant is seeking to rely upon are not in his name but in the name of another with insufficient evidence before the Judge to establish that a connection would be made between those articles and the appellant as the author of the same. In the absence of such evidence, the findings by the Judge that the appellant is an economic migrant and this is a fraudulent claim created to secure asylum in the United Kingdom, suggest they did not represent a genuinely held view but rather have been created as a means to enhance a very weak claim for international protection.
27. The argument of arguable legal error as the disingenuous nature of the Facebook entries had been not been put to the appellant has no

merit. Proceedings in the First-tier Tribunal are adversarial by nature. The appellant was represented and attended to give oral evidence which was considered by the Judge. The obligation upon the Judge was to properly consider the material provided and to arrive at appropriate findings supported by adequate reasons. The existence of a right of appeal provides an appellant with an effective remedy against errors made by a judge having undertaken the proper process. There is no legal obligation upon a judge considering evidence, with a view to producing a written decision, being required to reconvene a hearing to discuss each adverse conclusion made to provide the appellant with an opportunity for further comment either orally, via representative submissions, or in writing. The matters considered by the Judge are those based upon the evidence provided by the appellant himself. It is not a matter of the Judge considering material of which the appellant has had no reasonable notice which may, in some circumstances, amounts to procedural unfairness.

28. It is also the case, where it has not been shown that entries on a Facebook account represent a fundamental held view, that the judgment of the Supreme Court in *HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department [2010] UKSC 31* must be properly considered. The Judge assessed risk on return in light of the appellants accepted profile. The Judge was correct to do so for even if the Facebook entries are not genuine this does not prevent a potential persecutor who sees the same imputing an adverse profile upon the person on whose Facebook account they are, which may lead to ill-treatment or persecution. It was accepted in *HJ (Iran)* that an individual cannot be expected to lie to avoid persecution if what they are lying about is something that represents a fundamentally held belief or aspect of their personal identity, such as religion, sexual orientation, political opinion. It was recognised in *HJ (Iran)* that such a principle will only apply if the material in question does represent a credible genuine fundamentally held belief that forms part of a person's individual identity. Something created to enhance a bogus claim that has not been shown to represent a credibly held belief is not afforded the same weight. The Judge was clearly of the opinion that the appellants claim to have expressed views on Facebook for which he had received a warning from the Iranian authorities was not credible and was without foundation. As the views expressed do not form part of an expression of a fundamentally held belief there is no legal restriction upon the appellant in denying the existence of any such entries or in expecting any entries that may potentially cause him difficulties being deleted. The appellant had not provided any evidence to show the Iranian authorities had the ability to establish the nature of information deleted from a Facebook account in this way.
29. This is not a case similar to that relating to Zimbabwe where, at times, a failure to express an opinion in the positive may lead to persecution. In that country it was found that a failure to positively demonstrate

- support for Zanu-PF could give rise to ill-treatment especially at times of elections.
30. The Upper Tribunal received submissions from Mr Bates, a Facebook user, about the ease in which posts entered by others could be manipulated to change the entire content and meaning and what happens to the date when such manipulation occurs. However, we did not rely on the evidence of Mr Bates in reaching our decision.
 31. The Facebook entries have the name of PB on them arguably indicating that they are entries created by another person and not the appellant.
 32. The Judge has not been shown to have erred in law when noting in the appellant's screening and asylum interviews that the appellant makes no mention of a real risk of harm arising because of postings on his Facebook entry or of warnings being received from the Iranian authorities, both of which are matters he later sought to rely upon. It is reasonable to assume that if an individual claims to face a real risk on return to Iran, as a result of the matters appearing on the Facebook account, it is reasonable to expect specific mention would have been made of the same in both the Screening and Asylum interviews. The finding of the Judge that such documents had been created by the appellant in support of his asylum claim is within the range of findings the Judge was arguably entitled to make on the evidence.
 33. The clear inference by the Judge was that the lack of disclosure of the existence of such evidence, or the alleged warnings, at an earlier stage in the proceedings was because such documents had not come into existence until the creation of the appellant's appeal bundle disclosed at a much later date. Accordingly, the Judge was entitled to attach the weight he thought was appropriate to content of the Facebook account. We find this is a finding fully open to the Judge based on the evidence he was asked to consider.
 34. We also note that at [30] of the decision under challenge the Judge makes adverse credibility finding not related to the Facebook entry at all.
 35. At [32] the Judge makes a finding in the appellant's favour regarding the weight to be placed upon a certain aspect of the evidence as he does in [15] regarding a discrepancy in the evidence.
 36. The Judge's findings regarding the circumstances of the appellant travelling to the United Kingdom have not been shown to be outside the range of findings reasonably available to the Judge such as to enable us to find arguable legal error.
 37. A core finding is that the Judge did not find that the appellant has ever expressed views of an anti-Islamic or anti-state nature, that his account is a fabrication, or has never expressed any views about atheism. The appellant can remove the entries on his Facebook account which will not be available to be seen by the Iranian authorities even if the appellant is asked to provide his password, in the event he is questioned on return.
 38. Having considered the submissions in detail and all other aspects of this case, including the documentary evidence provided by the

appellant, we do not find the appellant has made out any arguable legal error material to the decision to dismiss the appeal. The Judge did not find the appellants claim to be credible. Accordingly there will be no need for the appellant to ask his wife to send evidence of a controversial nature which may place him at risk. It is not established that this applies to a simple request for his wife to forward his passport to him.

39. The appellant in his screening interview was asked whether he had been involved with or accused of being involved with any pro-government groups, political organisations, religious organisation, armed or violent organisations, group or parties or written anything that might be controversial or been suspected of being involved in the matter set out a question 5.7 to which he replied in relation to all matters “no”. It is clear the appellant had no adverse profile during his time in Iran.
40. There was some discussion during the error of law hearing of the boxing certificates within the appellant’s bundle issued in relation to boxing and related activities in the names of the appellant and PM and GM. The certificates do not appear to be contentious and it has been accepted that the appellant was an amateur boxer. However, this adds nothing of significance to the issues in relation to the Facebook evidence.
41. No arguable legal error material to the decision is made out.

Decision

- 42. There is no material error of law in the First-tier Tribunal Judge’s decision. The determination shall stand.**

Anonymity.

43. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

We make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 1⁷th of May 2017

