Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08238/2016

THE IMMIGRATION ACTS

Heard at Newport	**Decision & Reasons Promulgated**
On 31st July, 2017	**On 3rd August 2017**

Before

Upper Tribunal Judge Chalkley

Between

M V
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: *Ms S Caseley* instructed by Fountain Solicitors
For the Respondent: *Mr Stefan Kotas* s Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is an Iranian citizen born on [ ] 1987. She claimed to have arrived in the United Kingdom on 19th January 2016 and claimed asylum on

31st January, 2016. On 22nd June 2016, the respondent refused the appellant's claim and the appellant appealed to the First-tier Tribunal.

2. The appellant's appeal was heard by First-tier Tribunal Judge Fowell. The appellant claimed to be a Christian convert who would be at risk from the authorities on her return to Iran, having converted from Islam and who, on her return, would evangelise or proselytise.

3. The First-tier Tribunal Judge heard oral evidence from the appellant, but did not believe the whole of it. He did not believe that the appellant was involved in religious church activities in Iran, or indeed was involved in Christianity in Iran. He was satisfied that she was not a Christian convert at all. He found that she was regularly attending church in the United Kingdom and concluded that witnesses on her behalf had been duped by her. He did not accept that the appellant's conversion to Christianity was genuine. Those findings have not been the subject of challenge.

4. The appellant claimed to have been active online through a Facebook account and the judge noted that she had only started to be active on 22nd January 2017, approximately one month before the hearing before the judge. He noted that there were no ordinary posts, in the sense of messages about non-religious day-to-day activities. Her online activity comprised printed images posted on Instagram and on Facebook with her wedding photograph as her profile picture. There was no accompanying commentary, just a bare picture or biblical quote. He concluded from this that her motive in setting up her accounts was to purely bolster her asylum claim. He found it to be self-serving. At paragraph 73 of the determination he referred to and quoted from paragraph 107 of *AB and Others (internet activity – state of evidence) Iran* [2015] UKUT 257 (IAC). At paragraph 74 the judge (inaccurately as it turns out) stated that he had no information about privacy settings or evidence to show that a Google or other search against the appellant's name would reveal her Facebook account. He found that the burden on the appellant had not been discharged and that she had failed to demonstrate that there was a risk on return. He went on to consider the appellant's Article 8 claim and concluded that her removal would not be disproportionate.

5. There were detailed and lengthy grounds submitted. The first referred to paragraph 74 of the determination and pointed out that there was evidence which had been attached to a skeleton argument clearly explaining that an icon appearing on a Facebook page indicated that it was public. Reliance was placed on paragraph 475 of *AB and Others (internet activity – state of evidence)* Iran [2015] UKUT 0257 (IAC) and it was suggested that the appellant's Facebook activities might be the subject of an investigation by the Iranian authorities on her return, when they are interrogating her.

6. The second challenge suggested that the judge misunderstood the oral evidence the appellant gave in relation to the date when she left Iran. It is

claimed that in evidence-in-chief she corrected what she had earlier said in a statement, but accepted that her evidence may not have been clearly translated.

7. The third challenge suggested that the judge was wrong in failing to take into account background evidence regarding memory and recall of individuals generally. Instead, he felt he could not attribute the appellant's change of evidence in relation to the date that she left Iran, on stress or confusion, but the background evidence suggested that it is often difficult for an honest witness to remember correctly an important date.

8. The last challenge asserted that the judge failed to consider all relevant factors in the Article 8 analysis and erred at paragraph 80 when he was confused about the requirements of the Immigration Rules and conflated two different issues.

9. Counsel addressed me at some considerable length and could not have said anymore on the appellant's behalf. She pointed out that at paragraph 80 of the determination the judge had misquoted Article 8 and misapplied the Rules. Counsel accepted, however, that the appellant could not qualify under the Immigration Rules.

10. As to the first challenge Counsel reminded me that the appellant would be travelling back to Iran on a Home Office travel document and that would excite the interest of the Iranian authorities. During questioning she may be asked about her Facebook account and will in all honesty have to admit to having a Facebook account and explain why she opened it. The mere fact that she has claimed asylum in the United Kingdom will cause difficulties for her, because as the Tribunal point out at paragraph 464 of *AA,* seeking asylum is regarded as being rude about the government of Iran. It was clear, Counsel suggested, that the judge failed to appreciate the evidence he was given at paragraph 48 of his determination. I pointed out to Counsel that I had difficulty in understanding the error. The grounds themselves suggest that the appellant's answers to questions put to her were not clearly translated, although there appears to have been challenge at the hearing to the interpreter being used.

11. Mr Kotas drew my attention to paragraph 45 of the determination where the judge very clearly considered the discrepancy in the context of stressful confusion and discounted it. The appellant had claimed that she left Iran on 19th January, 2016 but was fingerprinted in Greece on 9th December, 2015. The judge was very clearly aware of the possibility that someone might give incorrect evidence, because they were suffering from stress or confusion, but in respect of this evidence he discounted that possibility. There was no medical evidence to suggest the appellant had memory difficulties and no merit at all in ground 3.

12. As to the allegation of misstatement of evidence and the claim that the judge materially misunderstood the chronology of events being put

forward by the claimant, Mr Kotas reminded me that it was demonstrated that she had lied about her presence in Greece. There has been no direct challenge to the credibility findings. The witnesses the appellant called in order to support her claim to be a converted Christian were found by the judge to have been duped by the appellant and no challenge has been made to those findings. There is no merit in ground 2 either he submitted.

13. As to the first challenge and the appellant's internet activity, the decision in *AB* is not authority for the proposition that any internet activity by an appellant must result in a risk on return to their native country. At paragraph 62 the judge deals with the appellant's evidence relating to her Facebook account. He found that her creation of that account was self-serving and intended purely to bolster her asylum claim. At paragraph 73 the judge points out that there was no blogging, in the sense of publishing online articles, merely a picture and biblical quotes.

14. As the judge points out, in *AB* evidence was presented in respect of the appellants and what may be revealed by an internet search against their name and the privacy settings employed. There was no evidence before this judge to show what Google or other search against the appellant's name would reveal. If when questioned she was asked about Facebook she could not be expected to lie. She would explain that she created a Facebook account a month before her asylum appeal in an attempt to bolster a false asylum claim.

15. Mr Kotas pointed out that *AB* was not a country guidance case and as the Tribunal itself were quick to point out, it was difficult to establish any clear picture about the risks consequent on blogging activities in Iran (*see paragraph 466 and 472 of AB*). This appellant has not been critical of the regime. The core of her claim was not critical of the Iranian government at all. He referred me to what the Court of Appeal said in *SS* at paragraph 24. While not being on exactly the same point, the principle he submitted, is the same.

16. As to the appellant's Article 8 claim, it is clear that the appellant could not succeed under the Immigration Rules. She was not in a relationship for two years before she made her claim and she is not married. What the judge says at paragraph 87 was a conclusion which was open to him on the evidence. There is nothing perverse about it. Mr Kotas submitted that the determination should be upheld.

17. In making submissions to me in closing, Counsel suggested that the fact that the appellant has narrowly missed meeting the requirements of the Rules is something which should be taken into account. *AB* does not suggest that anyone posting material will be at risk, but this judge accepted that she had placed material in her Facebook account. He has failed to apply *AB* to the evidence before him. It is not relevant that she was not critical of the Iranian government; the risk would still be there.

18. I reserved my determination.

19. There has been no challenge to the judge's findings that the appellant is not a genuine convert to Christianity and neither is there any challenge to his findings that she sought to mislead the United Kingdom authorities as to the date she travelled. He found that one "blatant untruth" was that she did not leave Iran on the date she originally said, because she had been fingerprinted in Greece on 9th December, 2015. He was clearly alert to the possibility that this may have been caused by stress or confusion on the part of the appellant, but discounted that because that claim was maintained in her witness statement long after the stress of her interview and right up to the point when it was shown to be false. He was entitled to do this. The judge found that the appellant opened her Facebook account on 22nd January, 2017, approximately a month before the hearing of her appeal and did so purely to bolster her asylum claim. That, again, was a finding open to him to make on the evidence and it has not been challenged.

20. So far as the first challenge is concerned, I accept there was evidence before him in the form of a print from Facebook, headed "*What audiences can I choose from when I share"*. But looking at the Facebook material as it appears, I am unable to detect what is of the appellant's material is public (if any) and what is private. The prints from the internet are certainly not clear and not entirely legible. For all I can discern from the prints, having read the Facebook note attached to Counsel's submission, I am completely unable to detect what privacy settings were used with each page and I do not believe that anyone else could do so either. I am therefore unable to detect any error on the part of the judge. There was clearly a printout relating to privacy settings, but there was nothing on the actual pages adduced in evidence, of the appellant's Facebook account, to show what pages (if any) were in the public domain and what were private.

21. I have concluded that on her return to Iran, this appellant is not going to be in any different position to any other failed Iranian asylum seeker. On return to Iran, if questioned she will explain to the authorities that she falsely created a false story claiming to be a convert to Christianity in order to stay in the United Kingdom. If asked if she has a Facebook account she can explain that she does. The judge believed that it was considerably more likely that the appellant's arrival in the United Kingdom had been expected by Mr Ghabel; that it had been arranged in advance; and that is why she had told the Home Office that Mr Ghabel was her boyfriend. If, as the judge suggests, she came to the United Kingdom to be with someone who had successfully obtained recognition as a refugee and she were to explain this to the Iranian authorities, then there is no reason to believe that she would be at any risk on her return. She certainly will be questioned because she will be travelling on her Home Office travel document, but I do not believe that the judge erred in thinking that she would not be at risk on return.

22. As for the judge not considering objective material suggesting that even honest witnesses sometimes make mistakes in giving their evidence, I find that the judge did not. He was clearly alert to the possibility that she might have been mistaken and made an error as a result of stress. There was no evidence (medical or otherwise) to suggest that this appellant suffers from any problems of memory recall.

23. I do not accept either that there was any mistake to the evidence. The appellant had very clearly lied as to the date when she claimed to have left Iran.

24. So far as Article 8 is concerned, the appellant cannot bring herself within the Immigration Rules and the finding of the judge at paragraph 87 of the determination is one which was open to him. It is not claimed that it is a perverse conclusion and the mere fact that, on considering the evidence in the round one might not necessarily have reached the same conclusion, is no reason for setting that decision aside.

25. I adopt all the submissions of Mr Kotas and have concluded that in making his decision, Judge Fowell has not erred in his determination. I uphold it.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Richard Chalkley
Upper Tribunal Judge Chalkley

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Richard Chalkley
Upper Tribunal Judge Chalkley **Date 02/08/2017**