**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: PA/09639/2016

**THE IMMIGRATION ACTS**

| **Heard at Glasgow** | **Decision & Reasons Promulgated** |
|---|---|
| **on 19 December 2017** | **on 21 December 2017** |

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**BURHAN JALAL MUHAMMEDI**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

For the Appellant: Mr A Caskie, Advocate, instructed by Latta & Co, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. Designated FtT Judge Murray dismissed the appellant's appeal by a decision dated 31 May 2017.

2. The appellant's grounds of appeal to the UT, stated in his application for permission dated 24 July 2017, quote ¶457 of *AB and others* (Iran) [2015] UKUT 00257 and continue:

> … upon return to the airport in Iran … a "pinch point" is created where under interrogation the appellant will be asked for his own Facebook login details. Upon provision of same … it will be clear to the Iranian authorities from logging on to the appellant's account that the appellant has engaged in activities which oppose the Iranian regime and are critical of that regime … the appellant is at risk of persecution as a result.

3. Mr Caskie began his submissions thus:

   (i) Evidence which was before the FtT – screenshots, with translations of captions imposed - showed the appellant (with others) engaged in defacing photographs of Iranian clerics and making derogatory gestures against them.

   (ii) The judge said at ¶59 that the photographs would not put him in danger "because it would be difficult to pick him out … and he is not named." He was not named, but he was easy to pick out.

   (iii) If those materials appeared on the appellant's own Facebook page, as stated in the grounds, the error of law would be plain, and the appellant's case would be established.

4. Mr Caskie acknowledged that the materials are not from the appellant's own Facebook page but from the Facebook page of the KDPI in Scotland, and that the grounds could therefore not succeed.

5. Undaunted, however, Mr Caskie submitted that the decision of the FtT should be set aside, and a decision substituted, allowing the appellant's appeal, because:

   (i) The appellant would be returned to Iran on travel documentation marking him out as a returnee.

   (ii) The authorities would ask him where he had been, and what he had been doing.

   (iii) He could not be expected to lie.

   (iv) It had to be assumed that he would state that he had made a false asylum claim, posing as a supporter of the KDPI, and engaging in activities denigrating the Iranian regime and its leaders.

   (v) As a result, he would be at risk of persecution.

6. Mr Matthews submitted thus:

   (i) The appellant was fixed with his grounds of appeal.

(ii) The grounds were founded on a factual inaccuracy, without which, permission would not have been granted. Once the factual basis was removed, there was nothing left.

(iii) The submission now made was not foreshadowed in the grounds. There had been no application to amend them.

(iv) If an application was made, it should not be granted at this very late stage.

(v) If the line of argument indicated was to be entertained, the respondent should be granted an adjournment to consider it and to prepare a reply.

7. Mr Caskie in reply said that the respondent's representative was capable of dealing with the issue without notice.

8. I reserved my decision.

9. The grounds on which permission was granted, as has been conceded, cannot succeed.

10. In order to decide whether to permit a (very) late amendment, some consideration has to be given to the apparent strength of the new ground advanced.

11. I do not find the "new ground" to be of arguable strength, and not of such strength as to allow late amendment, for several reasons:

(i) The line of argument was not put to the FtT.

(ii) The line of argument involves a number of rather far-fetched suggestions, and is far from being so obvious that it might have been an error of law to overlook it.

(iii) The appellant had not established, or even sought to establish, that he is entitled to have his case considered on an assumption of enforced return. Refusal to return voluntarily, where that course is available, does not qualify for protection, as a matter of general principle: see e.g. *Macdonald's Immigration Law and Practice*, 9th ed., ¶12.24, citing *AA v SSHD, LK v SSHD* [2006] EWCA Civ 401, [2006] NLJR 681, [2007] 1 WLR 3134. Put another way, "A person cannot rely on their own failings (as where they do not co-operate in securing valid travel documentation) to obtain international protection": *Macdonald's Immigration Law and Practice*, 9th ed., ¶12.28, citing *HF v SSHD* (Iraq) [2013] EWCA Civ 1276.

(iv) If the appellant overcame the above, he would have to show that as a matter of law he is entitled to an assumption that he would tell his national authorities, against his own interests, of activities he undertook in bad faith – a considerable stretching of the case law. There would be no sensible reason to find as a fact that he would tell them.

(v) Somewhat similar arguments in cases of activities at low level and in bad faith were rejected by the UT and by the Court of Appeal in *SSH and HR* (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC) (see the headnote, and ¶23, 29-30, and 34) and *AS* (Iran) [2017 EWCA Civ 1539 (¶32-33).

12. If I had thought there might be real potential in the line of argument, I would have granted time to the respondent. In light of my initial consideration, however, I decline to permit amendment, dismiss the appellant's appeal to the UT, and direct that the decision of the First-tier Tribunal shall stand.

13. No anonymity direction has been requested or made.

20 December 2017
Upper Tribunal Judge Macleman