Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/05224/2018**

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 15 October 2018	**On 18 October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE PICKUP

Between

SM
[ANONYMITY DIRECTION MADE]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr S Ell, instructed by Barnes Harrild & Dyer Solicitors
For the respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Durance promulgated 31.5.18, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 6.4.18, to refuse his claim for international protection.

2. First-tier Tribunal Judge Bird granted permission to appeal on 21.6.18.

Error of Law

3. For the reasons set out below, I found no material error of law in the making of the decision of the First-tier Tribunal such as to require it to be set aside and remade.

4. The appellant's claim was based on discrimination against him due to his condition of Oculocutaneous Albinism, which led to two suicide attempts. In addition, he relies on a sur place claim of risk on the basis of political opinion in posting anti-regime and pro PJAK material on his Facebook account.

5. In summary, the grounds assert that the (1) judge failed to have proper regard to a material consideration, namely his and his uncle's Kurdish ethnicity; (2) erred in the assessment of the sur place activity on Facebook; and (3) failed to make findings as to the appellant's two alleged suicide attempts when rejecting the claim of risk of suicide on return.

6. The wording of the grant of permission is somewhat confused but Judge Bird considered it arguable that the judge failed to see how the Facebook activity would be seen by the Iranian authorities and that the judge had failed to apply relevant case law, including YB (Eritrea) [2008] EWCA Civ 360 and AB (internet activity- state of evidence) Iran [2015] UKUT 0257.

7. I am not satisfied that there is any error of law in relation to taking account of the appellant's ethnicity. At [44] the judge rejected the appellant's claim to be a genuine supporter of the pro-Kurdish PJAK. In reaching that conclusion, the judge noted the alleged horrific treatment the appellant had received in Kurdistan due to his albinism, stating that no-one had been nice to him. In the light of that evidence, the judge found that it was not clear why he had become involved with a pro-Kurdish group given his "wholly negative experiences with Kurdish people for the entirety of his life." The grounds complain that the judge failed to take into account that the appellant and his paternal uncle, who helped him escape Iran, are both of Kurdish ethnicity. I reject the criticism. It is clear from a reading of the decision that the judge was fully aware of and took into account the appellant's Kurdish ethnicity and specifically made that finding at [35(a)]. It was open to the judge to reach the conclusion he did and for the reasons given notwithstanding the appellant's ethnicity and his explanations noted at [19] of the decision. The judge noted that by his own admission the appellant had had no political involvement in Iran and concluded that the sur place activity was entirely self-serving to bolster a weak asylum claim. There is nothing illogical or irrational about the conclusion and no error of law is disclosed on this ground.

8. At [31] the judge accepted from the decision of the Upper Tribunal in AB that there is a risk on return of social media content coming to the attention of the authorities, referred to as a pinch point. The judge also noted from the decision that it was not relevant whether the Internet had been used in an opportunistic way. At [32] the judge stated, "It does not matter whether an appellant has cynically sought to enhance his asylum prospects by creating the very risk he then seeks to rely on, although bad faith is relevant when evaluating the merits/credibility of the claim." The

judge went on to note from YB that even if his motives are disbelieve, the consequent risk on return from his sur place activity was essentially an objective one. At [44-45] the judge concluded that the appellant's Facebook activity had been contrived to manufacture and bolster a weak Convention claim.

9. The complaint of the grounds is that in rejecting that the appellant will be at risk on return of being questioned about his anti-regime and pro PJAK Facebook postings, the judge ignored the principles he had summarised at [31-32] that even a cynical creation of risk by the appellant's sur place activity has to be considered objectively.

10. I am not satisfied that any error of law is disclosed in relation to this ground. On a reading of the decision as a whole it is clear that the judge kept the relevant principles and case law very much in mind. The rejection of risk in relation to Facebook postings was not based solely or even mainly the finding that it was used cynically. For reasons set out in the decision, the judge rejected the claimed existence of an earlier Facebook account. In relation to the so-called second account, the judge accepted that the appellant had uploaded some content critical of the Iranian regime but was concerned that the appellant had failed to disclose the entirety of the account and had presented a selective rather a "holistic record" covering a short period of time, which lack of candour limited the weight that could be given to the evidence and made it impossible for the tribunal to evaluate the pinch point risk (see [40] and [35(e)]. At [27] the judge noted the admission of the appellant's representative that the authorities would have to trawl through the entirety of his Facebook account, which may be more than 10,000 pages, before encountering the relatively few elements which might be of concern. At [41] the judge noted evidence of the authorities closing 7 million web addresses, including Facebook, and concluded that it was unlikely to the lower standard of proof that Facebook would be accessible on the appellant's returns to Iraq. Given the finding that the appellant had no political profile before coming to the UK and that the account could simply be closed down, the risk of the account having been monitored is remote, even if he had 95 Facebook friends.

11. The judge indicated that he had to take the evidence in the round, in the context of the evidence as a whole and the other findings, including as to the appellant's credibility. Further, although it was asserted in submissions that the appellant would answer in the affirmative if asked about incriminating material on Facebook, as the tribunal concluded that none of the political postings reflected his genuine political opinion, the appellant has no entitlement to be protected in a lie; he would not be hiding his true opinions by failing to disclose such cynical postings and there is no HJ (Iran) point here. At [27] the judge noted the representative's concession that this element of the appellant's claim was "predicated on the appellant's account of his political conversion as being credible and authentic." He can simply delete the account and there is nothing to be seen. It follows that I find that the judge has provided cogent reasoning entirely open to him for rejecting the risk on return in relation to the

Facebook account postings and that no material error of law is disclosed in this regard.

12. In relation to the risk of suicide on return, rejected at [49] of the decision, it is complained that the judge failed to take into account the appellant's evidence that he has twice attempted suicide and failed to make a finding as to whether these had taken place. However, reading the decision as a whole it is clear that the judge found that the appellant had overstated his difficulties arising from discriminatory treatment arising from his albinism. Furthermore, the appellant's representative had conceded in closing submissions that the appellant was not at risk on return as a result of events which preceded his departure from Iran and that his case arose entirely out of his sur place activities. Even if the previous suicide attempts had been taken into consideration, the case authority of J v SSHD indicate that a question of importance is whether the fear of ill-treatment is well-founded. However, Y also held that even if without objective foundation whether the fear was genuine and sufficient to create a risk of suicide. On the findings of the judge, the fear was not only not objectively well-founded but not genuinely held. There was insufficient medical evidence to even justify this as a consideration, given the standard treatment the appellant had received. At [49] the judge properly assessed the risk. Whilst there is not a specific finding that there were previous suicide attempts, the judge appears to have proceeded on the same basis followed by the respondent in the refusal decision. Given the lack of evidence in support it was not incumbent on the judge to consider the risk any further or to make specific findings about past suicide attempts. On the evidence there was insufficient before the tribunal for the high threshold to be made out. In the circumstances, no error of law is disclosed in relation to this ground.

Decision

13. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the tribunal stands

The appeal remains dismissed on all grounds.

Signed

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014. In the circumstances, I continue the anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award pursuant to section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable and thus there can be no fee award.

Signed

Deputy Upper Tribunal Judge Pickup