Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09176/2016

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 4th October 2018	**On 23rd October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR SAMAN [S]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Schwenk, Counsel
For the Respondent: Mr C Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iran born on 29th May 1990. The Appellant left Iran in February 2016 arriving in the UK hidden in a lorry on 3rd March 2016. He claimed asylum the following day. His claim for asylum was based on having a well-founded fear of persecution in Iran on the basis of his religion as he has converted to Christianity. The Appellant's application was refused by Notice of Refusal dated 16th August 2016.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Alty sitting at Manchester on 20th April 2017. In a decision and

reasons promulgated on 3rd May 2017 the Appellant's appeal was dismissed on all grounds.

3. On 10th May 2017 Grounds of Appeal were lodged to the Upper Tribunal. Permission to appeal was refused by Designated Judge of the First-tier Tribunal Woodcraft on 30th August 2017. Renewed Grounds of Appeal were lodged on 18th September 2017. Those renewed grounds addressed specifically the refusal to grant permission by Designated Judge Woodcraft.

4. On 4th October 2017 Upper Tribunal Judge Finch granted permission to appeal. Judge Finch noted that in paragraph 40 of her decision the First-tier Tribunal Judge had found that the Appellant's conversion to Christianity was not genuine, he attended services at, Liverpool Cathedral on a regular basis. In paragraph 47 of her decision she had also found that it was likely that the Appellant would be identified for questioning when screened on arrival in Iran as he had been in the United Kingdom since March 2016 and did not have a passport. However, the judge did not go on to take into account the fact that the Appellant cannot be expected to lie if he is asked whether he applied for asylum in the United Kingdom and if so on what basis. Further, he could also not be expected to lie about his conversion to Christianity and therefore she did not fully consider whether his Conversion would place him at risk of persecution due to his religious views. As a consequence, Upper Tribunal Judge Finch considered that the decision of the First-tier Tribunal Judge contained arguable errors of law and granted permission to appeal.

5. On 31st October 2017 the Secretary of state responded to the Grounds of Appeal under Rule 24. It was submitted therein that the grounds had no merit and merely disagreed with the adverse outcome of the appeal and that the judge considered all the evidence that was available to her and came to a conclusion open to her based upon that evidence and the relevant Rules on the lower standard of proof and did not disclose any error.

6. On 21st February 2018 the appeal came before me to determine whether or not there was a material error of law in the decision of the First-tier Tribunal. At that hearing the Appellant appeared by his instructed Counsel Mr Schwenk and the Secretary of State appeared by her Home Office Presenting Officer Mr Bates. It is helpful to the continuity of this appeal that they continue to appear before me today. At that hearing Mr Schwenk relied on his Grounds of Appeal stating that there are two problems with the decision of the First-tier Tribunal Judge. Firstly, her approach to credibility and secondly her approach towards the Appellant's sur place activity. He relies on both grounds. Turning to the issue of credibility, he points out that paragraph 36 of her determination the First-tier Tribunal Judge has drawn an adverse inference from the fact that the Appellant has failed to produce the warrants of the arrest of his cousins. Mr Schwenk submits that such reasoning appears to assume that it is possible for the Appellant to provide such documents and that there was

no evidence to support such a finding. He contends that that is contrary to the Respondent's own country information and guidance, referring me to the July 2016 Country Guidance. He reminded me that that guidance points out that in principle in criminal cases substituted service through members of a family is not acceptable. Consequently there was no evidence available to the judge from which he could reasonably conclude that an arrest warrant was available to the Appellant, family members, his business partner or anyone else.

7. Secondly Mr Schwenk takes me to paragraphs 8 and 9 of his Grounds of Appeal and to the judge's conclusions at paragraph 32 with regard to the Appellant's claim relating to the killing of his dog by the authorities on 2nd May 2015 and that the conclusion of the judge on this point was unreasoned and thus an error in law. Further he notes that at paragraph 34 of her determination Judge Alty has stated that the Appellant's account of converting family members to Christianity "is not compelling given the timescales and the implications of conversion". Mr Schwenk submits that the judge's use of the word "compelling" reveals that she may have applied too high a standard and that the Appellant only has to show that it was reasonably likely that conversion has taken place.

8. Mr Schwenk turns to the claims relating to the Appellant's sur place activities, making out that that does not as a general principle depend on positive credibility findings. He notes that the judge rejected the Appellant's claim to be a genuine convert to Christianity, however she had accepted that he had been baptised in the UK and that he regularly attended services at Liverpool Cathedral. He reminds me that the Appellant's case is that following the authorities of AB and SSH, at the point of return the Appellant is reasonably likely to be asked questions, true answers to which will lead him to be at risk. He submits that these questions would concern his involvement in Christian activities which are likely to be seen as anti-Islamic, whether they are genuine or not. He contends that at paragraph 47 in her findings the judge has misunderstood the Appellant's arguments.

9. He makes reference to the unreported authority of *HM v SSHD* AA/09450/2014 (5th May 2017) a decision of Upper Tribunal Judge Plimmer, contending that that case is authority for the proposition that engagement in Christianity activities in the UK can constitute a risk factor on return to Iran even if the Appellant in question is not a genuine convert to Christianity. It was his submission that the First-tier Tribunal Judge erred by failing to adequately assess risk on the basis of the facts as she found them to be, which include the Appellant's baptism and regular church attendance.

10. Mr Bates at that hearing addressed the Appellant's sur place activities and started by reminding me that *HM v SSHD* was not a reported decision and was hardly unique. He acknowledged that the Appellant could not be expected to lie on return although it would be open for him to say he was not a genuine claimant and merely an economic migrant.

11. I noted that the judge had made adverse findings of credibility and concluded that there was no error of law in the decision of the First-tier Tribunal Judge in finding that the Appellant had not established his account of his conversion to Christianity and the interest of the authorities in him even to the lower standard of proof. However the issue regarding a disclosure of the Appellant's activities and whether they would be viewed with hostility by the Iranian regime in particular due to his activities on Facebook were not sustainable and I found in directions referring to paragraphs 11 to 14 of the amended Grounds of Appeal relating to the Appellant's sur place activity disclosed a material error of law and was set aside. It is important to emphasise that that was the only basis upon which I found a material error of law and as such the matter was retained by me within the Upper Tribunal for rehearing on that issue alone and I gave appropriate directions including directions that the Appellant should attend court for the purpose of cross-examination.

12. The matter reappeared before me on 19th June when there was a request made by the Secretary of State to admit in evidence the authority of *LKIK v Secretary of State for the Home Department* (PA/03758/2016). That decision by Upper Tribunal Judge Hanson was not a country guidance authority then and that remains the position. I gave directions at that stage on the understanding that it was the intention that the above case would be reported in the foreseeable future albeit that it subsequently turned out that it was not. I granted leave to the Appellant to admit further evidence regarding his Facebook postings such evidence to include a witness statement specifically related thereto and for the Appellant to attend for cross-examination solely on the issue of his Facebook activities.

13. It is against that background that the matter comes back before me now for rehearing on that issue alone. It is important throughout these proceedings to note that the starting point is that there is a finding that the Appellant's conversion to Christianity is not credible and is not sustained and it is against that background that this appeal has to be heard. No further evidence is to be given on that point. Both Mr Bates and Mr Schwenk continue to act for their respective clients. Mr Bates is required pursuant to the Upper Tribunal Rules Practice Direction Part 4 – Section 11 to make formal application to admit into evidence the unreported decision of LKIIK. That application is acceded to. Mr Schwenk feels it would be of benefit to the Tribunal if the again unreported authority of Upper Tribunal Judge Plimmer in *HM v Secretary of State* (reference AA/09450/2014) promulgated on 5th May 2007 was also before the court. In the interests of fairness I agree that that too may be admitted. It is on the above basis that I hear the evidence.

The Evidence

14. The Appellant has produced a bundle of documents for the resumed hearing including a witness statement of 26th June 2018 which specifically relates to the history and activities of his Facebook account. He confirms that statement as his evidence. I have read it. Mr Schwenk asks some

additional questions based thereon. The Appellant claims in his statement to have 3,100 friends on Facebook many of whom live in Iran. He advises that that number has now risen to 5,000 and that approximately 2,000 of those Facebook followers live in Iran. He also advises that he uses Telegram which he describes as a social media App popular in Iran. My understanding from his evidence is the Telegram is a cloud based instant messaging and voiceover service similar to WhatsApp or Facebook Messenger and by which you can send messages for free by using a wifi connection or your mobile data allowance. Further they have the benefit of being heavily encrypted and the ability to self-destruct. Mr [S] advises that he puts church schedules and related subjects on both Facebook and Telegram and promotes church activities.

15. He states that if he deletes his account he will lose all his Facebook data and memories and that all his photographs and posts will be lost for ever. He submits that they are precious memories he wishes to keep and that he should not be expected to delete his life which he believes would go against his human and fundamental rights.

16. I am taken to the screenshot pages to be found at pages 11 to 71 in the Appellant's second bundle which illustrates extracts of the Appellant's Facebook activities and friend requests. I am also referred to extracts where there are people commenting on his postings and to a cartoon posting of Mohammed which he believes could be construed by the Iranian authorities as being blasphemous.

17. Under cross-examination the Appellant confirms to Mr Bates that he has provided a printout of his Facebook activity log and that his profile has always been public. The Appellant acknowledges that he has continued to make Facebook postings after his original appeal was dismissed contending that he did so because he had become aware that by posting internet activity he could promote his religious beliefs. He confirms he is a member of a group who used to exchange data and that there were originally seven in this group but now only five. He further confirms that some members of that group are also asylum seekers.

18. He states that Facebook is accessible in Iran and they can be seen via Apps and that so far as he is aware Facebook is not banned in Iran. Mr Bates points to the earlier produced objective evidence in this appeal which shows that Faceook and Twitter are available in Iran to which the Appellant responds that he did not mean to imply that Facebook itself was legal but that there are means regularly used in the country by use of Apps for people to obtain it. When specifically asked if any of his 2,000+ Facebook friends in Iran had had problems since reading his Facebook account he responded that that was not something he had been informed about and when it was put to him as to whether he was worried that anyone could be at risk for viewing his profile he responded by saying that he had no option but to set out his beliefs contending it was his duty to evangelise all who viewed his site.

19. The Appellant stated that he had spoken to his mother but he did not know the whereabouts of his father believing that he may well have died within the past twelve months. He advises that his mother is aware of his conversion and when specifically asked as to whether she had had any problems with the authorities because of his Facebook posts he responded that she had mentioned that plain clothes officers had visited her at about the same time he opened his account. However when asked whether that was in his witness statement he advised that it was not.

20. The Appellant stated openly that he did not vet people who wanted to be his friends and that he never refused requests. He acknowledged that there was "bound to be" (his own words) members of the security services who were his Facebook friends and that he was also aware that he could adjust the priority setting on each post on his Facebook page. He confirmed that it was possible to convert his account from being public to private but that he had chosen not to do so.

21. When asked as to whether he knew any of his 5,000 friends personally he replied that he did have a few friends who were within the church. However he confirmed that he had not asked any of them to attend today to give evidence claiming that he had not been asked to do so. He states that he believes that his email address may have been hacked or monitored for contacts in Iran on a mobile device but when it is put to him by Mr Bates as to why he had not therefore downloaded pictures before deleting the account. He was concerned he responded that if he deletes them he would be "playing with his principles" and repeats that he is not prepared to delete his identity.

22. When questioned about his purported discussion with his mother regarding her being questioned by officers he states that he was not aware of any summonses against him and that she merely asked where he was and what he was up to. He indicated that his Facebook account does however make it clear that he is in the UK.

Submissions/Discussions

23. Mr Bates' starting point is to rely on the Notice of Refusal and the preserved finding of the First-tier Tribunal Judge that the Appellant was not a genuine convert. He reminds me that there had been adverse findings of credibility against the Appellant and questions why the Appellant has only opened his Facebook account and become public after the First-tier appeal was dismissed. He submits that any contentions made by the Appellant lack credibility based on the fact that the account has only blossomed after it had been rejected by the First-tier Tribunal. He submits quite strongly on behalf of the Secretary of State that the only purpose of the account is to deceive the immigration control and does not go to the Appellant's core beliefs. He reminds me the account could be deleted and that the photographs could be downloaded. The only argument he points out that the Appellant has raised is that as a Christian he should not be required, nor would he be prepared, to delete his account. It is the

Secretary of State's submission that the Appellant uses the account solely to deceive the authorities.

24. Mr Bates poses the question that if the Appellant were to delete his account would he be a person of interest to the authorities. He submits that he would not and reminds me that on the Appellant's own testimony he has 2,000 fans in Iran. He submits that there is no evidence that any of them have been targeted and would submit that they must theoretically be at greater risk as they are actually based in Iran but there is no evidence that any of them have been approached.

25. He stresses the Appellant seems unconcerned that his Facebook friends could be at risk which he does not consider to be a very Christian approach bearing in mind the contentions as to his religious beliefs made by the Appellant. He notes the Appellant seemingly never refuses anyone who wishes to be a Facebook friend and re-emphasises a number of friends he has in Iran. He points out that only today has the Appellant suggested that his mother was visited by the authorities after he had opened the account and that he has never raised this in his witness statement and that his failure to do so lacks any form of credibility. He submits that this goes to the proposition that the Appellant would not come to the attention of the authorities.

26. He takes with the authority of *LKIK* which whilst he acknowledges not is country guidance sets out sensible principles that can be followed in particular that it remains open for all individuals to have full control of their accounts. He specifically refers me to paragraphs 11, 22 and 26 and to the expert's report and reminds me that expert evidence confirms that it is possible for a user to download a full archive of the entire content of their active Facebook account by accessing the settings page and to edit individual posts. Consequently he reminds me that it is perfectly open for a Facebook account be manipulated by the account holder.

27. He emphasises that there is still no Dorodian witness or a Facebook friend who has come forward to show that the Appellant is a Christian and that the Appellant's evidence is undermined by what is in his own control. At best he contends he would be considered a low level individual even if it were believed that his postings have raised the awareness of the authorities. He points out that there is no evidence that he is subjected to any court action and to the guidance given in *AB and Others (Internet activity – state of evidence) Iran [2015] UKUT 0257 (IAC)*. He submits that the Appellant's case is very much dependent on his social media evidence and the reliability of it and that the Secretary of State contends the Appellant has failed to show that he was an individual of profile who would come to the attention of the authorities. He once again reminds me of the original findings as to the Appellant's Christian conversion and beliefs remain and submits the Appellant has failed to show he would come to the authorities' attention even if he has a perceived case. He submits that this is an opportunist case aimed at deceiving the UK, that the Appellant is not of significant profile and that he is unlikely to be targeted by the

authorities reminding me that the Appellant is not a journalist or a person of similar position who is likely to attract the attention of the Iranian authorities. He asked me to dismiss the appeal.

28. Mr Schwenk starts by pointing out that this case is not just about Facebook and social media but a person engaged on a range of activities and that whilst there was no dispute about the core facts the hearing on the error of law was whether or not the Appellant was a disingenuous Christian and what would happen to him as a result of questions being asked to him. He submits that if the Appellant returns with his account undeleted he would be at risk reminding me that the authority of *AB* states that the Appellant would be asked for details of his Facebook password. Further he submits that the Appellant has engaged in blasphemy in that the cartoon denigrates the Prophet Mohammed and contends that asking him to delete his Facebook account would be a breach of the Appellant's Article 8 rights in that Facebook is part of the Appellant's private and social life.

29. However he goes on further to contend that even if the account were deleted it is not possible to be satisfied that the Iranians would not be able to access it and that reliance on *LKIK* is unreliable in that the judgment relies heavily on what Facebook says and there are other social media such as Telegram which is referred to in this case and there is nothing available on that. He consequently contends there has to be a risk that the authorities would be able to access his account. Further even if he deletes it he submits that the Iranian authorities already know of his activities as they monitor potential dissidents and therefore the real risk is already known and he could be picked up by the authorities and secondly he is likely to be questioned as is the guidance given by Upper Tribunal Judge Plimmer in *HM v Secretary of State for the Home Department* and that if he tells the truth then he would be at risk.

30. He refers me to the authority of *SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC)* and the suggestion that the Appellant only has to be asked by the authorities what he has done on the internet and once his activities are revealed he would be found to be a refugee. He submits that it is undisputed that the authorities monitor activities carried out by potential dissidents both inside and outside Iran and that his activities on Facebook and the vast number of friends he has accumulated show that he is likely to come to the authorities' attention. He points out that there is evidence that the Appellant had had threats and that it is not possible to completely erase a person's Facebook history if other people have seen your posts and he relies on paragraphs 218 and 222 of *AB*. Further he refers me to the factual findings set out in the third bundle of the Appellant's documents and that the Appellant's profile is given as public on all Facebook accounts and on screenshots. He asked me to look carefully at the second Appellant's bundle in particular pages 60 to 63 and the evidence produced therein which he contends is clearly blasphemous and has provoked adverse comment on Facebook. He submits that this is an Appellant who has become involved in a number of arguments about those posts and that his involvement in Telegram and

Facebook needs to be assessed against the objective background. Finally he submits that even if his account is deleted he must be at risk from the authorities because they know about him and that they will ask sufficient questions to identify him as being a person who is at risk. He asked me to allow the appeal.

Findings

31. It is important to record the findings of fact both made by the previous Tribunal that have not been overturned and by myself:

    (1) The First-tier Tribunal made findings of adverse credibility relating to the sincerity of the Appellant's practice of Christianity in the UK given his finding that he has not provided a credible account of his conversion in Iran. The First-tier Tribunal Judge also found that his church activities in the short time he had been in the UK did not establish that his conversion was genuine. Those findings remain undisturbed.

    (2) That I accept that the Appellant has a Facebook account and that he has 5,000 followers, 2,000 of whom are in Iran.

    (3) That the Appellant is also active on Telegram.

    (4) That the Appellant's Facebook activities have increased since the findings made by the First-tier Tribunal Judge and the Appellant has posted cartoons online of the Prophet Mohammed which potentially could be construed as being blasphemous.

32. Much is made by Mr Schwenk and by the Appellant in his testimony that it would be a breach of his human rights to require him to delete his Facebook account. He insists on maintaining a public profile. I do not find that to be a sustainable argument. I have previously upheld the finding that the Appellant is not a genuine Christian and consequently there will be no breach of his human rights in deleting a Facebook account which can only be considered as designed to bolster a false claim. It is not a reflection of his genuine beliefs and he would not be obliged to disclose a deceit to the Iranian authorities. That is the approach that was taken by Upper Tribunal Judge Hanson in *LKIK* and one that seems to me to be perfectly sustainable. Bearing in mind the previous upheld findings it would only be a breach of the Appellant's human rights if his beliefs had been found to be genuine and a dishonest belief is not a genuine expression of his fundamental beliefs which is what would be protected. Consequently for the above reasons I do not consider that deleting the Appellant's Facebook account would in any way breach his human rights' claims.

33. The Appellant has sought to rely solely on his activities on Facebook and Telegram as being the basis for maintaining his claim. He contends in his oral testimony that the authorities have approached his mother to enquire

of his whereabouts. This is an Appellant who has extremely experienced and competent solicitors. They have provided on his behalf and no doubt with his assistance, a detailed further witness statement dated June 2018. Nowhere within that witness statement is any reference made to this purported interest of the authorities. Further the Appellant has admitted that he has friends within the church who are also active on Facebook. No attempt has been made to call them as witnesses on his behalf. It is of course for the Appellant to choose what witness evidence he wishes to adduce. However the culminating conclusion of these factors further damaged the Appellant's credibility particularly bearing in mind the adverse findings previously made by the First-tier Tribunal Judge.

34. Reliance is made on authorities which state that the Appellant would be required to produce his Facebook password to the authorities on return. That of course could not apply if the account had been deleted. Even if the Appellant were to be questioned the position in which the Appellant would find himself is set out at paragraph 30 of *SSH and HR*:

> "We can understand the sensitivity that the Iranian authorities may have towards perceived slights against their own State in the form of untruthful allegations about the conduct of the State, but equally one can expect a degree of reality on their part in relation to people who in the interests of advancing their economic circumstances would make up a story in order to secure economic betterment in a wealthier country."

That scenario would seem to fit the circumstances of this particular case.

35. I do not consider when looked at this matter in the round that reliance on *HM* – AA/09450/2014 assists the Appellant bearing in mind the negative findings of credibility found by the First-tier Tribunal Judge and maintained by myself in the Upper Tribunal. Further I do not consider that support can be found for the Appellant in paragraph 146 for all the above reasons i.e. that the Appellant has been found not to have had a genuine Christian conversion, that he has advanced his activities purely to support his case based on economic betterment and that he has been found not to be a credible witness.

36. For all the above reasons I am satisfied that this is an Appellant who would not be at risk on return to Iran, that he would not face persecution on return and that it would not be a breach of his human rights to return him. For all the above reasons the Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Notice of Decision

The Appellant's appeal is dismissed on asylum and human rights grounds.

The decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed Date 19 October 2018

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed Date 19th October 2018

Deputy Upper Tribunal Judge D N Harris