



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: PA/09698/2017  
PA/09700/2017  
PA/09701/2017

**THE IMMIGRATION ACTS**

Heard at HMCTS Employment Tribunals Liverpool  
On 12<sup>th</sup> September 2018

Decision & Reasons Promulgated  
On 23<sup>rd</sup> October 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

(1) MR HASSAN [K]  
(2) MISS REZVAN [R]  
(3) MR REZA [R]  
(NO ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Mr Greer (Counsel)  
For the Respondent: Mr A Tan (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against a determination of First-tier Tribunal Judge Alis, following a hearing on 31<sup>st</sup> October 2017 at Manchester. In the determination, the judge dismissed the appeal of the Appellants, whereupon the Appellants subsequently

applied for, and were granted, permission to appeal to the Upper Tribunal, and thus the matters come before me.

### **The Appellants**

2. The Appellants are all citizens of Iran. The First Appellant is the stepfather of the second and third named Appellants. They have treated him as their father. They have had no contact with their natural father for over twenty years. They have lived in the home of the First Appellant in Tehran prior to coming to the UK on 29<sup>th</sup> March 2017 when they all claimed asylum.

### **The Appellants' Claim**

3. The essence of the Appellants' claim is that the Second Appellant became involved with a prohibited political party, the United Iran Party, in June 2010. She carried out work for the UIP. This involved distribution of magazines and materials. She attended meetings at a house in Karaj. The Third Appellant also became a provisional member of the party the following month, becoming an official member in January 2011, and also attended meetings. The First Appellant was not arrested but was invited regularly for questioning as to the whereabouts of his stepchildren, which the authorities began to take an interest in. A particular feature of this appeal before Judge Alis, was that the Second and Third Appellants' sibling brother, Ali [R], had been granted asylum in the UK on a very similar basis, in an earlier application, when he had come to the UK himself.

### **The Judge's Findings**

4. The judge heard submissions from the Home Office Presenting Officer that the Appellants' claim lacked credibility because the Second and Third Appellants had not engaged with UIP activities in this country following their arrival here, so that it was not credible that they had been actually involved with such activities in Iran in the first place. Moreover, the fact that their brother had been granted asylum did not affect their appeals. He had been granted asylum on the basis of his *sur place* activities. Indeed, the respondent had rejected his claim about what had happened in Iran. There was no risk through association because he felt he left Iran as a student in 2011 and had no contact with the Appellants for over five years (see paragraph 40). The judge also heard submissions from the Appellants' own representative that even if the Appellants' account was lacking in credibility there had been Facebook entries by them which would place them at risk. Indeed, the fact of their brother having been granted asylum was a matter of some considerable significance because "this would benefit the position of the remaining Appellants especially as the authorities may be aware of the brother's activities" (paragraph 46).
5. The judge held that the Appellants' claim was not credible. The core issue was whether they had been arrested as they had alleged. This account lacked credibility (see paragraph 56). They claimed that they had paid a bribe for their release, but even though large sums were allegedly paid for their release, "they did not leave the

country but instead stayed in a villa in an orchard” (paragraph 59). As far as the grant of asylum status to their brother, Ali [R], was concerned,

“they claim to have had no contact with Ali (son/brother) until they arrived here but the motive for coming here was to be reunited as a family. All the witnesses claimed there had been no contact, but I do not find that credible. Ali was granted humanitarian protection and indefinite leave to remain in May 2012 and I am satisfied that the Appellants were aware of his grant and that this was their motive for coming to the United Kingdom (paragraph 61).”

6. With respect to the position of their UK brother, referred to as “Ali”, the judge stated that “the Appellants need to show more” (paragraph 68). It is true that the decision in **AB (internet activity - state of evidence) Iran [2015] UKUT 257**, deals with Facebook activity in Iran. However, as Judge Alis stated, “the Tribunal in **AB** are not saying that anyone who posts to Facebook would be at risk”. In any event, the Second Appellant’s posts to Facebook were limited and the exact nature of the articles was unknown. The judge did not accept that she was politically motivated (paragraph 71).
7. The judge then went on to say that “however, I also have to consider whether being linked to Ali would increase their risk in light of the fact that the Respondent has accepted he faces a real risk of persecution” (paragraph 72). The judge held that as far as Ali was concerned, “his application never went before the Tribunal so the outcome of his decision was never reported by the Tribunal” and that “simply being related to a person granted asylum does not mean an application would succeed” (paragraph 73).
8. The appeal was dismissed.

### **Grounds of Application**

9. The grounds of application state that the judge erred in failing to provide adequate reasons for rejecting as inherently implausible the Appellants’ claim of being detained by the Iranian authorities and released on the payment of a bribe. The grounds also state that the judge erred by committing a procedural irregularity in looking behind the Respondent’s concession that untranslated Facebook posts were political and failed to make findings on behaviour on return by the Appellants to Iran. Finally, the judge also failed to apply the country guidance in **SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 308**.
10. On 29<sup>th</sup> March 2018, the Upper Tribunal granted permission only on the basis that it was arguable that the First-tier Tribunal failed to address the Appellants’ claim that they would be at risk on return to Iran by reason of their connection to Ali [R], their brother in the UK, who had been granted asylum.
11. This was not because of the fact that he had been granted asylum per se. It was because he was identifiable as a political opponent and that would lead to a risk that

the Appellants would be subjected to enhanced interrogation about this on return to Iran. The First-tier Tribunal had erred arguably in not considering that there would be a risk of further questioning, detention and potential ill-treatment to these Appellants on return as was made clear in **SSH and HR**.

12. On 5<sup>th</sup> June 2018, a Rule 24 response by the Secretary of State was submitted to the effect that the only accepted fact was that Ali had been granted asylum.

### **Submissions**

13. At the hearing before me on 12<sup>th</sup> September 2018, Mr Greer, appearing on behalf of the Appellant, handed up the decision by the Home Office, with respect to Ali [R] accepting his claim for asylum. He directed my attention to paragraphs 22 to 26. In particular, he asked me to look at paragraph 24 which reads:

“in the light of the paragraphs above it is concluded that the Iranian authorities could identify the claimant because his name appeared alongside his photograph on his Facebook account, and on the internet. Therefore there is no need to doubt the authorities’ ability to identify the applicant because his identity has been made available for the authorities in Iran...” (at paragraph 26).

14. This followed, submitted Mr Greer, from what was stated at paragraph 24, namely that, “it is accepted that the claimant took part in demonstrations in the UK which have been reported via various media formats”. Mr Greer then asked me to look at page 37 of the Appellants’ bundle, where his skeleton argument, before the First-tier Tribunal, appears.
15. In particular, my attention was drawn to paragraph 14, which makes it clear that the Second and Third Appellants’ sibling brother, Ali [R], is a major player in the political activism of his country, thus putting the Appellants themselves at risk, were they to be returned back to Iran. He submitted that their case was that if Ali [R] had succeeded in his application, then so should the Appellants succeed in the appeal before the judge below. This is because they would be questioned vigorously upon return and detained and subjected to ill-treatment.
16. Mr Greer submitted that the judge, although looking at the Appellants’ own political activism, had overlooked the fact that an equally important dimension to their claim was that they were related to their brother who had been granted asylum status in the UK. One only had to look at the judge’s treatment of the issues at paragraphs 72 to 74 to realise that the point that was now being made had been missed by the judge below. He submitted that the judge had misconstrued the import of the skeleton argument put before the Tribunal below.
17. For his part, Mr Tan submitted that it was not the case that the judge had overlooked this particular dimension to the Appellants’ claim. The judge makes it clear that, “the fact the brother had been granted asylum did not affect these appeals”

(paragraph 40). He had taken into account the fact that “the authorities may be aware of the brother’s activities” (paragraph 46). Even at the end of the determination, the judge made it clear that “the Appellants need to show more”, than “their connection to Ali” (paragraph 68). Finally, Mr Tan submitted that if one looks at the country guidance cases on this matter, there is no reference made there to relatives being at risk, on account of their association with someone who had been granted asylum in the UK. At the same time, the judge does consider the case of **SSH and HR** and observes that “it is clear that illegal exit and being a failed asylum seeker is insufficient to bring a successful claim for protection” (paragraph 67).

18. In the case of these Appellants, submitted Mr Tan, what would happen is that there would be a question upon arrival, at the first stage, when enquiries would be made about what they had been doing in the UK and how they had made their asylum applications. Thereafter, however, the second stage level of questioning would only happen if there were “alarm bells ringing” and this was not going to be the case if the authorities accepted that the Appellants left their country illegally, and then proceeded to cooperate with the authorities.
19. In reply, Mr Greer submitted that the country guidance case of **SSH and HR** does not specifically deal with problems that siblings may face upon return to Iran. However, there was background evidence, in the form of what was said in the appendix (at paragraph 11) which would be of importance, and could not be overlooked.

### **No Error of Law**

20. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. I have come to this conclusion notwithstanding Mr Greer’s careful and measured submissions before me. This was a case where the judge disbelieved the Appellants’ own account. He expressly found that the Appellants’ “motive for coming to the United Kingdom” was to be reunited with Ali [R].
21. However, by far the most important and significant finding by the judge was that “Ali’s claims about activities in Iran were rejected by the Respondent and he was granted protection based only on his *sur place* activities” (paragraph 61). The Appellants themselves had not engaged in *sur place* activities, as the Respondent made clear (paragraph 35).
22. It is not the case that the judge did not consider the risk to the Appellants on the basis of their connection with Ali, known more fully as, “Ali [R]”. This is because towards the end of the determination the judge states that, “I also have to consider whether being linked to Ali would increase the risk in light of the fact that Respondent has accepted he faces every risk of persecution” (paragraph 72). The judge observed that Ali’s application “never went before the Tribunal” (paragraph 73). Even so, looking at the “untranslated Facebook postings”, the judge was not

persuaded, to the lower standard of proof, “that they are persons who would be targeted by the authorities were they to be returned” (paragraph 74).

23. Significantly also, the way in which the appeal was argued before the judge below, was primarily on the basis of their own activities, which were rejected by the judge, and this was clear from the skeleton argument of Mr Greer. Mr Greer’s skeleton argument states at the very end (at paragraph 14) that, “alternatively, if returned as failed asylum seekers, the Appellants are likely to be questioned about their asylum claim abroad including their family history.
24. It is accepted that their close relative AR has been involved with politics in the UK and could be identified by the Iranian authorities (the Respondent’s grant minute paragraph 24 - 26). It is therefore submitted that it is reasonably likely that the Appellants would be subjected to enhanced interrogation in relation to AR’s activities in the UK” (paragraph 14). Even though this was an additional element to the Appellants’ claim, it is clear that Judge Alis did give it due consideration in the determination, in what was a comprehensive and detailed consideration of the claim.

### **Notice of Decision**

There is no material error of law in the original judge’s decision. The determination shall stand.

No anonymity direction is made.

This appeal is dismissed.

Signed

Date

Deputy Upper Tribunal Judge Juss

22<sup>nd</sup> October 2018