Upper Tribunal
(Immigration and Asylum Chamber) PA/08252/2017

THE IMMIGRATION ACTS

Heard at Glasgow	Decision & Reasons Promulgated
On 25 January 2019	**On 14 February 2019**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

SARKAWT [S]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr J Chaudry, of Latta & Co, Solicitors
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against the decision of Designated FtT Judge Murray, promulgated on 7 February 2018.

2. The grounds of appeal, revised in light of the FtT's refusal of permission, are set out as:

   (1) errors when assessing credibility, (i) – (vii);

   (2) errors in relation to medical evidence, (i) –(iii);

(3) risk on return, (i) – (v); and

(4) starting with section 8 issues.

3. The UT granted permission on21 August 2018, in these terms:

> "There is nothing in the section 8 point and it may be that, on further analysis, the grounds amount to disagreement with the decision. However, the appellant did display some knowledge of the KDPI at interview, and has apparently attended demonstrations in the UK, and there is material on his Facebook page. It is accepted that if his account is true, he could be at risk on return.
>
> Arguably, the judge's findings are not adequately reasoned."

4. Mrs O'Brien conceded that the grounds succeeded in showing that the reasons given for the generally adverse credibility findings were legally insufficient, and that the decision should be set aside. She said that the outcome should be a remit to the FtT.

5. Mr Chaudry sought to show that there were positive findings in the decision which ought to be retained and that those, applying country guidance, enabled the appeal to be allowed by the UT. He advanced the following matters.

(i) The appellant was identifiable in Facebook posts of an anti-government nature, which had been before the FtT. (Clear copies were produced to the UT, without objection.)

(ii) The Facebook posts were not only on the appellant's Facebook page, but on the page of the KDPI's Scottish branch.

(iii) *HB* (Kurds) Iran CG [2018] UKUT 00430 (IAC) is authority that such posts are enough to demonstrate a risk.

(iv) If not in the headnote at (3) and (10), that proposition was vouched by the body of the decision.

(v) The FtT made a positive finding at [34, 36, 37] that the appellant had been an alcohol smuggler.

(vi) The respondent's guidance dated 6 April 2016, produced in the appellant's 2nd FtT bundle, item 2, at 5.3.2, confirmed that represented a risk in terms of article 3 of the ECHR, or even of article 2.

(vii) Alternatively, the circumstances which were proved, in combination, in light of the "hair trigger" approach of the authorities and their low threshold for suspicion, *BA* headnote (10), were enough.

6. Having considered also the submission for the respondent, I was not persuaded that there were positive findings, or uncontentious facts, which entitled the appellant to protection, after excision of negative findings.

7. The FtT accepted at [38] that the appellant "had a Facebook account with anti-government notices therein"; but it declined to find that on return he

would have to "give up these details and incriminate himself". Mr Chaudry said that the appellant could not be expected to lie, but he was unable to show that on the finding that the appellant was not genuine but only bolstering his claim, there was any reason to think that he could not be expected to delete his Facebook account whenever that was likely to be in his interest, or why it was reasonably likely he would ever be asked about it. Nor was Mr Chaudry able to point to evidence that it is the practice or within the abilities of the Iranian authorities to scan the internet for any traces of suspicion of nationals arriving back in the country.

8. Mr Chaudry submitted that because the appellant has been an alcohol smuggler, he was at risk of prosecution and of consequent prison conditions which amounted to persecution; and that suspicion of criminality opened him up to scrutiny on political matters. However, the FtT's findings at highest might be tentative support for him having been a smuggler. They contain no support for that being known to the authorities, or likely to be prosecuted, so there is nothing to trigger such a chain of events.

9. Mr Chaudry sought to equiparate this appellant to *HB*, but that appellant was found credible in the core of his account.

10. Mrs O'Brien drew attention to paragraph 39 of page 64 of *HB*, "The authorities in Iran are capable of distinguishing between returnees who are politically active and those who claim to be so for purely opportunistic purposes"; however, I note that is part of an annex and a record of the SSHD's submissions, not a finding of the UT.

11. In short, the appellant is unable to show by reference to uncontentious facts, positive findings, background evidence, and country guidance that as matters stand on setting aside the FtT's decision, he is entitled to protection. His case is contingent on securing favourable findings. He is entitled to another opportunity to seek those.

12. The decision of the FtT is set aside. It stands only as a record of what was said at the hearing. The nature of the case is such that it is appropriate under section 12 of the 2007 Act, and under Practice Statement 7.2, to remit to the FtT for an entirely fresh hearing. The member(s) of the FtT chosen to consider the case are not to include Judge Murray.

13. No anonymity direction has been requested or made.

25 January 2019
UT Judge Macleman