



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

First-tier Tribunal No:
DA/00341/2015

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 14 May 2023

Before

UPPER TRIBUNAL JUDGE HANSON
UPPER TRIBUNAL JUDGE KEITH

Between

AM (IRAN)
(ANONYMITY DIRECTION CONTINUED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Manjit Gill KC and Priya Solanki, Counsel, instructed by Braitch Solicitors

For the Respondent: Mr Carlton Williams, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 29 March 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

History of the Claim

1. There is a protracted history to this litigation, which has included the matter being litigated up to the Court of Appeal and remitted back down to this Tribunal for a re-making (see AM (Iran) v SSHD [2018] EWCA Civ 2706). During the course

of that litigation the issues have narrowed. It is therefore unnecessary for us to recite the litigation history at length, suffice it to explain that the sole legal issue before us is whether the respondent's decision to refuse him leave to remain would breach his rights under Article 3 ECHR. While he claims to fear persecution on his return, there is no asylum claim before us, as the appellant has been convicted in the UK of a particularly serious crime and constitutes a danger to the community of the UK.

2. It is important, given the danger that the appellant constitutes, that we reiterate that an Article 3 ECHR claim is not based on proportionality, or weighing the public interest in deportation with any qualified rights that the appellant may have, for example in relation to private or family life. Article 3 ECHR states that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." If the appellant has demonstrated to us that there are substantial grounds for believing that there is a real risk of torture or inhuman or degrading treatment, then no matter how serious his crime is, his Article 3 claim must succeed.
3. The appellant relies on three combined risks. The first is whether the Iranian government or its agents perceive the appellant as a Christian convert. Perception is critical, as previous Tribunals have already found that his claims to have converted are entirely fabricated, in order to manufacture an asylum claim. The perception is said to be based on the appellant's extensive social media posts on Twitter, Instagram and an open Facebook account. The second is the appellant's illegal exit from Iran. The third is the appellant's status as someone of Ahwazi Arab ethnicity, who has published his support for Ahwazi Arab political groups within Iran, on his social media accounts.
4. The appellant has provided an extensive bundle, running to thousands of pages, which includes posts in the social media accounts to which we have referred, and also includes the expert witness evidence of a commentator on Iranian government activities both within Iran and also targeted against the Iranian diaspora community outside it. That expert has themselves viewed the appellant's social media accounts, without access to his private password, in the same way that any member of the public could. The expert does not purport to be an expert in technological matters. He has done so to demonstrate what information is publicly available and in particular, in light of previous country guidance, what it is realistic to assume that the Iranian authorities have already discovered.
5. Having read through the appellant's substantial evidence, before the start of the hearing, we wrote to the parties, indicating that if it would assist them, we had formed a preliminary view on the merits of the claim. We expressed our preliminary view as follows:

"Having considered the extensive bundle provided on the appellant's behalf, and on the basis of there being no skeleton argument or bundle challenging the appellant's material from the Secretary of State,

and in light of the case law and CPIN in relation to risk to ordinary Christian converts, or those perceived as such, on return to Iran,

and in light of the appellant's accepted social media profile,

and accepting the principle that Twitter can be scraped in a manner in which Facebook cannot,

and accepting that an open search is likely to already have been undertaken by the Iranian authorities following the appellant's passport application and specific content of the same, including notification by the appellant of his having claimed asylum in the UK, as per the report of his country expert,

and accepting that such a search will have produced evidence of the appellant's social media activities which include substantial postings of Christian material and reference to named persons of adverse interest to the authorities in Iran,

and accepting in light of this that deleting the social media will have no material effect as such is likely to have been discovered by the Iranian authorities already,

and in light of the appellant's Ahwaz ethnicity and related postings,

and in light of the appellant's illegal exit from Iran and return from the UK,

It is our preliminary view, that we consider may be of benefit to share with the parties, that:

(a) there is no reason to disturb the findings of the Upper Tribunal in XX (P/AK - sur place activities - Facebook) Iran CG [2022] UKUT 00023 (IAC), which had the benefit of considering technical expert evidence not available in this appeal.

(b) the appellant will be questioned at the point of arrival on return to Iran.

(c) that such questioning is likely to be extensive and give rise to a real risk of ill treatment sufficient to breach Article 3 ECHR.

(d) that this a case of a number of identified risk factors cumulating to create a real risk of ill treatment on return."

6. Mr Williams was careful not to make any concession on behalf of the respondent. We also add that we have considered the respondent's skeleton argument, previously provided. Nevertheless, Mr Williams had no further submissions to make. At the hearing, we informed the parties that the appellant had provided sufficient evidence, and the respondent had not met the challenge to that evidence, that there are substantial grounds for believing that there is a real risk of torture or inhuman or degrading treatment, in the event of the appellant's return to Iran. We set out very briefly the undisputed evidence and our reasons.

7. The appellant has been active on social media for over 10 years. He opened a Facebook account in 2013, a Twitter account in 2015, and an Instagram account in 2019. His social media posts include numerous posts relating to Christianity and his Facebook account also includes posts about 'Al-Ahwaz,' which advocates Arab separatism in Iran. The appellant's accounts are all open to members of the public to view. To give a sense of the appellant's social media 'presence,' as of 26th November 2022, the appellant had 34,100 followers on his Twitter account, which contained over 15,000 Tweets, from 2015 onwards. His Twitter posts relate to Christianity, and a large number of them contain Biblical quotes. As of November 2022, the appellant had 2,726 Facebook friends, and a number of political posts relating to Al-Ahwaz, as well as religious posts. These include an image of the appellant and a map of the area espoused as being the 'Al-Ahwaz'

entity, Khuzestan. A search of his Facebook account brings up the posts about Al-Ahwaz, as does the same general internet search using 'Google'. A search of his Facebook account also reveals a number of posts shared by a website developer for the Ahwazi Democratic Popular Front, or ADPF, and the Ahwazi Centre for Human Rights. In terms of the appellant's Instagram account, he had 3,616 posts and 650 followers. His posts date back to 2019.

8. A separate archiving website captured and archived the appellant's Twitter posts in December 2019, so that even if his Twitter account were closed tomorrow, the records show 325,800 likes on his Twitter activity, with a single 'tweet' in April 2016 having 285,000 "impressions", i.e. it has been seen that many times; 17,997 "engagements", 478 profile visits, 2,800 "likes", 2,200 "retweets" and 303 comments. The appellant's social media profile is so extensive that it appears on websites which track the most popular tweets globally.
9. In that context, the appellant applied to the Iranian Embassy for a passport in 2022. It is unnecessary to refer to the precise date. In his application, he referred to his illegal departure from Iran, his asylum claim in the UK, the fact that he has a Portuguese EU national partner, and his personal email account name, which is linked to all of his social media accounts. He has also had telephone conversations with the Iranian Embassy, who indicate that his application is being considered.
10. In the circumstances, we are satisfied that the Iranian authorities will have already conducted a targeted search of his social media activities, just as the appellant's expert was able to do, without any specialist knowledge. It is unnecessary for us to make findings as to whether it is possible to obtain, on a bulk basis, Facebook account information, given the likely targeted search. No only will the appellant's religious posts have been viewed, but also his support for Al-Ahwaz. The Iranian authorities will also be aware of his illegal departure from Iran, because he told them.
11. Given these facts, we accept that there are a number of factors, which in combination, demonstrate a real risk, at the very least, of interrogation of such duration and intensity as to amount to breach of Article 3. These are his illegal exit, (see paragraph 53(ii) of SB (risk on return - illegal exit) Iran CG [2009] UKAIT 00053); a real risk that perception of his Christian conversion, even if not genuine, but with such a significant social media profile, would prompt prolonged detention (see PS (Christianity - risk) Iran CG [2020] UKUT 00046 (IAC), headnotes 4(ii) and (iv) and the Respondent's CPIN on Christian converts, paragraphs 2.10 and 2.14); and his Ahwazi ethnicity and support for separatist political parties (see the respondent's CPIN - Iran: Ahwazis and Ahwazi political groups, 11th January 2019, in particular paragraphs 2.3.11 and 2.3.13). Even if the appellant protested that his conversion was, as has been found, contrived, that is in our view unlikely to mitigate the risk of lengthy and intensive interrogation. On the particular facts of this case, the appellant's prolific social media profile, over a very lengthy period, is likely to attract sufficient adverse Iranian government interest.

Notice of decision

12. The appellant's appeal under Article 3 ECHR succeeds. The respondent's decision to refuse the appellant's human rights claim is not upheld.

Judge J Keith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12th April 2023