Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07887/2014

THE IMMIGRATION ACTS

Heard at UT (IAC) Birmingham	**Decision & Reasons Promulgated**
On 17 February 2016	**On 14 March 2016**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

AS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Stephen Vokes, Counsel, instructed by TRP Sols.
For the Respondent: Ms R Petterson, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make the

order because the appellant is an asylum seeker who might be at risk just by reason of being identified.

2. The appellant appeals against the decision of the First-tier Tribunal dismissing the appellant's appeal on asylum and human rights grounds against a decision taken on 8 August 2014 refusing to grant him leave to remain and to remove him to Iran.

Introduction

3. The appellant is a citizen of Iran born in 1988. He claims that he was born in Tehran and is from a Muslim family. He met a girl in school who was Zoroastrian and fell in love. His uncle threatened her family and they moved away. The appellant began to question the Islamic faith. He then went to university where he investigated the Islamic faith and had friends who were critical of Islam. He met and married his wife, M, who is a non-practising Muslim. He was involved in producing a play that involved indirect criticism of Islam and was thrown out of university. He still worked in a print shop and was asked by P to produce pro-Islamic literature. He refused and sent an e-mail to P criticising Islam. His house was raided and the authorities found anti-Islamic literature on his computer. He did not return to his apartment and his uncle arranged his exit from Iran.

4. The respondent accepted identity and nationality but did not accept that the account given was credible. Interfaith marriages are opposed by the Zoroastrian faith and there was no evidence to support the appellant's account of later events. He was of no interest to the authorities and had not abandoned Islam.

The Appeal

5. The appellant appealed to the First-tier Tribunal and attended an oral hearing at Bennett House on 12 March 2015. The judge found that the relationship with the Zoroastrian girl was not credible because her family would not have accepted the appellant. The university play was not credible because the university would not have stopped the play from being performed at an earlier stage if it were even implicitly critical of Islam. It was not credible that the university only asked the appellant to leave and that his wife was allowed to remain in the university and the appellant was allowed to work. The judge accepted that the e-mail to P was sent to a private Yahoo e-mail address and found that it was not credible that the university could monitor Yahoo accounts in the manner described by the appellant. It was not credible that he would send an inflammatory e-mail to P having not previously discussed his anti-Islamic views with P. It was not credible that the appellant would not warn his wife after the raid. It was not credible that the appellant had asked M to print evidence for his appeal but had not asked her about her safety. The evidence about service of the summons was inconsistent. The CD was not reliable evidence that the appellant produced anti-Islamic material in Iran.

6. The judge found that the appellant was not at risk due to his activities in the UK. Even if he had anti-Islamic statements on his Facebook account, the account had privacy settings and was not broadly available without access being provided. The authorities would have to go to some lengths to access the material and there was no credible case that they had the means, manpower or incentive to go to such lengths for a person with no established profile. Given that the appellant was not high profile and was at best a person who had left illegally, the judge did not accept as credible that his Facebook page or e-mails would be monitored. His uncle worked for the government.

The Appeal to the Upper Tribunal

7. The appellant sought permission to appeal on 20 May 2015 on the basis that the findings were unreliable because the evidence was not considered properly. The appellant's Facebook account was not private and the judge should have considered whether anti-Islamic pages would place him at risk. The judge failed to consider objective evidence about the risks of posts on own Facebook accounts. The appellant's account was substantiated by documentary evidence.

8. Permission to appeal was granted by Upper Tribunal Judge Finch on 6 July 2015 on the basis that it was arguable that the judge had erred in law by failing to consider AB and others (internet activity – state of evidence) Iran [2015] UKUT 0257 (IAC).

9. In a rule 24 response dated 30 July 2015, the respondent sought to uphold the judge's decision on the basis that the determination was adequately reasoned and sustained throughout. The last entry to non-friends on the Facebook account was August 2014. It was possible that the appellant had adjusted his privacy settings so that his posts were only visible to friends but his basic profile was visible to all. The Iranian authorities would not know if the appellant had made anti-Islamic statements. The case law was not raised on the appellant's behalf and there was nothing that would have led the judge to reach a different conclusion.

10. The appellant submitted further evidence in relation to his Facebook account on 11 February 2016 and applied for permission to admit the evidence under rule 15(2A).

11. Thus, the appeal came before me.

Discussion

12. Mr Vokes submitted that the key paragraphs of the decision are 44-45. The finding that the privacy settings would prevent access is undermined by the fact that the solicitors were able to research the page. It was not always the case that the account had privacy settings. No reasons were given for the findings. On return the appellant would be asked about his internet activity and for his password. AB was not cited to the Tribunal

because it had not been promulgated as at the date of hearing. It was not the judge's fault but the correct law should be applied now. AB was the law as at the date of hearing. There is a real risk on return and the other adverse credibility findings did not matter. The appellant had been out of Iran for more than two years now. The other grounds of appeal did not contain germane points to be argued. There should be a further hearing on the Facebook point only.

13. Ms Petterson submitted that the judge did not fall into error. The appellant had privacy settings as at the date of hearing and the material was only available to friends. The fact that the privacy settings were turned on a few weeks earlier did not matter. The judge looked at the most recent material. AB is not a country guidance case. There was no reason why the authorities would be monitoring the appellant now and if they did, such monitoring would be on the basis of an account with privacy settings.

14. Mr Vokes submitted in reply that it does not matter if the internet activity was opportunistic. The issue was the content of the internet activity. The pinch point was return at the airport. The Facebook activities have continued until today. Even if it was accepted that there was no previous attention from the authorities the appellant could still succeed under AB regardless of the privacy settings.

15. In AB, the Upper Tribunal concluded at paragraph 467 that the mere fact of being in the UK for a prolonged period does not lead to persecution. However, it may lead to scrutiny and there is clear evidence that some people are asked about their internet activity and particularly for their Facebook password. The act of returning someone creates a "pinch point" so that a person is brought into direct contact with the authorities in Iran who have both the time and inclination to interrogate them. It is likely that they will be asked about their internet activity and likely if they have any internet activity for that to be exposed and if it is less than flattering of the government to lead to at least a real risk of persecution.

16. At paragraph 470, the main concern is the pinch point of return. A person who was returning to Iran after a reasonably short period of time on an ordinary passport having left Iran illegally would almost certainly not attract any particular attention at all and for the small number of people who would be returning on an ordinary passport having left lawfully we do not think that there would be any risk to them at all. However, as might more frequently be the case, where a person's leave to remain had lapsed and who might be travelling on a special passport, there would be enhanced interest. The more active they had been the more likely the authorities' interest could lead to persecution.

17. I accept that if the appellant were asked to disclose his Facebook password then the issue of privacy settings would be immaterial. I find that the guidance in AB is highly relevant to the facts of this case given the length of stay in the UK and the extent of the appellant's Facebook activity. The failure to consider AB was a material error of law although the

judge was not at fault because the authority was not cited to her. Mr Vokes accepted that the adverse credibility findings at paragraphs 20-43 of the decision should stand and that the Facebook activity is the only live issue.

18. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of a material error of law and its decision cannot stand.

Decision

19. Both representatives invited me to order a rehearing in the First-tier Tribunal if I set aside the judge's decision. Bearing in mind paragraph 7.2 of the *Senior President's Practice Statements* I consider that an appropriate course of action. I find that the error of law is limited to the issue of Facebook activity and **preserve** the findings at paragraphs 20-43 of the decision.

20. Consequently, I set aside the decision of the First-tier Tribunal. I order the appeal to be heard again in the First-Tier Tribunal to be determined by a judge other than the previous First-tier judge.

Signed  Date 2 March 2016

Judge Archer

Deputy Judge of the Upper Tribunal