Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01263/2018

THE IMMIGRATION ACTS

Heard at Birmingham
On 6th February 2019

Decision & Reasons Promulgated
On 4th March 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

MSH
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr M Mohzan of Burton and Burton, Solicitors
For the respondent: Mr M Diwnycz, Senior Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The appellant is a national of Iran born in January 1993. He claimed protection on the basis of imputed political opinion.

2. He is from the Western Azerbaijan province near the border with Iraq. He says he gave a lift to a man and a woman he saw on the

roadside. Shortly afterwards his car was stopped at a police checkpoint and the occupants were asked for their documentation. They were asked to step outside the vehicle whereupon his passenger produce a gun and shot one of the policeman. They then made him drive on. He decided to leave Iran and travelled on foot to Turkey with help from an agent.

3. The respondent did not accept his account of the shooting incident and did not believe he would face any risk simply for leaving the country illegally. No other basis was seen for the grant of leave.

The First tier Tribunal

4. His appeal was heard by Judge of the First-tier Tribunal O'Hagan at Birmingham on 27 February and 28 March 2018.On the 1st occasion the appeal had to adjourn because of concerns about interpretation. The matter was relisted with different interpreter. The central issue in the appeal with the appellant's credibility. Part of the claim also related to the appellant's use of Facebook here on which he was critical of the Iranian regime. It was argued this would place him at risk.

5. The judge did not find the appellant credible. The judge said the absence of documentation to support the claim was a neutral factor in the circumstance. The judge did not find the account to be particularly contradictory. He gave a simple account which was consistent. At paragraph 37 judge gave reasons for not finding the appellant credible. The judge highlighted his claim to have no contact details for family or friends. If the claim were genuine the judge felt the appellant would be anxious to know if the authorities had visited his home or if his family had experienced difficulties because of what had happened.

6. The judge also referred to his claim about Facebook activity. The judge was unimpressed by his claim he could not use this medium to contact his family. He initially said he did not contact them because the authorities monitor Internet activity and then said there was no Internet in his village. The judge also referred to the material posted and questioned why, if the appellant was not politically active before, he would then start using Facebook to criticise the regime. The judge questioned why, if he believed such activity was monitored, that he would go out of his way to provoke the Iranian authorities.

7. The judge acknowledged that attempts to bolster a claim by such activity could give rise to a situation in which protection was nevertheless justified. The judge accepted that the Iranian regime monitor Internet activities and check on Iranian nationals abroad.

8. The judge also accepted that on return he would be questioned. The judge considered whether he would feel compelled to tell the truth if questioned and whether it would be reasonable to expect him not to do so. The judge referred to the negative credibility findings and concluded that if questioned he would lie. Finally, the judge considered whether if the authorities became aware of his activities here they would conclude they were opportunistic and concluded they would be.

The Upper Tribunal

9. Permission to appeal was granted on the basis it was arguable the judge applied too high a standard of proof when assessing the appellant's credibility and erred in relying upon peripheral matters in doing so. It was also arguable that the judge erred in relation to his Facebook activities.

10. Mr Mohzan has referred me to paragraph 29, stating that the judge did not set out the standard of proof applicable. At paragraph 26 and 27 the judge refers to the burden of proof being upon the appellant to show substantial grounds for believing he faces a real risk. The judge also refers to the decision of Karanakaran [2000] EWCA Civ 00011.At paragraph 33 the judge specifically refers to the low standard applicable. If paragraphs 39 onwards of that decision are considered it sets out the correct standard of proof and gives guidance on the approach to assessing credibility. I see nothing elsewhere in the decision to suggest the judge has imposed too high a standard of proof. Although the judge does not specifically state the applicable standard of proof it is now so well established that, in the absence of evidence to the contrary, I would take it as having been correctly applied. Consequently, I find no merit in this challenge.

11. The 2nd challenge relates to paragraph 31-35 of the decision. The judge found that the claim made was not inherently plausible but was broadly consistent with what might happen in Iran. The judge made the valid point that this does not mean the events actually happened. The judge at paragraph 35 accepted the account could be true or it might not be. Mr Mohzan contended that the judge did not reached a conclusion on this. This however is not correct if regard is had to paragraph 37 where the judge concluded it was fabricated and gives reasons for rejecting it.

12. Mr Mohzan criticises the judge for focusing upon the appellant's claim of not having contact with his family and said this was a peripheral issue. However, a judge is entitled to take secondary issues when assessing the truths of the core of the claim. As the judgement stated, this was a very simple claim and the judge was perfectly entitled to approach the matter obliquely to

determine its truth. He also suggested the judge was giving a personal view in stating the appellant would want to find out about his family. I find the judge's comments here are entirely appropriate.

13. Mr Mohzan then sought to argue that paragraph 41 indicates a material error of law. The judge questioned why, if the appellant believed his family were at risk following the checkpoint incident, he would then post antiregime material on Facebook. He said the appellant had produced around 70 pages illustrating his Facebook activity and suggested that the judge did not have adequate regard to this material.

14. Mr Diwnycz opposed the appeal. He questioned whether the permission to appeal was restricted to the question of the Facebook. If the permission is considered the emphasis seems to be upon paragraph 6 which refers to the Facebook account. However, for completeness I have considered the areas raised and find no merit in them.

15. I am in agreement with Mr Diwnycz that the judge gave detailed, sustainable reasons, for finding the appellant's account lacked credibility. The judge did focus upon his claim about not contacting his family. This had been raised in cross-examination and by the judge. The judge observes that a lack of education or illiteracy does not inhibit an individual's intellectual capacity. Mr Diwnycz observed that whilst it was not raised at hearing the ability to maintain a Facebook account appears to fly in the face of the claimed illiteracy. Furthermore, he observed that the appellant's name has been spelt differently in the Facebook account. Finally, he submitted that the Facebook account can be deleted and so it did not present a risk for the appellant on return.

16. I have considered the decision in its entirety. I see nothing to suggest the judge applied the wrong standard of proof. The judge found the claim made was a simple straightforward one which, consistent with country information, might have occurred. However, this is not the same as finding the claim to be true. I find no fault with the judge using peripheral matters to assess credibility when it is difficult to challenge the central claim. In this instance the judge focused upon the claim the appellant said he had no contact with his family. In the circumstance the judge found this was a contra indicator of his credibility. I find no fault with this.

17. The judge also considered in detail the appellant's Facebook activity and the risk this would present on return to Iran. The judge analysed this in detail at paragraph 39,40 and 42. The judge acknowledged that opportunistic activities may still create

a real risk and has properly evaluated this. The judge does not reject the genuineness of the Facebook posts but concluded they would not place the appellant at risk. Reasons are given which are adequate.

18. Ultimately I find this is a carefully prepared decision which analyses the claim made and makes rational and sustainable findings. I find no material error of law established.

Decision.

No material error of law has been established in the decision of First-tier Tribunal Judge O'Hagan. Consequently, that decision dismissing the appellant's appeal shall stand.

Francis J Farrelly
Deputy Upper Tribunal Judge.

Date: 27th February 20191`