



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/10336/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5 June 2019**

**Decision & Reasons Promulgated  
On 17 June 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON**

**Between**

**MR A N  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms J Fisher, Counsel, instructed by Duncan Lewis & Co Solicitors

For the Respondent: Mr J McGirr, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The appellant is a citizen of Iran born 11 March 1982, who appealed to the First-tier Tribunal against the decision of the respondent dated 6 August 2018 to refuse the appellant's fresh claim. In a decision, promulgated on 26 March 2019, Judge of the First-tier Tribunal Courtney dismissed the appellant's protection claim on all grounds.

## **Grounds of Appeal**

2. The appellant appeals with permission from the First-tier Tribunal on the grounds that the First-tier Tribunal erred:
  - (i) in finding that the appellant could be expected to lie about the existence of his Facebook account;
  - (ii) in finding that the appellant had not shown that his Facebook account was still extant and visible to the public at large;
  - (iii) in concluding that the appellant was lying as to whether he genuinely held anti-regime views;
  - (iv) in not affording the appellant an opportunity to comment on the issue of whether he had created the Facebook entries in bad faith;
  - (v) in the reasons given for rejecting the expert's conclusions in relation to the court summons;
  - (vi) in rejecting the expert's conclusions in relation to the death certificate and in the findings more generally in relation to the death certificate, where it was argued that the judge had misunderstood the evidence, including as to the dates in question.

## **Error of Law Decision**

3. Mr McGirr conceded at the outset of the appeal that that the judge had gone awry in effectively requiring the appellant to lie at [81] of the decision and reasons and he considered that grounds (i) to (iv) of the appellant's grounds were properly arguable and not contested by the respondent.
4. Mr McGirr initially contested that the judge's reasoning in relation to the appellant's activities in Iran could stand and initially opposed therefore grounds (v) and (vi). However, following the submissions made by Ms Fisher he reversed his approach.
5. Those submissions focussed, in particular, in relation to the judge's treatment of the expert evidence and the failure to give adequate reasons for rejecting that evidence, including her misunderstanding of the expert's expertise in document assessment. Ms Fisher submitted this went to the heart of the appellant's claim, if the expert's evidence in relation to the expert report had been accepted, which she submitted it should have been, in respect of the authenticity of the summons provided. Similarly, with ground 6, it was Ms Fisher's submission that the judge had misunderstood the evidence and had not given valid reasons for rejecting the expert's conclusions in respect of the death certificate and had misunderstood the evidence in relation to the date of death (referring to paragraph 20 of page 155 of the appellant's main bundle).

6. It was also Ms Fisher's submission that had the judge applied the proper standard of proof in relation to the expert's evidence in respect of the report in general, noting that the judge wrongly required the expert to be able to make a "definitive judgment" at [47], she argued that a different conclusion would have been reached.
7. Having heard the submissions Mr McGirr quite properly conceded the remaining grounds of appeal and submitted that the appeal should be remitted to the First-tier Tribunal for a fresh hearing.
8. I agree that the judge materially erred both in the approach at [81], to what the appellant should be required to do or say on return to Iran (see including **RT (Zimbabwe) and others v Secretary of State for the Home Department [2012] UKSC 38** and paragraph 457 of **AB and Others (internet activity - state of evidence) Iran [2015] UKUT 0257 (IAC)**); and in respect of the appellant's claimed activities in Iran, in the failure to give adequate reasons for rejecting the expert report from Dr Kakhki, including a lack of adequate reasons for rejecting Dr Kakhki's claimed expertise/experience in authenticating documents (the reasons given appearing to misunderstand/overlook the extent of Dr Kakhki's experience in this area.

### **Notice of Decision**

9. The decision of the First-tier Tribunal contains an error of law and is set aside. No findings of fact are preserved, given that these errors go to the heart of the judge's decision, both in relation to the appellant's claimed activities in Iran and Sur Place activities. Given the nature and extent of the fact-finding required, the appeal is remitted to the First-tier Tribunal, other than to Judge Courtney, for hearing de novo.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 14 June 2019

Deputy Upper Tribunal Judge Hutchinson

**TO THE RESPONDENT**  
**FEE AWARD**

As no fee was paid no fee award is made.

Signed

Date

Deputy Upper Tribunal Judge Hutchinson