Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/03745/2016**

THE IMMIGRATION ACTS

Heard at the Civil and Family Court, Liverpool	**Decision & Reasons Promulgated**
On 8 February 2018	**On 3 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

Mr AN
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Holmes, Counsel, instructed by Broudie Jackson & Canter Solicitors
For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1 The Appellant appeals against the decision of Judge of the First-tier Tribunal Smith dated 23.5.17 dismissing his appeal against the Respondent's decision of 26.3.16 refusing his protection claim. The Appellant, a national of Iran, sought protection on the grounds that he had converted from Islam to Christianity in Iran, and since arriving in the UK had continued in his adherence to the Christian faith.

2 The Respondent rejected his claim for protection on the grounds that his account of conversion to Christianity in Iran was not credible, in particular on the grounds that the chronology of events set out in his claim was inconsistent with his having been fingerprinted in Greece on 25.9.15.

3 On appeal, the Appellant gave evidence, as did the Pastor of the church that the Appellant was then presently attending. The Appellant also relied upon material posted on Facebook regarding the Appellant's attendance at church [17], which showed pictures of his attendance at his baptism ceremony along with the various quotes from New Testament [31].

4 The Judge found that he was not satisfied that the Appellant had given a truthful account with regard to his claim to conversion to Christianity in Iran. The chronology was inconsistent with his presence in Greece, and the Appellant had only sought to correct his evidence about the chronology of events after the Respondent had refused his claim, notwithstanding that a letter of corrections and clarifications was provided to the Respondent after the SEF interview, but before refusal [22].

5 Further, the Appellant knew very little of key details of the Christian faith at the time of his asylum interview, although the Judge held that such questioning rarely gives any real assistance as to whether a person is a genuine convert or not [24]. More significantly for the Judge, was the fact that the Appellant was unable to give a clear and compelling reason as to what it was about the Christian faith that so appealed to him. The Judge was satisfied that the Appellant's account both in the asylum interview, his witness statement, and his oral evidence before the Judge was lacking in such detail. 'The combination of lack of knowledge about Christianity at the point of the AI along with any compelling reason given by the Appellant as to why he wanted to convert to Christianity and put himself of such risk further supports my conclusion that the Appellant had not genuinely converted to Christianity in Iran." [24]

6 Although the Judge stated that he was impressed by the Pastor, who gave her evidence with care, and whose evidence was given 'appropriate weight' [26], and the Judge gave 'considerable weight' to the fact the Appellant had demonstrated a regular attendance at the Christian churches in Liverpool and Manchester [27], the Judge held that:

> '27 ... When I consider the attendance at the church along with the support of evidence from *(the Pastor)*, with the other written evidence from the church community it does not address the concerns I have set out above with regards to the chronology given by the Appellant as to his history in Iran. Nor does it address the issue that I have set out above with regards to the lack of any convincing explanation by the Appellant as to why he claims he turned to Christianity in Iran. Despite this regular attendance at church by the Appellant I am still not satisfied that he is a genuine Christian convert."

7 At paragraph 30, the Judge held as follows:

> 'I have considered the possibility that the Appellant may have been a 'nongenuine' convert to Christianity at the time of his arrival in the United Kingdom but who has subsequently gone on to develop a genuine interest in

> Christianity. This is not the case that he has asked me to assess. The Appellant claims that the he converted to Christianity in Iran. For the reasons that I have set out above I do not accept that account."

8 As regards the Appellant's potential risk of harm as a result of being returned to Iran, and his online activity, the Judge held as follows at 31:

> 'I am satisfied that there is no evidence that he has ever come to the adverse attention of the authorities in Iran. As such I am satisfied that he is not at risk upon return unless the authorities were aware of the church attendance. If he has (*sic*) encountered by the authorities and ask (*sic*) questions upon return he is not expected to lie. On the basis that I have not accepted that he is a genuine convert there is no reason why he should be expected to lie. I have also considered at the request of the Appellant the country guidance case of SSH and HR (illegal exit: failed asylum seeker) Iran (CG) [2016] UKUT 308 (IAC). There is no evidence before me that upon return to Iran questions such as 'have you been attending a Christian church in the United Kingdom?' are routinely or indeed ever asked. The only potential difficulty to the Appellant would be if somehow the authorities had become aware of his attendance at church in the United Kingdom. I have considered the material that he says has been uploaded to the Internet. It is apparently include (*sic*) the pictures of his attendance at the baptism ceremony along with various quotes from the new Testament. Whilst some suggestion in SSH that people of interest to the authorities are subject to some scrutiny including enquiries about Internet Social media history I am satisfied that the risk of the Iranian authorities coming across this material is remote in the extreme. In any event it is always open to the Appellant to reset his social media history to remove this material if he wishes. It would not be too onerous a requirement upon him and would not for instance require him to lose contact with his social media friends."

9 The appeal was dismissed.

10 The Appellant appeals on grounds which argue:

> (i) The Judge had failed to deal with the core of the Appellant's case. As per Chiver [1997] INLR 212 in having found that the Appellant had not converted to Christianity in Iran that the Appellant may nevertheless have converted to Christianity whilst in the UK. It was suggested that the Judge had expressly excluded this consideration at [30]. The Judge had not given consideration to whether or not, notwithstanding what may have been an embellishment to his account in respect of activities in Iran, the Appellant was nevertheless a genuine Christian. Consideration of this issue was particularly required in view the Judge's assessment of the evidence of the Pastor.

(ii) The Judge had failed to consider guidance in AB and Others (internet activity – state of evidence) [2015] UKUT 257 (IAC) as to risk on arrival in Iran, in particular in the light of his internet use. As per paragraph 467 of AB:

> "The mere fact of being in the United Kingdom 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. We think it 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 the very least a real risk of persecution."

Further, the Judge's finding at [31] that the risk of the Iranian authorities coming across the Appellant's online material was 'remote in the extreme', was not consistent with the findings in BA.

(iii) The Judge's conclusion at [31]that it was open to the Appellant to reset his social media history was not supported by any evidential basis, I was not an issue canvassed at the hearing; the Appellant did not have an opportunity to deal with the position taken by the Judge's decision, and, given that the matter was not raised at the hearing, the question as to whether the Appellant could or would in fact remove the material has not been answered.

11 Permission to appeal was granted by Judge of the First-tier Tribunal Nightingale in a decision dated 13.9.17, on the basis that such grounds were arguable.

13 Before me, Mr Holmes relied upon the grounds of appeal, and Mr Bates upon the Respondent's rule 24 response dated 31.10.17, both with oral amplification of those arguments.

Discussion

14 It is to be noted that the Appellant makes no challenge to the Judge's finding that the Appellant was not a genuine convert to Christianity in Iran.

15 No particular passage from the case of Chiver was set out in the Appellant's grounds of appeal, but I assume the Appellant relies upon the passage in the last paragraph of the decision:

> " It is perfectly possible for an adjudicator to believe that a witness is not telling the truth about some matters, has exaggerated the story to make his

case better, or is simply uncertain about matters, but still to be persuaded that the centre piece of the story stands."

16 What, then, was the centre piece, or core of the Appellant's account? The core account was, I find, that he converted to Christianity in Iran, and continued in his adherence to that faith in the United Kingdom. That is how the Appellant advanced his case. Neither the Appellant in his witness evidence, or Mr Holmes in his skeleton argument, sought to positively advance an alternate case that even if the Appellant's account of converting to Christianity in Iran was untruthful, he has subsequently genuinely converted to Christianity in the United Kingdom. It was clearly not the core of the Appellant's case that he had 'converted' to Christianity in the UK. The Appellant's reliance upon the case of Chiver is misplaced.

17 In any event, I find that the Judge *did* make a finding on the Appellant's *present* adherence or non-adherence to the Christian faith. At the end of [27] quoted at paragraph 6 above, the Judge held: 'Despite this regular attendance at church by the Appellant I am still not satisfied that he *is* a genuine Christian convert'. Further, at the first and second line of [31], the Judge reiterates that he had rejected the account put forward that the Appellant *is* a genuine convert to Christianity. Further, at the 12th and 13th line of [31], on page 9, the Judge again states: 'On the basis that I have not accepted that he *is* a genuine Christian convert..."

18 It is sufficiently clear to me with reference to the Judge's repeated use of the present tense that the Judge has considered whether the Appellant is presently a genuine convert to Christianity. The Judge's reference at [30] to the fact that the Appellant has not advanced a positive case that he may not have a genuine convert in Iran, but might be a genuine convert in the UK, does not diminish the clarity of the Judge's findings at these points of the decision.

19 The Judge's observation at [30] about the way that the Appellant's case had been put was in any event perfectly correct. It does not seem to me to be appropriate to say that the Judge has failed to deal with the core of the Appellant's account – it was never the core of the Appellant's account to say that he lied about his account in Iran, but has become a genuine convert in the UK. There is nothing in the Appellant's evidence regarding any 'conversion' to Christianity *in the UK* at all.

20 Appellant's first ground is not made out.

21 Dealing with grounds two and three together, it is apparent that the Judge was referred to the authority of both AB and Others, and SSH and HR in the Appellant's skeleton argument. However, it is apparent that the Judge only refers to the latter in his decision.

22 Paragraph 2.4 of the Practice Directions of the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal provides that:

> "Any failure to follow a clear, apparently applicable country guidance case or to show why it does not apply to the case in question is likely to be regarded as grounds for appeal on a point of law."

23 However, AB, whilst reported, is not country guidance.

24 Further, in the context of the Judge's consideration of the case of SSH, I am satisfied that the Judge has not left out of account the observations of the Upper Tribunal in AB. It is to be noted that SSH refers to AB at paragraph 11, which provides:

> "In AB & Others (internet activity - state of evidence) Iran [2015] UKUT 257 (IAC), there is reference at paragraph 457 to the act of returning someone creating a "pinch point" so that returnees are brought into direct contact with the authorities in Iran who have both the time and inclination to interrogate them. That however was in the context of people who had engaged in internet activity, and it is relevant to note also that at paragraph 470 the Tribunal said that a person who is returning to Iran after a reasonably short period of time on an ordinary passport, having left illegally, would almost certainly not attract any particular attention at all. It went on to say at paragraph 471 that where a person's leave to remain had lapsed and they might be travelling on a special passport there would be enhanced interest and the more active they had been the more likely the authorities' interest could lead to persecution. That is essentially a comment rather than evidence, and though it agrees with what is said by Dr Kakhki, it takes matters no further in our view as to the risk of ill-treatment on return during a period of questioning. In particular as it cites no evidence to support the view expressed, and also it is a remark made in the context of evaluating risk on account of blogging activities, and the reference to 'more active' would not be applicable to a person with no relevant profile."

25 The issues discussed in AB are therefore referred to in SSH, which was referred to by the Judge. The Judge was also clearly considering the position of persons having used social media at [31] in the decision.

26 I do not find that the Judge left any material consideration out of account by not referring directly to AB.

27 In the alternative, if the Judge did err in law by not referring to directly to AB, it is apparent from the remainder of the Judge's decision that this would not have made any material difference to the outcome of the appeal.

28 The Judge positively held at [31] that there was no evidence before him to the effect that the Appellant was likely to be asked whether he had been attending church in the UK. There is no challenge to that finding.

29 Therefore even if the Judge has, by reason of a failure to refer to AB, underestimated the chances of the authorities asking the Appellant for his Facebook

password, the Judge's decision would be the same, because of the Judge's alternative finding ('in any event') that it is open to the Appellant to reset his Facebook history and to delete any material of interest.

30 Insofar as the Appellant alleges procedural unfairness in the Judge having suggested at [31] that the Appellant had the choice of resetting his social media history to remove certain material on his Facebook account, I find that the Appellant's point is not made out. Insofar as the Judge has taken judicial notice of the fact it is possible to delete material in, or even the entirety of a Facebook account, he was entitled to do so. This needs no expert evidence. Even if, as the Appellant says, it is sometimes difficult to eradicate all traces of oneself on the Internet, the Appellant identifies no particular evidence to suggest that what the Judge said could be done, could not. No Rule 15(2A) application was made seeking to rely on evidence to the effect that the Judge was not entitled to make that observation.

31 Further, insofar as the Appellant asserts that the Appellant cannot reasonably be required to delete any material of interest from his Facebook account, the Appellant fails to establish that the Judge erred in law in making that suggestion. Given the Judge's finding that the Appellant was not a genuine Christian convert, then it cannot be said that it would be contrary to the Appellant's fundamental rights (as per HJ (Iran) [2010] UKSC 31) to delete such photographs; the Appellant's continued possession of these photographs cannot be insisted upon by the Appellant as a core right.

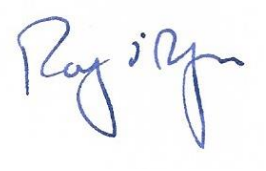
32 Finally, Mr Holmes argued that given that the Tribunal (whether First tier or Upper) has the task of determining the appeal on the basis of an immediate hypothetical return, this meant that there would be no opportunity for the Appellant to delete any part of his Facebook account. With respect, this moves the argument from the hypothetical to the surreal. In Ravichandran v SSHD [1996] Imm AR 96, the Court of Appeal held that due both to the statutory construction of the then applicable appeals provisions, and because of sound policy reasons, an assessment of risk of harm was to be carried out as at the date of hearing, rather than at the date of the Respondent's decision. That does not require the Tribunal to consider an appellant's return in the artificial way that Mr Holmes suggests. If during an asylum appeal hearing, an appellant had physical possession of an arrest warrant which was held to be false, it would be artificial to argue that his hypothetical return to his home country, immediately upon the end of the hearing, would result in a risk of harm to him because the document might arouse suspicion and give rise an adverse interest in him upon return. In those circumstances, the hypothetical return can be presumed to take place giving that appellant the opportunity to put his fraudulent evidence in the bin.

Decision

33 The making of the Judge's decision did not involve the making of any material error of law.

34 The Appellant's appeal is dismissed.

Signed: Date: 24.4.18



Deputy Upper Tribunal Judge O'Ryan

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

I make an anonymity order under Paragraph 13, Upper Tribunal Immigration and Asylum Chamber, Guidance Note 2013 No 1: Anonymity Orders, on the grounds that this is a protection appeal.

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 to the appellant and to the respondent and to all other persons save as may be required by other proceedings before any Court or Tribunal. Failure to comply with this direction could lead to contempt of court proceedings.