Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/06726/2018**

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 6 February 2019	**On 14 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

BRYAR ABDULLAH MAHMOOD

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Mair counsel instructed by GMIAU

For the Respondent: Mr Bates Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this

Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Appellant was born on 21.10.1997 and is a national of Iran.

3. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.

4. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge A J Parker promulgated on 23 July 2018 which dismissed the Appellant's appeal against the decision of the Respondent dated 11 May 2018.

The Judge's Decision

5. Grounds of appeal were lodged in essence arguing that that the reasons given for dismissing the appeal were inadequate; there were errors in relation to the findings about the Appellants Facebook activities. Permission was refused by First-tier Tribunal Judge Froom on 17.8.2018.

6. The application was renewed and came before Upper Tribunal Judge Storey who granted permission on both grounds on 21 November 2018 stating:

> "*I consider it is arguable that the judge's findings and reasons in regard to adverse experiences in Iran are unclear in significant respects, in appearing at certain points to summarise the respondent's submissions and rely on these as his own findings without any separate reasoning as to why they have been adopted.'*

Submissions

7. On behalf of the Appellant I heard very detailed submissions from Ms Mair enlarging on her very detailed Grounds of Appeal and these are recorded in full in my record of proceedings. She identified those aspects of the judge's decision which she argued showed that the findings were inadequate and lacked clear reasoning. She also argued that his findings in respect of the Appellants sur pace activities on Facebook were inadequate.

8. Mr Bates on behalf of the Respondent argued that the Appellants claim that he had distributed leaflets for the KDPI was not accepted by the Respondent because of inconsistencies and inadequacies in his account. The Judge was entitled to find that these had not been addressed by the Appellant either at the time of the interview or since. He noted that in granting permission in respect of Ground 2 Dr Storey found no merit in the argument that the Appellants social media activities would put him at risk on return. The Judge was entitled to find these were very recent activities to bolster a weak claim by someone who did not genuinely hold the beliefs claimed. He was entitled to conclude there was no basis for finding his activities would come to the attention of the authorities and put him at risk.

9. In response Ms Mair argued that the Judge had to consider two risks: that arising out of events in Iran and that arising out of his Facebook activities. She argued that the risk for Kurds was greater than that of a non Kurd.

Finding on Material Error

10. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.

11. The Appellants protection claim was initially based on his assertion that he was at risk on return because he claimed to have distributed material on behalf of the Kurdistan Democratic Party 2 months before he left Iran which led to a raid on his home. By the time of the appeal hearing the Appellant also asserted that he was at risk because a month before the appeal hearing he had begun to share photos and posts about the Kurdish cause on Facebook.

12. His ‘story’ was a simple one both factually and chronologically covering a brief period of time and the issues were not complex and therefore any criticism of the Judges failure to summarise what he might have identified as the Appellants account is without merit as the summary of what is described as the ‘claim’ in the refusal letter at paragraph 8 is not , in fact, the account as set out in the refusal letter as it includes the later claim based on sur place activities. Thus it is a very brief but accurate summary of the Appellants claim at the time of the appeal

hearing. The Judge notes that he kept a full record of the Appellants evidence and referred to it in his findings where he found that evidence relevant to the issue he had to determine: there is no error in this approach.

13. The Respondent rejected the claim as it was at the time of the refusal letter in essence because it was not accepted that the Appellants claim to have engaged in leaflet distribution for the 'Democrats' was credible as it was undermined by lack of knowledge, vagueness and inconsistencies and this argument I am satisfied is what the Judge summarises at paragraph 14.

14. The Judge went on to identify what he felt were the key inconsistencies in this claim. It may well be that the decision could have been written in a clearer and more structured way and certainly addressing s8 issues in the middle of his general credibility findings before returning to events in Iran was unhelpful but the test is one of adequacy and no more: so the Court of Appeal in MD (Turkey) [2017] EWCA Civ 1958 at paragraph 26 stated:

> *"The duty to give reasons requires that reasons must be proper, intelligible and adequate: see the classic authority of this court in Re Poyser and Mills' Arbitration [1964] 2 QB 467. The only dispute in the present case relates to the last of those elements, that is the adequacy of the reasons given by the FtT for its decision allowing the appellant's appeal.* ***It is important to appreciate that adequacy in this context is precisely that, no more and no less. It is not a counsel of perfection.*** *Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons is, in part, to enable the losing party to know why she has lost. It is also to enable an appellate court or tribunal to see what the reasons for the decision are so that they can be examined in case some error of approach has been committed."(my bold)*

15. Thus the findings set out why the Judge did not accept that the Appellant had distributed leaflets as he claimed and given that the account was relatively short there was unlikely to be a great deal that the Judge could say. The Judge at paragraph 16 therefore examined whether the Appellants claims about his political activities were internally consistent and on any fair reading of the whole of his albeit brief decision he highlighted discrepancies been his various accounts

as to key issues: thus at paragraph 16 he notes that in the Screening interview the Appellant made no mention of distributing leaflets for the Democrat Party which was what he said in the asylum interview which clearly was the case he advanced before the Judge but said that he distributed leaflets for all parties. That is a clear discrepancy.

16. The Judge again explicitly stated at paragraph 18 there were other discrepancies and refers to his claim to work for the Democrats who he identified as Hizbi Komani Democrat Republic Party and I do not accept the argument that this is anything other than a clear finding. This party does not exist and this was accepted by Ms Mair but she argued that he meant the KDPI: the Judge was perfectly entitled to say he did not agree that he must have meant a party who bore a different name to the one that he stated and that 'you'd think he would get to know the party he was working for.' The Judge accepted that the Appellant was illiterate but was entitled to find that this did not adequately explain the inconsistencies he found. The Judge at paragraph 19 finds his description of the party logo was vague and this is perhaps an example of where the decision could have been better written in that the Judge could have identified what the Appellant left out of the description that entitled him to use the word 'vague' but the word is apt as the Appellant made no reference to the Sun which is a central and distinctive feature of the KDPI logo.

17. In the refusal letter it was also suggested that the Appellant had shown limited knowledge of the aims and objectives of the party that he was distributing leaflets for: given the risks involved and the nature of his claim this was found not to be credible. The Appellant bears the burden of proving his case and it was open to the Judge to state at paragraph 20 that he had not addressed this challenge. The fact that he is illiterate is not a clear explanation for his lack of knowledge given that he was risking his life to distribute this material.

18. The Judge found at paragraphs 23-24 that the Appellants account in the asylum interview of how he got involved in the leaflet distribution and who and where he delivered to was' vague' and lacking in detail that he might have expected to hear. While the findings are brief I am satisfied that these are clear and adequate findings.

19. It was open to the Judge to find at paragraph 28 that the circumstances of his friend finding him while he was smuggling goods on his way back from the border to warn him about the raid was implausible given that the route he took was 3-4 hours long and there was unlikely to be only one route across the Iraq/Iran border.

20. The Judge also explained why he did not accept that the Facebook posts put the Appellant at risk. Upper Tribunal Judge Storey found no merit to the challenge to the Judges findings in respect of the Appellants Facebook activities and I agree. While clearly there are too separate issues the Judge was not considering the Sur Place activities in a vacuum. He found that the Appellant had not fled from Iran because his home had been raided as a result of him leafleting for the KDPI. While Ms Mair argues that he did not make explicit findings as to Facebook activities and whether they reflected beliefs he held I am satisfied that he rejected his claim about his political beliefs in Iran (paragraph 31, 35 and 38) and makes clear he does not accept that the Appellant then or in Facebook was being truthful about his political beliefs The Judge was also looking at activity that had only begun shortly before the appeal hearing after the Appellant had arrived in the UK on 29 November 2015. These were factors that the Judge was properly entitled to take into account in determining whether the Appellant was sharing views that he genuinely held. He did not refer to AB and Others (internet activity) [2015] UKUT 257 because it is not a country guidance case and was reported only to make available the material placed before the tribunal and therefore he is not in error in not referring to it. Moreover the Judge would have been entitled to note that in assessing whether he had a profile that would put him at risk In a number of ways the case of this Appellant is distinguishable from AB in that AB was a member of the KDPI and had supportive evidence from them in the UT this Appellant is not and does not, AB attended meetings and demonstrations and this Appellant has not, AB was the author and originator of the material that appeared on the internet whereas this Appellant is illiterate and merely ‘shared ‘ material. All those factors contributed to the potential profile of AB, factors which were entirely absent in this case.

21. No expert evidence about Facebook evidence or how and in what circumstances such activity would come to the attention of the authorities was placed before the Judge particular to this Appellant. He found that the Appellant had no political profile from anything that had occurred in Iran as he did not find his account credible (paragraph 35) and concluded that posting some material as he had did not give him a risk profile particularly given that these were views that the Judge found he did not genuinely hold (paragraph 37) . The Judge was entitled to find that no material had been placed before him that precluded the deletion of Facebook accounts or that such an account would have come to the attention of the authorities in Iran. I accept that the T-shirt analogy drawn by the Judge is particularly unhelpful given that a T Shirt can be discarded/ abandoned /destroyed but Ms Mairs argument (without any evidential support) was that a permanent footprint was left by Facebook accounts. However the Appellant bears the burden of proving his case so if he wished to argue as Ms Mair suggests that Facebook accounts leave a permanent footprint that would expose him to risk he bore the burden of establishing that as part of his case.

22. I therefore accept that the Judge's determination when read as a whole set out findings that were adequate reminding myself that this is the standard that applies.

CONCLUSION

23. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

24. **The appeal is dismissed.**

Signed Date 11.2.2019

Deputy Upper Tribunal Judge Birrell