



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005474

First-tier Tribunal No: PA/00002/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 19th of March 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

NAWHT
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Paramjorthy of Counsel appeared on a Direct Access basis
For the Respondent: Mr A McVeety, A Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 12th February 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court. The parties are granted permission to seek a variation of this order.

DECISION AND REASONS

1. An anonymity direction has previously been made in this case and shall continue in view of this matter relating to a protection claim.
2. This is my oral decision which I delivered at the hearing today. The hearing was as hybrid hearing. I was in Court, as was Mr McVeety, and Mr Paramjorthy joined the hearing via a remote link pursuant to a previous grant of permission for him to do so.
3. The matter relates to the Appellant's protection claim which was considered by First-tier Tribunal Judge Oscroft sitting at the Taylor House hearing centre on 8th August 2023. By way of a decision promulgated on 30th October 2023 the learned judge dismissed the Appellant's appeal.
4. The Appellant's grounds of appeal seeking permission to appeal were extensive and were considered by First-tier Tribunal Judge Seelhoff. He granted permission setting out matters in helpful detail. The grant of permission was on a limited basis but on an important basis. Judge Seelhoff said as follows,
 - "3. At paragraph 5 the grounds assert that the Judge erred in the approach to Facebook evidence at paragraph 23 in holding against the Appellant that providing live access to the Facebook account was 'unsatisfactory' and presented 'obvious difficulties'.
 4. The judge correctly identifies **XX (Pjak - sur place activities - Facebook) Iran CG** [2022] UKUT 23 (IAC) as the relevant authority. Worryingly part of the Judge's criticisms of the evidence include an indication that it would have been better for the Appellant to upload 'simple hard copy screen grabs of what I was to be now shown 'live''. A central point in **XX** is that screen grabs from Facebook are open to manipulation as set out at paragraph 8 of the headnote. It is arguable that being given live access to a Facebook account is more probative than screen shots and the judge may have erred in the approach taken to the evidence.
 5. At paragraph 6 it is complained that the judge has failed to make clear findings as to why an association with a 'Sri Lanka Black Politics' page would not draw adverse attention from the authorities. The judge appears to have placed weight on the lack of a public association despite control of the page having apparently been demonstrated.
 6. The case of **WAS (Pakistan)** [2023] EWCA Civ 894 suggests that judges should be cautious in approaching evidence of this sort and that the focus should be on the consequences of such a link becoming known to potential agents of persecution rather than focusing too much on the likelihood of that happening. The Judge may have erred".

The decision to grant permission continued at paragraphs 10 and 11 to state:

- "10. The approach may be inconsistent with **WAS** in this respect as well.
11. Paragraph 9 complains that the judge made a material error in speculating that the Appellant would likely have had drafts and other

materials available to him at the time of the earlier appeal if his account were true”.

Therefore Judge Seelhoff had granted permission to appeal in respect of paragraphs 5, 6 and 8 of the grounds of appeal.

5. At the hearing before me today Mr Paramjorthy said succinctly and clearly in his submissions that this was an unusual case and that a lot had turned on Facebook evidence. Mr Paramjorthy explained that he had been instructed on a Direct Access basis as counsel and on the morning of the hearing at the First-tier Tribunal. He said he had sought to do his best by showing the judge the Facebook page and the Black Politics Facebook page, thereby the judge had a live visualisation of Facebook for this Appellant.
6. Mr Paramjorthy said putting it frankly the judge was unimpressed and that she would have preferred Facebook in screenshots and singular pages, in hard copy form. Mr Paramjorthy said that Judge Seelhoff, an experienced judge, had granted permission to appeal in this case and that he had noted that screen grabs are prone to manipulation and that ultimately here there was good evidence which had been presented on a live basis instead. There was reference to the authorities in Sri Lanka. Mr Paramjorthy said that the regime in Sri Lanka have very significant surveillance. Issues of Refugee Sur Place activity is important to consider and that if in a scenario such as this the authorities will consider looking at Facebook pages as the country guidance makes clear, not that they ‘might’. Mr Paramjorthy said that a proper assessment of the complicated evidence was required and that there was a material error of law in the decision.
7. Mr McVeety made clear and helpful submissions. He said that there was no Rule 24 in this matter but ultimately having heard Mr Paramjorthy’s submissions Mr McVeety, said he saw a fatal flaw in the judge’s decision. Much of the evidence was not challenged, in reality it was in respect of only the email account. Mr McVeety frankly said that he does not have his own Facebook account but if one reads the case of **XX** there is a fatal flaw. The judge needed to make a finding as to whether or not there are genuinely held beliefs because the Appellant cannot be expected to delete his Facebook account if the beliefs are genuine. If on the other hand, the Appellant’s beliefs are not genuine then an assessment needed to be undertaken as to whether he, the Appellant, would delete them in accordance with the decision in **XX**. The flaw here said Mr McVeety was that the judge had not made findings as to whether the Appellant’s beliefs are genuine or not. This was a fundamental problem with the determination, the judge appeared to have been sidetracked with the evidence rather than risk from it. Although the Home Office cannot access Facebook it has been possible to search on Google and one can see that there is such a Facebook account in existence. Mr McVeety said that based on that concession there was sufficient here for the case to be reheard as a continuation hearing here at the Upper Tribunal on a limited issue.
8. I invited Mr Paramjorthy to consider whether this was matter could remain here with preserved findings or whether there should be a complete rehearing. Mr Paramjorthy said that the Tribunal would find itself in an invidious position. The Appellant’s work here was as a journalist and it was not possible to dissect that aspect to what ultimately might happen in relation to the findings in respect of the Facebook pages. I had referred to the judge’s decision at paragraph 53 with the various subparagraphs where the judge said that she found the Appellant to

lack credibility, that the Appellant's account remained vague in certain aspects, that it was not reasonably likely that he would delay his departure from Sri Lanka and the like, and there was reference to a previous decision and the starred decision in **Devaseelan**. Mr Paramjorthy submitted that these were matters which complicated the approach required for fact finding.

9. Having considered the submissions, it is clear that both parties agree that there is a material error of law in the Judge's decision.
10. In my judgment in view of the proper concession made by Mr McVeety the real issue for me to consider is whether it is possible for me at a continuation hearing to reconsider the aspects relating to the Facebook pages. Mr Paramjorthy informs me that in any event it would be likely that he would seek to rely on an addendum to the expert report by Dr Smith, who will deal with updating matters in respect of how the government of Sri Lanka deals with monitoring, including digital monitoring of social media.
11. I consider this against a backdrop of the decision of the Judge being a detailed and thorough one and one in which there was obvious care and attention unfortunately, no doubt because of the many strands to the case, there is the fatal flaw which Mr McVeety has highlighted on behalf of the Secretary of State.
12. I have considered whether it is possible for me to dissect the findings which have been made from the findings which will necessarily have to be re-made and whether thereby it is possible to preserve certain aspects of the First-tier Tribunal Judge's decision. I remind myself of the Practice Statement and I apply the decision in **AEB [2022] EWCA Civ 1512** and **Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC)** and I consider matters in line with the general principles set out in paragraph 7 of the Senior President's Practice Statement whereby I take into account the history of the case, the nature and extent to the findings to be made and that this appeal requires assessment of the Appellant's evidence. When I consider paragraph 7.1 and 7.2 of the Senior President's Practice Statement in my judgment there has to be a reassessment of the Appellant's claim.
13. I conclude that fairness requires that there be a rehearing at the First-tier Tribunal and that the Appellant be afforded the opportunity of having his appeal heard by the First-tier Tribunal. I remind myself this is a protection claim. The principles of **Devaseelan** will continue to apply in relation to the earlier decision but the decision of First-tier Tribunal Judge Oscroft is set aside in its entirety. Therefore will be a hearing at the First-tier Tribunal. That is my judgment.

Notice of Decision

The decision of First-tier Tribunal Oscroft contains a material error of law and is set aside.

The matter is remitted to the First-tier Tribunal for rehearing.

An anonymity order is made.

Deputy Upper Tribunal Judge Mahmood

A. Mahmood.

Appeal Number: UI-2023-005474
First-tier Tribunal Number: PA/00002/2022

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
12 February 2024