



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/04237/2013

THE IMMIGRATION ACTS

Heard at Birmingham
On 7 August 2013

Determination Sent

Before

UPPER TRIBUNAL JUDGE KING TD
DEPUTY UPPER TRIBUNAL JUDGE BOWEN

Between

MR M S N

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Fountain of Fountain Solicitors
For the Respondent: Mr Smart, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant claimed asylum on 30 May 2012 and his application was refused on 19 April 2013. Thereafter he sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Thomas on 4 June 2013.

2. The judge found the appellant's claim to be without credibility and dismissed the appeal in all respects.
3. Grounds of appeal were submitted against that decision. Permission to appeal was granted on 9 July 2013. Thus the matter comes before us for a determination as to the relevant issue.
4. The appellant lived in Iran with his parents and younger brother. His family was affluent and owned a number of properties. His father worked for the government as an interpreter in the navy and co-founded a private school.
5. Subsequently his father was placed under house arrest and the school closed because of suspected anti-government activities. The school then reopened and his father left the navy. In 2000 the authorities closed down the school and in 2007 his father set up a new business. The appellant came to the United Kingdom to study. In June 2009 his father ran a campaign for the anti-government Green Party in the presidential elections. The appellant's father, brother and cousins were arrested and the family home raided.
6. In October 2011 the appellant returned to Iran for one month. His application for a further student visa had been refused and his maintenance funds were insufficient. Having arrived in Iran he was notified that he should for his own safety leave, which he did in November 2011.
7. Thereafter in December 2011 there was a letter from the court requesting the appellant to attend. In April 2012 officials raided his family home taking many of his possessions including his laptop which he had left with his mother to use. There were photographs stored on the laptop showing him attending a demonstration in Victoria Square in London in June 2009.
8. The Judge, for the reasons set out in the decision, did not accept that the appellant's father was arrested or had been involved in the activities as claimed. The Judge did not find it credible that the authorities either raided the family home or wanted the appellant.
9. At the hearing before First-tier Tribunal Judge Thomas there had been a request to show two short videos. There had been no request for the use of video equipment prior to the hearing and indeed there had been a CMR hearing on 21 May 2013. A record of that hearing is in the file and indeed there was a copy of the directions in that Case Management Review handed to each party. There is a specific passage in those directions dealing with video evidence and no indication is given that that was raised at all at that hearing.
10. Nevertheless the Judge sought to accommodate the parties and equipment was obtained but unfortunately it was not equipment that could show the particular videos in question.

11. The first ground of appeal is that the Judge failed to adjourn the matter in order that the evidence should be obtained. For our part we see no merit whatever in that suggestion. It is unfortunate indeed that the correct equipment was not available but that of course is the whole purpose of having earlier directions so that those matters can be dealt with. We detect no impropriety on the part of the Judge in insisting that matters go ahead.
12. We requested of Mr Howard what the particular videos purported to show. He said that they were very short, about two minutes each. One video showed the appellant's father teaching and the other showed a demonstration. The common ground, as indeed the Judge had noted in the determination, is that the video of the demonstration did not show the appellant.
13. Mr Howard submitted that it was material to the claim that the appellant's father was shown to be a teacher. From our reading of the findings of the Judge, however, it was not the father's occupation as a teacher that was in question but rather his political involvement. The judge considered indeed that if the appellant's father had been under such suspicion he would not have been reemployed or reinstated as an interpreter in the navy as claimed.
14. We find nothing to criticise the Judge in relation to the video evidence.
15. Mr Howard relying on grounds 2 and 3 submits that there was inadequate reasoning in respect of the Judge's credibility findings.
16. Our attention was drawn in particular to paragraphs 22, 25 and 29 of the determination. The Judge comments that if the appellant's father had been placed under house arrest in 1992 on suspicion of anti-government activities it was not credible that he would then be permitted back into the navy to carry on his work until 1996. The Judge went on to find that, given the appellant's father's claimed difficulties with the authorities, it was not credible that he would openly expose himself and his family in the involvement with the Green Party campaign. Furthermore that following the defeat of the Green Party it was not credible that the appellant's father would have remained in his home for more than a month. The Judge did not find it credible that the appellant would have left his laptop containing potentially damaging information at his mother's home given the problems that his family already faced with the authorities.
17. It is contended that there is a marked lack of reasoning as to why those matters should be regarded in the way in which the Judge seeks to place them. Mr Smart on behalf of the respondent invited our attention to a decision of the Upper Tribunal in **Shizad (Sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC)**.
18. We were invited to note the head note of that case that, although there is a legal duty to give a brief explanation supporting the conclusions on the central issues on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge.

19. It seems to us that it is proper to put those matters within the wider context of the findings made in connection with the case as a whole.
20. The Judge did not consider that if the appellant's father was permitted back into the navy and continuing to run a school and later set up business, that such was consistent with his claim to be someone who was regarded as an anti-government individual who had been placed on lengthy house arrests in the past. It seems to us that that is a reasonable approach to take to such matters.
21. More particularly the Judge noted that the appellant's father and brother and cousins had been arrested prior to 2011 thereby, if true, establishing a very strong profile for the family as being anti-government. Notwithstanding that matter the appellant makes no claim for asylum but rather returns to Iran. The Judge finds that that a return is undermining of the credibility of the profile the family as presented. We would agree. The judge notes in paragraph 30 that if the authorities had a genuine adverse interest in the appellant they would have known of his presence in Iran and his arrival in October 2011. The Judge notes that the authorities, if they really had an interest in the appellant, could simply have arrested him at his home. No reason is given why the appellant should have left his laptop with his mother particularly if such contained incriminating photographs.
22. Given the entire context of the claim we do not find that that finding is **Wednesbury** unreasonable or perverse in all the circumstances.
23. The third ground of appeal relates to the failure of the judge to make proper findings in the light of **BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC)** or to have applied it to the circumstances of this case.
24. Mr Smart submits that it was unnecessary for the judge to consider the case of **BA** given the findings that were made in paragraph 33 of the determination, namely that the appellant had not proved that he was present or actively involved in the demonstration in 2009. The Judge goes on to say "I do not find that the authorities in Iran have any such belief of reason to believe that he has been politically involved in the United Kingdom."
25. The evidence emanated from the appellant himself that he had been involved in that demonstration. The YouTube extract that had been sought to be produced at the hearing was to show that particular demonstration. It did not however show the appellant to be at it. There was a lack of information about the demonstration in Birmingham on 21 June 2009.
26. It is perhaps of significance to note that the hearing took place on 4 June 2013, some four years from that demonstration. No evidence was given by the appellant that he has attended other or more recent demonstrations.
27. The return of the appellant is regarded as having significance by the judge both as to the genuine nature of his fear of the authorities and of the fact that the appellant entered the country in 2011 seemingly with no difficulty with nobody seeking to

arrest him at that stage. It is clear from the decision in **BA** that there is a very significant and sophisticated monitoring apparatus recording those who have taken part in demonstrations. The appellant came upon a student visa and with an Iranian passport. No doubt therefore the authorities have all relevant records as to his facial characteristics and, if they had been so interested, no doubt could have picked him out from the demonstrators. The fact that the appellant was allowed to both enter and leave Iran was, to the Judge, a factor illustrating that the authorities were not looking for him nor had they an interest in him. Indeed it is the appellant's own account that it was the images on his laptop which encouraged the authorities in their pursue of him as well as his family connections.

28. Given the findings of the judge that the appellant was not involved in the demonstration it does not seem to us to be an error of law on the part of the judge not to engage with **BA**. In any event the appellant decided to return to Iran which he did in 2011 without incident. It was only after he returned to the United Kingdom that he claims that the difficulties which he has spoken about arose.
29. The devil often lies in the detail. The question must arise why it is that the appellant at his hearing sought to rely upon a YouTube picture of the demonstration which did not show him whereas on his laptop that he had prior to Iran in November 2011 he claims to have had footage showing himself. Accepting of course that the claim for asylum was not made for two years or more after that demonstration, it is perhaps surprising that the appellant chooses to produce something that does not show him at the demonstration, when according to him he did have in the past some evidence showing his presence.
30. Overall the Judge's findings are properly open to be made. The appellant gave evidence before the Judge and no doubt the Judge was in the best position to assess that evidence.
31. We detect no material error of law in the proceedings. The case is very fact specific and the task of the judge as we so find was properly discharged in the approach taken to the case as shown in the determination.
32. In those circumstances the decision of the First-tier Tribunal Judge shall be upheld. The appellant's appeal against that decision is dismissed. The asylum appeal is dismissed. That in relation to humanitarian protection is dismissed. The appeal in relation to Article 8 and human rights is also dismissed.

Signed

Date 30th August 2013

Upper Tribunal Judge King TD