



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

Appeal Number: AA/00330/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22<sup>nd</sup> April 2014**

**Determination Sent  
On 22<sup>nd</sup> May 2014**

**Before**

**UPPER TRIBUNAL JUDGE KING TD**

**Between**

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

Appellant

**and**

**MR GSM**

Respondent/Claimant

**Representation:**

For the Appellant: Ms A Everett, Counsel, Senior Presenting Officer  
For the Respondent: Mr K Behbahani, Oaks Solicitors

**DETERMINATION AND REASONS**

1. The claimant born on 21<sup>st</sup> March 1962 is a citizen of Iran. He arrived in the United Kingdom in August 2009 as a dependant upon his wife's student visit. In December 2011 he returned to Iran for a holiday returning to the UK on 6<sup>th</sup> April 2012. He applied for asylum on 17<sup>th</sup> October 2012. The application was refused by the Secretary of State for the Home

Department on 30<sup>th</sup> December 2013 and directions for his removal were also issued.

2. The claimant sought to appeal against those decisions which appeal came before First-tier Tribunal Judge Courtney on 14<sup>th</sup> February 2014. The determination is a detailed one. The decision by the Judge was to allow the asylum appeal and to allow the appeal in respect of Article 3 of the ECHR.
3. The Secretary of State for the Home Department seeks to raise a number of grounds against that decision in particular that the Judge failed to give reasons for findings on material matters. Permission to appeal was granted on that basis. Thus the matter comes before me in pursuance of that grant of permission.
4. The nature of the appeal was twofold. The first basis was that the claimant had a political profile with the Iranian authorities. It was said that in 1978 he had become a supporter of the Tudeh Party and had distributed leaflets and attended meetings. That had led him to be expelled from school and in 1982 he was arrested and imprisoned for eighteen months. He was released and went on to complete his military service but his profile had caused him to have difficulty in obtaining employment. He said he was detained on two further occasions.
5. After what clearly was a very significant period, the claimant began activities with the Green Movement prior to the 2009 elections. At the time he was working as a manager of a pharmacy in Mashad. It was his evidence that he used pharmaceutical supplies to support those members of the Green Movement who had been wounded in demonstrations. One of his contacts, Dr K, seemingly was killed in March 2012. The appellant suspected that it was not an accidental death. When he had attempted to contact P who had been a nurse and a go-between he was told by her not to contact her further. Seemingly after he had returned to UK from his latest visit information came that she had been arrested. His brother had told him also that security services had raided the pharmacy and the house looking for evidence seeking to confirm the appellant's associations with the Green Movement.
6. The second aspect of the appeal was that the appellant had converted to Christianity and feared retribution also on that account.
7. The reasons for refusal letter dated 30<sup>th</sup> December 2013 set out a detailed analysis of the evidence provided. The delay of the claimant claiming asylum was considered to be relevant and a number of discrepancies highlighted in the course of the analysis of the evidence. It was accepted that the claimant had converted for the reasons that are set out in the decision.

8. Ms Everett, who represents the Secretary of State for the Home Department, relies on the grounds of appeal which she says speak for themselves.

Essentially she seeks to criticise the approach adopted by the Judge to the delay and why that should not have affected the credibility of the claim. Also said that the Judge has not given reasoned findings for accepting the profile of the appellant as to his political activities and of the events described. It is also said that the Judge gave inadequate reasons for accepting the conversion of the appellant and had not applied the principles and guidelines set out in the decision of **Ali Dorodian (01/TH/1537)**.

9. Mr K Behbahani, who represents the claimant, invited me to find that contrary to the grounds the determination was not only a detailed one but a very careful one. He drew my attention initially to paragraphs 27 and 28 of the determination in which the Judge sets out the general principles which apply to the assessment of credibility. The Judge reminds herself of the importance of taking the case as a whole. She addresses the issue of vulnerability of the witness, particularly given the medical evidence as to his depression.
10. The Judge proceeds to consider the issue of credibility from a number of perspectives. The first being that relied upon by the Secretary of State for the Home Department, namely the effect of Section 8 and the delay in claiming asylum being a factor damaging of credibility. The matter is dealt with in paragraphs 33 through to paragraph 36. An explanation for the delay is noted. The Judge considers for the reasons as set out particularly in paragraph 36 that a satisfactory explanation has been made for the delay thereby not undermining credibility.
11. Mr Behbahani submits that the aspect of delay has been carefully considered and that the findings of the Judge were properly open to be made.
12. The Judge then considers the political activities of the claimant in a structured way. Firstly the events in 1982 then moving to the more recent events in 2009 and later.
13. As to the earlier arrest of the claimant the Judge considers not only what he had to say but also the background evidence relating to events at that time and finds, in the conclusion of paragraph 39, "Mr M's account of the methods employed accords with that provided in the A1 report at page 7. In my judgment it has the ring of truth."
14. As to the claim that the arrest had prejudiced his chances of employment that was considered at paragraphs 40 to 44. The background material from Amnesty International was found by the Judge to corroborate and explain the process.

15. Having analysed such matters, the Judge concludes at paragraph 43 that the claimant has provided a credible explanation for the apparent errors and omissions identified by the Secretary of State in the refusal letter. His account sits well with the background country evidence. The Judge is satisfied on the appropriate standard and burden of proof that the claimant was arrested, imprisoned and tortured in 1982.
16. The grounds of appeal contend that the Judge provided no reasons for accepting the claimant's evidence in the light of the discrepancies in his evidence. I disagree. It is clear that the Judge has considered with care the challenges which were made against the credibility of the claimant on that aspect and has come to a reasoned decision.
17. It is perhaps of some considerable significance that at paragraph 43 it was noted that the claimant was not cross-examined by the Presenting Officer on his political activities. Thus although there had been challenges made in the refusal letter which the Judge has clearly considered and borne in mind it is a matter of importance as indeed was conceded most fairly by Ms Everett before me that there was no cross-examination as to political matters.
18. The Judge went on to consider the more recent political activities and once again it is, as I so find, a very balanced consideration of the case. Throughout the Judge bears in mind the criticisms that are made of the appellant's account by the respondent but finds that overall there is the serious possibility that the various elements of the claim as presented are true.
19. The Judge deals with the death of Dr K in paragraphs 48 to 55, paying particular regard also to the Country Report on Human Rights Practices 2009 and to other reports. The Judge also considers the evidence relating to the relationship of the claimant with P.
20. Finally the Judge comes to the conclusion at paragraph 55 that she is satisfied to the requisite low standard of proof that the appellant was involved with the Green Movement and that his associates have been targeted by the Iranian authorities and that the security services are aware of that involvement.
21. I find it difficult to fault the approach taken by the Judge to those matters. The grounds of appeal seek to take a number of distinct strands of the political profile to argue that the Judge has not adequately dealt with those. Nevertheless it is entirely clear that the Judge has taken a very careful and structured approach to the situation and has done her best to reconcile the various accounts. It is to be borne in mind that it is not only the evidence that is presented, which leads to a conclusion in favour or against credibility, but also the way in which the evidence is given, the manner in which the appellant presents that evidence and the internal

consistencies with the evidence and with consistencies of the evidence with background material. It is not an exact science to determine credibility, indeed it is often sometimes very difficult to articulate precisely why the evidence given by an individual is credible or not. There is to be accepted an element of “Judgecraft” in the process of decision making.

22. Indeed it is often easier for a Judge to find reasons not to believe than to articulate reasons for believing. Thus it seems to me that the Judge has done all that she can reasonably be expected to do in weighing up the accounts and indicating why it is that she prefers one account to the other or one set of circumstances to the other. It is submitted that phrases like such as “ring of truth” are wholly unacceptable. I disagree. There has to be some contextual support for the findings that have been made and I find in this particular determination that, so far as the political activities of the claimant are concerned, the contextual examination has been fully and accurately undertaken by the Judge.
23. The Judge went on to consider the aspect of whether or not the claimant has converted to Christianity. Once again the determination is a careful one looking at what is said by all parties on that particular issue.
24. The Secretary of State for the Home Department has been critical of the Judge in the approach taken to the letter written by the pastor of St George’s Church, Southall on 4<sup>th</sup> February 2014. Objection was taken at the time of the hearing to the letter as can be seen at paragraph 61 of the determination. It was said that it did not contain a statement of truth and the vicar was not present at court to be examined. It was submitted to me by Mr Behbahani there is no requirement in the jurisdiction of the Tribunal to have statements contained in the usual statutory declaration as to truth which of statements in the criminal jurisdiction are expected to contain.
25. He invited me to read the letter because it was not speaking directly on the issue of conversion simply stating the pastor’s knowledge of the appellant. In December of 2013 the claimant and his wife started attending the church regularly and he was asking to be baptised. The pastor did not want to run into baptism as spiritual conversion was hard to discern and time was often the best indicator of the reality of the experience a person expresses. Thus the letter indicated that baptism was not then being offered to the appellant.
26. The witness goes on to say this:-

“Mr M appears sincere in his request but with the language barrier it is hard for me to explore sufficiently what he understands already about Christianity.”

Essentially therefore the letter is confirming the fact that the claimant attends church on a regular basis and says little more than that.

27. The situation as envisaged in the decision of **Ali Dorodian** is essentially to expect clergy to attend to be questioned on important matters such as faith, conversion and baptism. Though that may be so, but that was not the extent to which the letter reached. The vicar was not speaking of conversion but merely to set in context the interests of the appellant in the services of that particular church. It is difficult to see that such would be controversial in any event.
28. I was asked to find that it was perfectly proper for the Judge to take into account what the vicar had said albeit the vicar had not attended the hearing. The Judge noted the letter and found no reason to doubt its probity. It seems to me that was properly open to the Judge to decide in any event. Indeed the Judge, not only considered the letter from the Reverend Ramsey, but also a web page from the Open Charities site included in the bundle which spoke of that particular church and of its Sunday gatherings.
29. The Judge indicated at paragraph 64 that she had had the opportunity of hearing evidence from the appellant who impressed her to be a sincere witness. The Judge concludes in paragraph 64 it is reasonable to expect the appellant upon return to take part in a church service which in the circumstances was likely to expose him to danger.
30. Although criticism is made of that finding it is also to be noted specifically that the appellant was not cross-examined as to how he was likely to behave upon return to Iran. The function of the Judge is to hear the witnesses and place the evidence within its proper context with the background material. There is nothing to indicate that the Judge in this case has not done precisely that and sought, through a combination of evidence and reports, to have come to a finding.
31. Overall I do not detect any manifest error of approach in the way that the Judge has dealt with the evidence. I find that the grounds generally amount to little more than an argument as to merit rather than identifying any material error of law.
32. In those circumstances therefore, the appeal by the Secretary of State for the Home Department before the Upper Tribunal is dismissed. The decision of the First-tier Tribunal shall stand namely that the asylum claim is allowed and that in respect of human rights, particularly Article 3, is allowed.

Signed

Date

Upper Tribunal Judge King TD