



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

Appeal Number: AA/01064/2014

**THE IMMIGRATION ACTS**

**Heard at North Shields  
on 14<sup>th</sup> July 2014**

**Determination Sent**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**MB  
(Anonymity direction made)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Miss Ali of hallidayreeves law firm.

For the Respondent: Mr Kingham – Senior Home Office Presenting Officer.

**DETERMINATION AND REASONS**

1. This is an appeal against a determination of First-tier Tribunal Judge Cope promulgated on 11<sup>th</sup> April 2014 in which he dismissed, on all grounds, the appeal against the removal direction to Iran that accompanied the refusal of the Appellant's claim for asylum.
2. The Appellant is an Iranian national born in 1991. There are two strands to his claim to be entitled to a grant of international protection, the first relating to an alleged risk on the basis of an actual or perceived adverse political profile relating to activities on behalf of

the PJAk, which the Judge did not find to be credible for reasons set out in paragraphs 24 to 45 of the determination. These are conclusions that have not been shown to be susceptible to any credible legal challenge.

3. The second head of claim relates to risk arising from an alleged conversion from Islam to Christianity. The Judge considered the evidence with the required degree of care, including the limits upon the evidence made available for him to consider. In paragraph 51 of the determination, to which Ms Ali referred me at the hearing, the Judge states:

51. I consider it unfortunate to say the least that Mr Mazahari was not able to attend the hearing of the appeal. I am afraid that I do consider it significant that despite the messages apparently being relayed through Mrs Langley that he was indeed attending, and that he was on his way to North Shields, he failed to arrive. Of even more concern to me is that not only was there no explanation on the day as to why he had not attended, but [there] has been none subsequently forthcoming.

4. This witness, in his witness statement, claimed to have met the Appellant in Greece when he was acting as a church worker and claimed the Appellant attended church and had regular contact with him. In paragraph 52 of the determination the Judge records that he was unable to place any weight on the statement of this witness as his absence without any explanation cast an adverse light on that part of the Appellant's claim regarding Christianity, namely that he was interested in the Christian faith in Greece. The Judge also notes that there was considerable documentation relating to the absent witnesses from Greece but no such documentation in relation to the Appellant, not even a letter from the church as there was for the witness, confirming his attendance.
5. The Judge considered the material with the required degree of anxious scrutiny and set out his analysis of that evidence and the weight that he was prepared to attach to such material. In paragraph 80 of the determination the Judge finds:

80. In this case I can go further. Although I accept that the Appellant has been through a ceremony of public baptism at Stockton Parish Church, and that he does attend that church on a very regular basis, whilst I do accept that it is a possibility I am not satisfied that it is reasonably likely that his espousal of the Christian faith is genuine; and that consequently if he were returned to Iran that he would wish to continue with that faith or to give any public expression to it.

6. The grounds on which permission to appeal was sought challenge certain specific elements of the determination but on the whole amount to no more than a disagreement with the Judge's findings. The grounds contain specific comment upon paragraph 51 asserting that Jobcentre Plus allocate tightly regulated appointments and that it would not have been possible to deviate without considerable difficulties to access an alternative appointment, which is the explanation for the failure of the witness to attend. This is combined with an assertion the Judge attached disproportionate weight to such failure.

### **Error of law finding**

7. At the hearing Miss Ali accepted that the real nature of the challenge being made to the determination was an attempt to try and secure for the Appellant a further hearing to allow him the opportunity to appear with his witness. Whilst such honesty is to be commended, no legal error has been established in the way the Judge dealt with this aspect of the case on the day. The witness had filed a witness statement but failed to attend at the time appointed for the hearing. The Judge records in paragraph 7 of the determination that the Appellant's representative made enquiries and informed the Judge that the witness had told her that he needed to go to Jobcentre Plus and to the bank to sort out various practical arrangements following a recent grant of immigration status for him on 5<sup>th</sup> March 2014. The Judge records that at his suggestion the representative undertook further enquiries to see whether the witness could attend the hearing instead of his appointment or complete his business as soon as possible and then come to the hearing thereafter, which the Judge was advised he had agreed too and on which basis the Judge indicated that he would be prepared to be flexible in terms of timing to enable the witness to give his evidence after lunch if required [8].
8. Notwithstanding such an approach, and stated flexibility, when the case resumed at 2 PM there was no sign of the witness and nor did the representative have any explanation to put forth as to why he had not yet arrived. The Appellant's representative indicated that she wanted to go ahead with the case by moving to submissions from the Presenting Officer, the oral evidence having been otherwise concluded before lunch [9].
9. Not only did the Judge provided ample opportunity for the witness to be contacted and provide flexibility within the timetable for the hearing, when the witness failed to attend without explanation it was the Appellant's own advocate who invited the Judge to proceed rather than make an adjournment request for the matter to go part heard and return to the Tribunal on a later occasion. There is no procedural unfairness in this case as the Judge was entitled to proceed as he did on the basis of the invitation from the Appellant's own representative

and the facts as stated. There is still no adequate explanation for why the witness failed to attend if he genuinely wished to come along to support the Appellant. There is no evidence that the Jobcentre Plus are so inflexible with their appointments that alternative arrangements could not have been made to allow the witness to attend the hearing on the stated date if he genuinely wanted to do so. The fact he did not, the fact no adequate explanation was provided, and the fact the Appellant's representative invited the Judge to proceed in such circumstances, is very relevant.

10. The grounds on which permission to appeal was sought fail to disclose any arguable material legal error in the determination. The Judge considered the evidence with the required degree of anxious scrutiny and has given adequate reasons for the findings that he made, which are within the range of permissible findings on the evidence.
11. If the Appellant has fresh evidence that has come to light, such as the documents served upon the Tribunal on the day of the hearing, which were not before the Secretary of State when the application was made he maybe able to make a fresh claim although this is a matter upon which he will need to take proper legal advice.
12. I find the Appellant has failed to discharge the burden of proof upon him to the required standard to show that Judge Cope made any legal error material to the decision to dismiss the appeal.

### **Decision**

13. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

14. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I continue that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson  
Dated the 15<sup>th</sup> July 2014

