



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

Appeal Number: AA/10567/2012

THE IMMIGRATION ACTS

**Heard at Bradford
On 7 January 2014**

**Date Sent
On 3 February 2014**
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Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

REKAN ZAHIRI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mrs R Pettersen, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Rekan Zahiri, was born on 10 June 1991 and is a male citizen of Iran. The appellant had appealed to the First-tier Tribunal against a decision of the respondent dated 7 November 2012 to remove him as an illegal entrant from the United Kingdom. That appeal had been dismissed by the Tribunal (Judge Saffer) in a determination promulgated on 11 January 2013. But by a decision dated 24 July 2013, I found that

there were errors of law in the First-tier Tribunal determination such that the decision fell to be set aside. A resumed hearing took place at Bradford Upper Tribunal on 7 January 2014.

2. The appellant no longer has the assistance of professional representatives. He attended in person and sought an adjournment. He showed me a letter which indicates that he will have an operation on his leg (he says in order to amputate it) on 28 January 2014 in Doncaster. He did not appear to be in any obvious physical discomfort or pain but he claimed that his mind was focused on the forthcoming operation to the extent that he would be unable to give clear answers in cross-examination. There was no medical evidence to support that contention. I refused the application for the adjournment and told the appellant that I believed that he was fit enough to answer questions in cross-examination. I told him that I would halt the cross-examination and the hearing if I was persuaded that he was unable to put his case to the Tribunal as he would have wished. That eventuality did not occur. The cross-examination was, in fact, brief and there was no indication whatever that the appellant was unable (through the interpreter) to understand the questions and to give coherent answers.
3. My reasons for finding that the First-tier Tribunal made an error of law were as follows:

REASONS FOR FINDING THAT TRIBUNAL MADE AN ERROR OF LAW, SUCH THAT ITS DECISION FALLS TO BE SET ASIDE

1. The appellant, Rekan Zahiri, was born on 10 June 1991 and is a male citizen of Iran. The appellant appealed to the First-tier Tribunal (Judge Saffer) against a decision of the respondent dated 7 November 2012 to remove him from the United Kingdom as an illegal entrant. The First-tier Tribunal, in a determination promulgated on 11 January 2013, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Granting permission, Judge McGeachy stated:

“I considered there was ‘Robinson’ obvious ground of appeal in this case as I considered it is clearly arguable that the Judge of the First-tier Tribunal had not fully engaged with the appellant’s claim and had not given sufficient reasons for rejecting the claim. I will therefore grant permission to appeal.”

3. Although the respondent has filed a Rule 24 letter on 7 March 2013 opposing the appeal, Mrs Pettersen at the Upper Tribunal hearing did not persuade me to preserve the determination. The appellant claims to be Kurdish and to have been tortured by the Iranian authorities about seven years ago. At the end of the determination, Judge Saffer wrote:

“21. I accept that his credibility is damaged by his failure to claim asylum en route here.

22. I accept that it is reasonably likely the appellant has chronic osteomyelitis of his right tibia which causes pain and restriction of

movement to the right leg given the letter from Dr Ahmed. He has failed to establish that any hospital treatment he required is reasonably likely to have occurred in a military or prison hospital given the background evidence of hospital treatment for prisoners being inadequate.

23. I do not accept it is reasonably likely he was detained as a juvenile and ill-treated in the manner he claimed given the background evidence of children and juveniles in conflict with the law are sent to the JCRC through competent courts.

24. I do not accept that it is reasonably likely his father was ill-treated or detained in the manner claimed or at all as I do not have to accept the appellant's word just because he said and given the adverse credibility findings I have found (sic).

25. I am not therefore satisfied that it is reasonably likely the authorities of Iran believed the appellant's holds anti-regime political beliefs, he has been involved in anti-government activity or has information that may lead to those who do. There is no real risk he will be detained when he returns to Iran and ill-treated. Accordingly he has failed to establish that he is a refugee."

4. It was open to the judge to find that the appellant's credibility was damaged by his failure to claim asylum en route to the United Kingdom but I do not consider that a single sentence is adequate to support such a finding. The judge has not engaged with any explanation given by the appellant for not claiming asylum before he reached the United Kingdom and, although he was of course not obliged to accept any such explanation, he should at least have addressed it.

5. At [12] the judge quotes background evidence (the Country of Origin Information Report) which indicates that prison conditions are poor, "many prisoners have had heart attacks ... and prison authorities refuse to transport ailing prisoners to hospital even when the prisoners urgently needed treatment that can only be provided outside of prison and even when the prison doctors themselves recommend it." The background evidence did not indicate that each and every prisoner who has a medical problem is denied treatment so it is not entirely clear why the judge concluded that, applying the standard of reasonable likelihood, the appellant's account of having been treated for his injuries in a military or prison hospital should have been so readily rejected. This is not to say that the judge could not have concluded that the appellant's account of his treatment was untrue; it is simply that the analysis is so brief as to render it unsound.

6. The same is the case concerning the judge's rejection of the appellant's claim to have been ill-treated and imprisoned in Iran. At [13], the judge notes the Country of Origin Information Report (COIR) and what it says regarding the operation of Juvenile Correction and Rehabilitation Centres (JCRCs). The COIR states that "all children and juveniles in conflict with the law are sent to the JCRC" although at the beginning of the same paragraph it notes that "in general" children accused of committing criminal acts are detained in a JCRC. The judge was quite right to examine the appellant's account in the context of the background material and, once

again, it was open to him to reject the appellant's claim as untruthful. However, at [16], the judge wrote "[the appellant] was taken to an army hospital and had ten operations over the years he was detained there." It may well be the case that the appellant's account is so at odds over the background material as to render it implausible. I find, however, that, whilst the findings were open to him, the judge should have attempted to engage thoroughly with the appellant's written and oral evidence before rejecting his account. The real problem with this determination lies less in [22] and [23] even though the findings of those paragraphs are poorly reasoned. The real difficulty lies in [24]. Here, the judge rejects out of hand the appellant's claim that his father was ill-treated and detained simply because (i) the judge believes that he does not have to accept the appellant's account just because he uttered it and (ii) on account of the "adverse credibility findings" which he had made at [22] and [23]. It is this paragraph which renders this determination unsustainable. As regards (i), it will rarely, if ever, be satisfactory to reject an appellant's account simply because it is not supported by other evidence. Further, the judge at [24] attaches a weight to his earlier poorly-reasoned findings ("adverse credibility") which they cannot support. To reject the entirety of an appellant's account because parts of it may not be wholly supported by general background evidence seems to me to be unreasonably harsh.

7. In the circumstances, I find that the judge has erred in law such that his determination falls to be set aside. The decision will be remade in the Upper Tribunal at or following a resumed hearing. I stress that the appellant still needs to prove his case; none of the findings of fact of Judge Saffer will stand. If it does not do so, this appeal is likely to fail.

4. The burden of proof in the appeal is on the appellant and the standard of proof is whether there is a real risk that the appellant would face persecution or treatment contrary to the ECHR (in particular, Articles 2 and 3) if he returns to Iran.
5. The appellant's claim may be summarised as follows. He claims to be an Iranian national of Kurdish ethnicity. He has suffered injuries to his right leg and uses crutches to help him walk. I have no reason to doubt that the problems with his leg have led to his surgeons deciding to amputate it in Doncaster at the end of January 2014. The appellant claims to have worked as a shepherd with his father. In the mountains, he would encounter the Peshmerga and occasionally provided them with food. The appellant claims that he and his father were reported to Ettela'at and they were arrested. They were both ill-treated in detention and his father died some 6-8 months after his arrest. The appellant claims to have been kept in detention for seven years before his leg became infected and swollen. He claims to have remained as a prisoner in the hospital to which he was removed and during that time had ten operations to his leg. Some months before he came to the United Kingdom, he claims that the hospital received a letter from the government directing the doctors to kill him by lethal injection. The doctor assisted the appellant in escaping having contacted an Imam from the appellant's village and together they arranged for an agent to help the appellant leave the country. The appellant travelled by lorry to the United Kingdom.

6. The respondent accepts that the appellant is a Kurd but rejects the credibility of his account of past events in Iran. The refusal letter of 7 November 2012 at [16] states:

Your account of remaining in a hospital for seven years and receiving all necessary medical treatment which included ten operations, is considered wholly inconsistent with the country information relating to medical treatment for prisoners and entirely inconsistent with the treatment you claim your father received. Additionally, you have provided no credible evidence as to why the authorities would spend a considerable amount of money on treating you for seven years only then to ask the hospital to kill you.

7. I have examined that central “core” incident in the appellant’s account in the context of all the evidence both oral and written and in the light of the remainder of the appellant’s account of past events. Having anxiously scrutinised that evidence, I have concluded that I concur with the observations of the Secretary of State set out at [16] of the refusal letter. The Country of Origin Information Report for Iran, which is quoted together with the US Department of State Country Report for 2010 in the refusal letter, indicates that prison conditions are poor. The report records that “prison authorities refused to transfer ailing prisoners to hospitals even when [they] urgently needed treatment ...”
8. The Tribunal should hesitate before finding an account implausible or untrue simply on the basis that it does not accord with background material; other considerations may well be relevant. Here, the appellant has not simply given an account of having been treated in a prison hospital following an injury; he has claimed that he underwent ten operations on his leg over a period of several years spent in prison. That level of medical care sits very uneasily indeed not only with the background evidence relating to prisons in Iran but also in the wider context of the treatment by the prison authorities of the appellant’s father (who died in custody) and the appellant’s claim that subsequently the Iranian authorities attempted to kill him. Frankly, it made no sense whatsoever that an individual whose involvement with rebel forces would, during such a lengthy detention, have become entirely apparent be kept, at the expense of the Iranian authorities, indefinitely in prison and there given a level of medical treatment which, as a poor and illiterate shepherd, the appellant could not have expected outside the confines of the prison. The background material indicates that the Iranian authorities operate a sophisticated bureaucracy and that they deal ruthlessly with those whom they consider a threat to the state. I do not accept that those authorities would detain the appellant apparently without any purpose other than to treat his medical conditions only then to decide that he should be summarily disposed of.
9. My difficulties in accepting the truth of the appellant’s account regarding his detention are significantly intensified by the account which he has given of his escape from the prison. Not only does the appellant claim the doctor who had been charged with killing him decided to put his own life

at risk by saving the appellant, but that the same doctor also took the highly dangerous step of contacting a complete stranger in the appellant's village in order to help arrange an agent to remove the appellant from Iran. I do not accept this part of the account as true.

10. I stress that I have considered this element of the appellant's account only by reference to all the evidence before me. However, I do not accept that the appellant and his father were arrested and detained as claimed nor at all. The question then arises whether the remainder of the appellant's account, even if accepted as true, would give rise to any risk to him upon return to Iran. I find that it does not. Even if I were to accept (and I see no reason to do so in the light of my rejection of the core incident of the appellant's claim as fabricated) that the appellant's uncles were rebels who fled abroad and that the appellant and his father may have given food to the Peshmerga, I find that the appellant had completely failed to prove that such matters would ever come to the attention of those who may interrogate him upon return to Iran. It is possible that the appellant will be questioned because he may have made an illegal exit from Iran but, absent any evidence of anti-state activities, I do not find that that fact alone would expose him to a real risk of harm.
11. In conclusion, therefore, I find that the appellant is not a witness of truth and I do not accept any part of his account as true. I certainly reject the core element of the appellant's account relating to his arrest and detention. Even if I were to accept the remainder of the account as true, I find that the appellant would not face a real risk of persecution or ill-treatment upon return to Iran either at the airport or subsequently living in his home area of the country. I acknowledge that the appellant may have physical and practical difficulties if his leg is amputated but the same would be true if he were to remain in the United Kingdom. His medical condition is not such as to entitle him to international protection. As regards Article 8 ECHR, I find that the appellant may have developed a private life during the years he has remained in this country but he has provided no details of that life (there was no evidence of his associations with any other individuals here) and his removal in pursuit of the legitimate aim of the control of immigration policy would, in my opinion, be proportionate. Having regard to the same factual matrix, I find that the appellant is not entitled to a grant of humanitarian protection.

DECISION

12. This appeal is dismissed on asylum grounds.
13. This appeal is dismissed on human rights grounds.
14. This appellant is not entitled to a grant of humanitarian protection.

Signed

Date: 16 January 2014

Upper Tribunal Judge Clive Lane