



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

Appeal Number: AA/02181/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 25th March 2015**

**Decision & Reasons
Promulgated
On 31st March 2015**

**Be
fore**

**MR JUSTICE CRANSTON
DEPUTY UPPER TRIBUNAL JUDGE FRANCES**

Between

**M G
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Gayle, Elder Rahimi Solicitors

For the Respondent: Ms A Brocklesby, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is an Iranian national born in April 1984. He appeals against the decision of First-tier Tribunal Judge Russell dated 19th August 2014 dismissing his appeal against removal on asylum and human rights grounds.

2. The Appellant arrived in the United Kingdom on 11th December 2007 and claimed asylum as a minor. He was released into the care of social services but failed to attend his interview on 17th January 2008. The Appellant was encountered by police on 9th October 2010 and he attended his substantive asylum interview on 12th March 2014.
3. In summary, the basis of the Appellant's claim is that he attended a party in 2006 in Tehran and consumed alcohol. The authorities discovered the party and arrested him and the other attendees. The Appellant made disparaging comments about the regime. He was taken to court and sentenced to 80 lashes and detained for fifteen days before being released. On release he was required to report to the authorities on a regular basis and undertake community service.
4. The First-tier Tribunal Judge found that the Appellant's claim lacked credibility because he had dishonestly claimed to be a minor when he was not. The judge rejected the Appellant's explanation that he was misinterpreted when he repeated his claim to have been born in 1990 during his substantive interview in March 2014 and only stated his real date of birth when challenged. The judge considered Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and rejected the Appellant's explanation for absconding. He found that the Appellant's claim to have left Iran in search of international protection was not credible.
5. Notwithstanding the judge looked at the Appellant's claim at its highest and found that it involved a very minor interaction with the authorities for which the Appellant was punished. There were no further problems with the authorities before the Appellant left Iran. The judge attached little weight to the writ of warning dated June 2009 and the letters from the Appellant's brother and neighbour. He found that the Appellant was of no further interest to the regime prior to his departure from Iran and he was of no continuing interest to the regime on return. The judge dismissed the Appellant's appeal under the Refugee Convention, the Immigration Rules (humanitarian protection) and on human rights grounds (Articles 2 and 3).
6. In relation to Article 8, the judge found that the Appellant's partner had not divorced her husband, who remained in Bulgaria, and there was no supporting evidence to show that the Appellant was living with his partner, an EEA national. However, the Appellant and his partner had a child and therefore the judge accepted that the Appellant had established family life.
7. The judge found that the Appellant had failed to show that he could not enjoy family life outside the UK. It was conceded by the Appellant's representative that the Appellant's partner was not a qualified person for the purposes of the EEA Regulations. The judge considered the best interests of the child and concluded that the Appellant had not shown that his removal engaged Article 8.

8. Permission to appeal was granted by Upper Tribunal Judge O'Connor on 7th January 2015 on the following grounds:
 - (1) The judge had failed to give sufficient reasons for rejecting the Appellant's explanation for absconding.
 - (2) The judge had failed to attach significant weight to the warning notice given the background evidence of the arbitrary and unpredictable nature of judicial procedures.
 - (3) The judge's finding that the threat to life contained in the letters was inconsistent with the nature of the offence was a finding which was not open to him on the evidence and that if the judge accepted the Appellant insulted the regime this was sufficient for him to be subject to execution.
 - (4) The judge's finding that the punishment, 80 lashes, received by the Appellant was not persecutory although it did amount to inhuman and degrading treatment was contradictory and unsustainable.
 - (5) In relation to Article 8, the judge's finding that there was no interference with family life because it could continue in Bulgaria was not open to him because the Appellant would be unable to obtain a travel document, and secondly the judge's finding that the Appellant's partner had no status in the UK was contrary to her EU citizenship.
9. In submissions Mr Gayle stated that the initial interview transcript indicated that the officer had asked the Appellant if he had anything to say before he was returned to Iran. This supported the Appellant's explanation that he had absconded because he was afraid of being returned. It was also plausible that the Appellant had claimed to be a minor because he was following the instructions of the agent. The judge had failed to give sufficient reasons for rejecting these explanations. The judge had also failed to take into account the ongoing interest of the authorities given the Appellant's evidence in his substantive interview that he was doing community service which amounted to ongoing harassment.
10. In relation to ground 2 the background evidence indicated the arbitrary nature of the regime. Therefore it was not implausible that the writ of warning was issued some years after the Appellant left Iran. This background evidence enhanced the plausibility of the document and the judge's finding that he attached little weight to it was therefore not sustainable in the light of the background evidence.
11. In relation to Article 8 Mr Gayle submitted that the Appellant was not entitled to any form of travel document and therefore he was unable to leave the UK. This was relevant to the judge's assessment of proportionality.

12. On behalf of the Respondent Ms Brocklesby submitted that the Appellant was here without status and it was conceded that his partner was not exercising treaty rights. Therefore there was no reason for either of them to remain in the UK since neither had any basis of stay. The judge considered all the evidence and found that the Appellant had failed to show that he was not able to live in Bulgaria.
13. In relation to the asylum claim the judge considered all the evidence and assessed it in a holistic manner. He accepted part of the Appellant's claim but not that he had made comments which were anti-regime or that he had fled Iran in search of international protection. The judge rejected the Appellant's explanation for absconding because his brother was an asylum seeker in the UK and had not been removed. The Appellant absconded for a significant period of time.
14. The judge engaged with the writ of warning and found that there were no further writs in the period since June 2009. The judge's finding that the Appellant was not at risk on return was open to him on the evidence and the judge was entitled to reject the Appellant's claim to have been subjected to community service. The judge had taken the background evidence into account in coming to these conclusions.
15. In response Mr Gayle submitted that the Appellant's partner was currently a qualified person and was now working. Her status had been vague at the time of the hearing before the First-tier Tribunal because she had just had a baby and was not working at that time. There was nothing to suggest that she was not entitled to be in the UK. The Appellant's explanation for absconding was credible because there was no reason for him to abscond unless he feared return given that his brother was an asylum seeker.
16. The Appellant had given a consistent account of the main events and the judge had failed to engage with the ongoing harassment during community service. The judge had a duty to deal with this matter given that it was the Appellant's reason for leaving Iran and there was evidence in the letters from the Appellant's family that he was of ongoing interest.

Discussion and Conclusions

17. It is worth noting at the outset that the judge found that the Appellant's dishonesty in claiming to be a minor and his failure to pursue his asylum claim until he was encountered by police seriously damaged his credibility. However, the judge went on to consider the Appellant's claim taken at its highest. With that in mind we shall deal with each of the grounds of appeal in turn.

Ground 1

18. The Appellant claimed that he had absconded soon after arriving in the UK because he was terrified that he would be returned to Iran. At paragraph 31 of the decision the judge rejected this explanation because the Appellant had contacted his brother, who had been in the UK for some time, soon after the Appellant arrived in the UK. We find that these reasons were sufficient for rejecting the Appellant's explanation. The judge found that the Appellant's claim to have left Iran in need of international protection was not credible. This finding was open to him on the evidence. The Appellant had arrived in the UK in 2007, given a false date of birth, absconded and only sought to pursue his asylum claim after his arrest in October 2010.

Ground 2

19. The weight to be attached to the writ of warning dated 2009 was a matter for the judge. At paragraph 33 of the decision the judge gave adequate reasons for why he attached little weight to this document. The writ of warning was issued three years after the incident and two years after the Appellant's departure from Iran, and there was no further interest in the Appellant since 2009. The judge's finding that the Appellant was not of ongoing interest was open to him on the evidence.

Ground 3

20. The judge found that the threat to the Appellant's life contained in the letters from the Appellant's brother and his neighbour were inconsistent with his claim to have been arrested and punished for consuming alcohol. Contrary to the grounds the judge did not accept that the Appellant insulted the regime. He found at paragraph 35 that this part of the Appellant's claim was not credible. This finding was open to the judge on the evidence and he gave adequate reasons for coming to that conclusion. The judge did not find the Appellant to be a credible witness for the reasons given at paragraphs 30 to 32.

Ground 4

21. The judge found that the Appellant was arrested and punished for drinking alcohol at a party in 2006. He took into account the background evidence, at paragraphs 9, 10, 23, 26, 36, 37 and 38, and found that the Appellant was not persecuted prior to leaving Iran and he would be of no interest upon return. The judge's finding that the Appellant had failed to show to the lower standard that he was a refugee was open to the judge on the evidence before him.
22. We find that grounds 1 to 4 disclose no error of law in the judge's decision to dismiss the Appellant's asylum claim.

Article 8

23. The Appellant has been in the UK illegally and formed a relationship with a Bulgarian national. It was accepted that the Appellant's partner was not a qualified person exercising treaty rights in the UK. The judge found that it was in the best interests of their child to remain with the parents. The Appellant had failed to provide sufficient evidence before the First-tier Tribunal to show that family life could not be enjoyed outside the UK. This finding was open to the judge on the evidence. The grounds of appeal disclose no material error of law because the Appellant's removal was not disproportionate in all the circumstances.
24. Accordingly we find that there was no material error of law in the decision of the First-tier Tribunal dated 19th August 2014 and the decision shall stand. We dismiss the appeal.

Notice of Decision

The appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 31st March 2015

Deputy Upper Tribunal Judge Frances

TO THE RESPONDENT FEE AWARD

I have dismissed the appeal and therefore there can be no fee award

Signed

Date 31st March 2015

Deputy Upper Tribunal Judge Frances