
**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: PA/12748/2016

**THE IMMIGRATION ACTS**

| **Heard at Bradford** | **Decision and Reasons promulgated** |
|---|---|
| **on 12 December 2017** | **On 02 February 2018** |

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**R K**
**(anonymity direction made)**

Appellant

**and**

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

Respondent

**Representation:**
For the Appellant: Mr T Hussain instructed by Halliday Reeves Law Firm.
For the Respondent: Ms Pettersen Senior Home Office Presenting Officer.

**ERROR OF LAW FINDING AND REASONS**

1. This is an appeal against a decision of First-tier Tribunal Judge O'Hanlon, promulgated on 12 May 2017, in which the Judge dismissed the appellant's appeal on all grounds.

## Background

2. The appellant is a national of Iran born on [ ] 1985. The Judge noted the respondent accepted the appellant's reasons for claiming asylum, based on his imputed political opinion, engaged the Refugee Convention. The appellant's nationality and identity are also not in dispute.
3. Having considered the evidence with the required degree of anxious scrutiny the Judge sets out findings of fact from [28] of the decision under challenge.
4. The Judge notes at [29] that the key finding to be made in the case related to the appellant's credibility. Having assessed the evidence, the Judge did not find the appellant to be a credible witness. The Judge's findings of fact in support of this conclusion, and lack of risk on return, can be summarised in the following terms:

    a. The respondent conceded that the evidence showed there were riots in Mahabad City on 7 May 2015 following the suicide of a Kurdish girl after being raped by the Iranian Ettela'at. The applicant claims to have been involved in such demonstrations. The respondent accepted the applicant provided information in relation to the demonstration which was broadly consistent with the internal evidence but considered the applicant had failed to provide any evidence of his attendance at that demonstration and his activities at the demonstration. The Judge found it somewhat implausible that the appellant would, at his first active political activism, become involved in the burning of an Iranian flag which action, as it is admitted elsewhere, would result in his execution or long-term imprisonment [31].
    b. The Judge found the appellant's account of the visit to his home address by the Ettela'at some four days after the demonstration to be unsatisfactory. The Judge noted the respondent's claim that the appellant's evidence in relation to security forces who were present at the demonstration and the fact the appellant was not arrested in the act of burning the flag is inconsistent, but did not find that to be determinative in light of the fact events at a significant demonstration would be volatile and fast moving. The Judge did find, however, the appellants evidence as to his identification and tracing by the Iranians security services and his evidence relating to the arrest warrant and photograph brought to his parent's home to be lacking in credibility. Despite the appellant claiming an arrest warrant and photograph had been brought to his house on an occasion the appellant was not present, he had not asked his family about the content of the arrest warrant or what the photograph showed. The Judge found it difficult to

credit that the appellant would not ask his family what the security services were accusing him of and what evidence they had which was causing them to attempt to execute an arrest warrant [32].

c. The Judge placed no weight upon respondent's submission that the Iranian authorities will not be able to identify and trace the appellant from a photograph in light of the background information stating the Ettela'at are a highly trained and efficient security force and that such tracing could have taken place [33].
d. The Judge considered the appellant's political activities in the United Kingdom and the photograph showing he had taken part in a demonstration in London on 12 July 2016 outside the Austrian Consulate. The appellant indicated he had not become involved in any other political activities with the KDPI in the United Kingdom because he had not been informed of the same and had not made any approach to this group although claimed he had close friends who were active. The Judge found the appellant's evidence in this respect to be lacking credibility as on the one account the appellant claimed he had been forced to leave his home country as a result of his behaviour at a political demonstration, claimed he felt more free and able to be involved in political matters in the United Kingdom, yet had only attended one demonstration and had not become involved in any other political activities. This was not found to be credible [34].
e. The Judge found in light of the above findings as to lack of political activities in the United Kingdom that the appellant did not have a genuine subjective fear on return to Iran due to his imputed political opinion [35] and that he will not be at risk on return as a result of his illegal exit [36].
f. The appellant's representative asserted the appellant would be at risk in relation to Internet activities but the Judge states that he had not seen evidence of any significant Internet history of the appellant which would bring him to the attention of the Iranian authorities. The evidence seen was a photograph on a Facebook page of another person and the Judge did not consider there was any reasonable likelihood of the appellant coming to the attention of Iranian authorities on this basis [37].
g. The Judge did not consider the appellant would be at risk on return at a 'pinch point' due to the lack of credibility in his claim [38].
h. The Judge found the applicant was not entitled to be recognised as a refugee [39], was not entitled to a grant of humanitarian protection [40], or that there would be a breach of the European Convention of Human Rights [41 – 42].

5. The appellant applied for permission to appeal which was granted by another judge of the First-tier Tribunal on the grounds it was arguable the Judge failed to give adequate or sustainable reasons for rejecting the appellant's account.
6. The respondent opposes the application in the Rule 24 response of the 27 September 2017.

## Error of law submissions

7. The appellant asserts that the Judge erred in rejecting his account as he failed to express any sustainable reasons as to why this should be so. It is asserted at [31] that the Judge noted the respondent conceded that the demonstration the appellant claims to have been involved in took place but argues the finding it was somewhat implausible the appellant would become involved in the burning of a flag at his first expression of political dissent to be "somewhat implausible" is not a sustainable reason for the rejection of the appellant's account.
8. The appellant asserts the Judge provides inconsistent findings in relation to the finding the appellant's account of the visit of the authorities to his parent's house was unsatisfactory because he had not asked his family what he was being accused of.
9. It was submitted a reading the determination did not allow the appellant to understand why his claim had been rejected as the key reason for finding the appellant not to be credible and rejecting his account was not explained. It was submitted adequate reasons had not been given and that there was no inconsistency in the appellant's case.
10. The Secretary of State's case is that the decision is sustainable. It is argued in the Rule 24 response that the grounds amount to a disagreement with the findings and are misconceived as the Judge did not find, even accepting the country material evidence that the demonstration referred to by the appellant took place, that the appellant had actually attended the demonstration.
11. It was submitted on the respondent's behalf that what the appellant was trying to do is to find the Judge should have given reasons for reasons. It was argued the Judge gave adequate reasons for why the claim was not accepted.
12. In reply the Mr Hussain referred to the appellant's sur plas activities and submits it was clearly found that the appellant did attend a demonstration in the United Kingdom. As such the Judge should have assessed the risk arising therefrom. It was submitted that as it was the appellants first demonstration 'human nature' led to the flag being burnt in the heat of the moment as an expression of individual opinion.

## Discussion

13. Guidance on reasons challenges can be obtained from a number of authorities including *Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) Blake J)* in which the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue 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; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.
14. It was noted in *MD (Turkey) v SSHD [2017] EWCA Civ 1958* that adequacy meant no more nor less than that. It was not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons, is in part, to enable the losing party to know why she has lost and it is also to enable an appellate court or tribunal to see what the reasons for the decision are so that they can be examined in case there has been an error of approach.
15. The Judge clearly gave reasons in the decision for why the appellant's credibility was not accepted. Those reasons arguably make sense when the decision is read as a whole. The appellant claims that, whilst not being politically active in the past, he attended a demonstration that it was accepted by reference the country information had taken place in Iran. The appellant claims that he is at risk as a result of not only attending the demonstration but also for burning an Iranian flag. The Judge notes the serious consequences for a person acting in this way as the burning of the flag will be perceived as an attack upon the government as well as the state of Iran. The Judge notes that execution or long-term imprisonment was likely to follow.
16. There was no evidence before the Judge regarding how the appellant felt at the demonstration but concluded it was not credible that he would have behaved in such a way as his first demonstration. Mr Hussain's submissions to the effect that the appellant got carried away with the moment and did what he did as a result may be his opinion, but does not appear to reflect what was said before the Judge.
17. Despite committing such a serious act as the burning of a flag at a demonstration which was attended by the Iranians security forces, the appellants claim was that he was not arrested on the day. He claims that he was able to return home and then four days later, at a time he just happened not to be present in the family home, the Iranian security services came to arrest him being in possession of both an arrest warrant and photograph. Such modus operandi in principle is not arguably imperceivably in all cases, as the police in the United

Kingdom employ similar tactics for policing large-scale events such as demonstrations and football matches. It was therefore necessary for the Judge to consider this evidence together with all other evidence, in the round, which the Judge arguably did.

18. The Judge found that not only was it implausible that the appellant would have involved himself in a potentially fatal activity of burning an Iranian flag on his first occasion of attending a demonstration, which is an arguably sustainable finding when considered against the country information and the fact that those in Iran would be fully aware of the consequences of such an action, but was also concerned with the combined fact that despite claiming that his property was visited by the Ettela'at (an organ of the Iranians security services with a reputation for taking a hard line approach to individuals who come to their intention, including the use of inhumane treatment such as long detention and torture to secure confessions), the appellant did not asked his family members who clearly informed him of the visit what was written on the alleged arrest warrant or what was in the photograph. It is reasonable to assume, as the Judge did, that a person having been told they were the subject of adverse interest would have wanted to have known what the material was that was produced at the house. The fact the appellant made no such enquiry in all the circumstances is arguably relevant to the consideration of the credibility of the appellants claim. The finding by the Judge that it was difficult to credit that the appellant would not ask his family what he was been accused of and what evidence they had is an arguably sustainable finding.

19. The core finding by the Judge, that the appellant’s attendance at the demonstration had not been made out, is a finding within the range of those reasonably available to the Judge on the evidence which is supported by adequate reasons. It is not made out the reasons given are in any way irrational, deficient, or contrary to the material the Judge was asked to consider.

20. In relation to the appellant’s activities in the United Kingdom, the Judge noted the appellant had attended one demonstration in 2016 outside the Austrian Consulate. It is not made out that this would have come to the attention of Iranian authorities. The Judge noted the appellant had not joined any other group within the United Kingdom such as the KDPI. The Judge did not find that the appellants claim to have been politically active in attending the demonstration in Iran, at which he burnt the flag, as support of a claimed actual or potential imputed political opinion supported by the evidence of a lack of activities in the United Kingdom. This is a finding within the range of those reasonably open to the Judge.

21. In relation to Internet activities, the Judge noted the evidence of the same was poor with no evidence of a significant Internet history that would bring the appellant to the attention of the Iranian authorities. A photograph on the Facebook page of another, referred to at [37], proves nothing other than the presence of the photograph and maybe the content. It is known there are various Facebook settings including

privacy settings which prevent access to an account. It is also not made out before the Judge that the account in question is one which the Iranian authorities would have known about or shown any adverse interest in or have access to the same. It is not made out who is responsible for the posting of the photograph or why it could not be deleted. The finding by the Judge that the presence of the photograph did not establish arguable real risk is within the range of those reasonably available to the Judge on the evidence.

22. Whilst the reasons given by the Judge may not be as numerous of those that may be given other appeals, I find this is not as a result of a failure to understand or make sufficient relevant findings but rather as a result the fact that on the limited evidence made available the Judge was not required to do more. A reader of the determination clearly understands why the Judge came to the conclusion he did. The Judge clearly considered the matter with the required degree of anxious scrutiny and has given adequate reasons in support of the findings made. Whilst the appellant may disagree with those findings it has not been established that they are in any way perverse, irrational, or contrary to the evidence.

23. The appellant has failed to make out the findings were not reasonably open to the Judge on the evidence or not adequate to support the adverse credibility finding. As such, the appellant has failed to make out anything that warrants the Upper Tribunal interfering with this decision.

## Decision

**24. There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

25. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Judge of the Upper Tribunal Hanson

Dated the 31 January 2018