



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/04528/2013

THE IMMIGRATION ACTS

Heard at Manchester
On 3 February 2014

Determination Sent

Before

The President, The Hon. Mr Justice McCloskey and
Upper Tribunal Judge Martin

Between

SHAPOUR HASSANI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Nicholson (of Counsel) instructed by Broudie Jackson Canter,
Solicitors

For the Respondent: Ms Johnstone, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

INTRODUCTION

1. The Appellant is a national of Iran, aged 33 years. This appeal has its origins in a decision made on behalf of the Secretary of State for the Home Department (*the Secretary of State*), dated 25th April 2013, whereby the Appellant's application for refugee status was refused.

2. Our analysis is that the Appellant's application for refugee status entailed the following core assertions:
 - (i) He first attended an anti-government demonstration in Tehran on 15th June 2009, designed to highlight the lack of voting rights of Irani citizens.
 - (ii) Between 18th June 2009 and 25th May 2012 he attended five further comparable demonstrations in Tehran. His role was that of mere participant and he was not the subject of any adverse attention.
 - (iii) In the course of these demonstrations, his friends, using the Appellant's mobile phone, recorded footage showing sections of the crowd, including the Appellant, chanting, together with the burning of waste bins.
 - (iv) The Appellant subsequently uploaded these videos onto his computer and retained them.
 - (v) On 20th November 2012, the police escorted the Appellant's brother to the police station and went to the family home, seizing some unspecified belongings, including the Appellant's laptop. At this juncture, another brother advised the Appellant not to go home. He stayed in a friend's house for two nights. On the second of these dates, the police went to the Appellant's place of work and his parent's home, signalling an intention to detain him. He then travelled to the north of Iran, staying in Ramsar for six nights.
 - (vi) With the assistance of a brother and an agent, he then travelled to Turkey and onward to the United Kingdom, arriving on 6th December 2012.
3. The Appellant claimed asylum upon arrival in the United Kingdom on 7th December 2012. Following the customary interviews, the aforementioned decision on behalf of the Secretary of State ensued. The refusal of refugee status was based mainly on a close analysis of various claims and assertions made by the Appellant which were deemed unworthy of belief. Various perceived inconsistencies and discrepancies were highlighted. It was further determined that, in any event, the Appellant would not be exposed to a real risk of any form of proscribed treatment upon return to Iran, essentially on account of his modest profile.

FIRST-TIER TRIBUNAL DETERMINATION

4. The First-Tier Tribunal (the "FtT") dismissed the Appellant's ensuing appeal. We distil from the determination the following clear findings:
 - (a) The Appellant, in common with hundreds of thousands of other Iranians, engaged in three public demonstrations protesting against the Presidential election, in June and July 2009, encountering no problems with the authorities.

- (b) These were the only political activities in which the Appellant engaged.
- (c) Some demonstrations were recorded on his mobile phone.
- (d) He did not upload and retain these recordings on his laptop.
- (e) He has engaged in no political activities in the United Kingdom.

It was not disputed by either parties' representative that, by virtue of finding (d), the Judge, by necessary implication, rejected those parts of the Appellant's story relating to subsequent seizure by the police of an incriminating laptop and discovery of the alleged video recordings.

5. Duly analysed, we consider that the Appellant's claim for refugee status had three core elements: his participation in the demonstrations, the recording of some of these events on his mobile phone and the subsequent uploading of these records onto his laptop, with the consequences which he attributes to the latter element. The Judge accepted the first two elements, but disbelieved the third. Thus, the Appellant's case was found to be credible in two key respects, but not credible in one further, critical respect. The Judge articulated a series of reasons for disbelieving the third element of the Appellant's claim. We summarise these as follows:
- (i) The Appellant gave two markedly inconsistent explanations for the alleged uploading and retention of the video recordings on his laptop.
 - (ii) He stated in his evidence that there was no internet connection in his home area.
 - (iii) Given this lack of internet connection, he was unable to explain how his younger brother had illegally downloaded music from the internet onto "pirated" CDs, which he sold for a living.
 - (iv) While (on the one hand) claiming that his younger brother had been arrested (in effect, the event precipitating the Appellant's flight), he (on the other hand) testified that he had not asked his parents about his brother during several telephone conversations following his flight from Iran.
 - (v) He then stated that during his brother's detention the recordings on the Appellant's laptop had been exposed - based on what his brother had told him.
 - (vi) Next, he testified that he had not spoken to his brother, repeating this.
 - (vii) This was followed by an answer to the effect that he was "*only guessing*" what his brother had said in detention.

- (viii) Whereas when interviewed the Appellant stated that his older brother had informed him of the release of his younger brother from detention before 21st March 2013, his evidence to the Tribunal was that he did not know for how long the brother had been detained.
- (ix) Whereas in the screening interview he stated that he went into hiding in the north for eight days, at the main asylum interview his account was that he had spent two days with a friend in Shahriyar, followed by six days in Ramsar in northern Iraq.

The Judge made the following explicit statements regarding the Appellant's credibility:

"In my judgement, there is a clear contradiction in the Appellant's oral evidence. I find that the Appellant cannot keep to a consistent story because he has not been telling the truth

I find that there are material inconsistencies in the appellant's evidence relating to the core elements of his asylum account notwithstanding the fact that it is a relatively simple story. At the hearing, the Appellant showed himself to be an unreliable witness ..."

- 6. In the Determination, the Judge also referred to the decisions in BA Iran CG [2011] UKUT 00036 (IAC) and SB Iran CG [2009] UK AIT 00053. In a latter passage, he stated:

"By reference to the Country Guidance Case Law in SB and BA, the Appellant will not face a real risk of return to Iran merely by reason of him having exited [sic] Iran illegally or being returned from the UK as a failed asylum seeker. I conclude that the Appellant's claim on the ground of his imputed political opinion is not well founded."

This passage is found at the end of paragraph [36]. The Judge then expresses his omnibus conclusion:

"[37] On the basis of the facts as described above, I find that the Appellant has not discharged the burden of proof of having a well founded fear of persecution for a reason recognised by the Geneva Convention."

[Emphasis added.]

The Judge, in similar terms, also rejected the Appellant's claims for humanitarian protection and under Articles 2 and 3 ECHR.

PERMISSION TO APPEAL: PRACTICE

7. We consider it necessary to highlight an issue of practice relating to applications for permission to appeal to the Upper Tribunal. The context is the following.
8. An application was made for permission to appeal to the Upper Tribunal. This was based on grounds settled by Counsel. The application was refused by a Judge of the FtT. Next, the application was renewed, based on newly formulated grounds settled by different Counsel. This resulted in permission to appeal being granted by Upper Tribunal Judge Grubb.
9. At the outset of the hearing of this appeal, much time was expended in this Tribunal's attempts to establish with clarity the terms of the grant of permission to appeal. Ambiguities and doubts abounded on account of the existence of two separate sets of grounds of appeal. As a result, there was substantial obscurity about the "grounds" to which the Judge was referring in the grant of permission to appeal. Uncertainty bordering on confusion resulted. As we pointed out at the hearing, this was pre-eminently avoidable by the simple mechanism of ensuring that where an initial application for permission to appeal is refused, any subsequent application must be framed in comprehensive terms, in a composite document. This, sadly, did not occur in the present case. We would emphasise that, in furtherance of the overriding objective and, in particular, the avoidance of wasted Tribunal time and effort, the unsatisfactory practice which this appeal exposed will no longer be acceptable. It will be substituted by the good practice which we have identified.

THE APPEAL: CONSIDERATION AND CONCLUSIONS

10. The case which was argued before us had two central strands. The first consisted of an attack on certain findings made by the FtT Judge, coupled with an asserted failure to make other findings. The second was based on the decisions in SB and BA and focused on the Judge's treatment of the issue of risk upon return to Iran.
11. The first of the two strands which we have identified above entailed arguments by Counsel that certain findings by the Judge were unsustainable as they are contaminated by perversity. The first finding challenged in this way was the Judge's rejection of the Appellant's claim that he had uploaded the mobile phone recordings of certain political demonstrations to his laptop. In paragraphs [31] and [32] of the Determination, the Judge gives a series of reasons for this finding. They are included in the list which we have formulated in paragraph [5] above. We remind ourselves that the test to be applied is that enshrined in the decision of the House of Lords in Edwards - v - Bairstow [1956] AC 14. We consider that it was open to the Judge to make this discrete finding, that no irrationality has been demonstrated and that sufficient and intelligible supporting reasons have been provided. The significance of this is that the Judge's rejection of what we have identified as the third of the three core elements of the Appellant's story is vindicated.

12. Next, the Judge's evaluation of the Appellant's evidence relating to the issue of post-flight contact with his younger brother was also condemned as perverse. We reject this contention. In paragraphs [33] and [34] of the Determination, the Judge expresses intelligible and sustainable reasons for this particular assessment. We discern no irrationality in these passages. Moreover, it is quite clear to us that the Judge would have rejected the Appellant's internet uploading claim in any event, quite apart from this finding, for the reasons expressed in the earlier passages in the Determination, in paragraphs [31] - [32].
13. Next, we turn to the challenge to the Judge's finding concerning the Appellant's movements in the immediate aftermath of the events allegedly involving the security forces. In short, the Judge found a material discrepancy between the Appellant's account when interviewed and his evidence under cross examination. We remind ourselves again that the threshold to be overcome here is that of irrationality. Our evaluation of this particular challenge is more marginal. However, on balance, we consider that it was reasonably open to the Judge to find that a material discrepancy had been demonstrated. We repeat that, in any event, the Judge's earlier expressed reasons for rejecting the Appellant's laptop uploading claim, independent of this discrete finding, are ample and unimpeachable. They are unrelated to this discrete finding. Thus this isolated finding, even if erroneous in law, would not contaminate any of the other findings in the Determination or the reasons formulated and would, therefore, be immaterial.
14. We would highlight also the Judge's description of the Appellant as "*an unreliable witness*". In our judgment, the findings littered throughout paragraphs [31] - [34] of the Determination, which we have found to be unassailable, provide ample grounds for this assessment. In this context, we enquired of Counsel whether the "*unreliable witness*" assessment could also be construed as embracing an adverse evaluation of the Appellant's demeanour when testifying. Counsel replied in the negative, adding the submission that it was not part of the judicial function to assess demeanour. We consider this submission manifestly unsustainable.
15. Next, we turn to that part of the Appellant's challenge which is based on the Judge's failure to make findings. This relates to the post-2009 demonstrations and, hence, whether any of these was recorded or subsequently uploaded to the Appellant's laptop. We shall deal first with the latter issue. As we have concluded, the Judge's finding that the 2009 demonstrations were not uploaded as claimed and the reasons therefore are beyond reproach. We consider it inevitable that if the Judge had specifically addressed the issue of post-2009 demonstrations, precisely the same finding would have been made.
16. Thus the only remaining issue of substance to be considered is whether the Judge erred in law by failing to make a finding about the Appellant's claim that he had attended post-2009 demonstrations. This involves the following analysis:

- (a) At the screening interview, the Appellant's account described participation in a single demonstration in 2009 and a single video recording thereof.
 - (b) In response to question 3 of the asylum interview, he stated that he was in fear of the government because he "*attended demonstrations in 2009*".
 - (c) In response to question 37, he stated that he first attended a demonstration on 15th June 2009.
 - (d) In reply to question 47, he stated that he attended "*other demonstrations*" on 18th June 2009, 20th June 2009, 17th July 2009, 14th February 2011 and 25th May 2012.
 - (e) In response to question 52 he stated: "*I gave my mobile to my friends to video record and it was in all the demos*".
 - (f) Replying to paragraph 56, he used the terminology "*the demos*".
17. In paragraph 13(ii) of the Determination, the Judge recorded the Appellant's claim that he had attended all of the above mentioned public demonstrations and his related claim that these had been recorded via his mobile phone. In paragraph [28], the Judge used the plural "*demonstrations*" without reference to any specific dates. In paragraph [29], the Judge confined the Appellant's claim to attending demonstrations in 2009 only. This is repeated in paragraph [31]. Finally, as noted above, the Judge made a specific finding - in paragraph [36] - that the Appellant attended post-election street "*demonstrations*" in Tehran in 2009.
18. On balance, we consider that the Judge's finding that the Appellant participated in public demonstrations against the governing regime in Iran is confined to events in 2009. This embraces the first three of the five demonstrations described by the Appellant in his asylum interview. Thus there was no separate finding by the Judge in respect of the fourth and fifth events which, per the Appellant, occurred on 14th February 2011 and 25th May 2012. The Appellant's challenge to this Tribunal isolates this failure as an error of law. We reject this submission. As we have highlighted above, the Judge accepted the first two of the three core elements of the Appellant's claim. The first concerned his attendance at anti-Iranian government demonstrations. The Judge has explicitly found that the Appellant attended three of these. We accept that the Judge should have made a clear finding about the Appellant's alleged attendance at the fourth and fifth of the alleged street protests. However, it is clear that if the Judge had explicitly addressed the issue of the Appellant's attendance at the two later demonstrations, the finding would have embraced these attendances also. The recording of, rather than attendance at, protest demonstrations was the issue. Nothing adverse to the Appellant flows from the failure identified. It is immaterial. No error of law has been demonstrated.
19. The third, and final, aspects of the Appellant's challenge rests on the Judge's application of the country guidance decisions in BA and SB. We consider that the

correct formulation of the question of law for this Tribunal is whether the Judge erred in law in any material respect in her application of either of these two decisions *to the findings made*.

20. We begin by addressing the question of the Appellants **relevant characteristics**. He is one of many hundreds of thousands of persons who attended a series of anti-government street protests in Tehran. He did so on five occasions, between June 2009 and May 2012. He recorded parts of these events on his mobile phone, with the assistance of friends. He was a mere participant in each of these events. He has engaged in no other political activity in his life. He has at no time attracted any attention from the security forces or any government agency. His profile is modest and discrete. If he returns to Iran it will be evident that his provenance is the United Kingdom. It was not contended that the Appellant has any other material characteristic.
21. The argument that the Appellant, upon returning to Iran, will be at risk of proscribed treatment was founded on the following passages in a report published by the UK Home Office Country of Origin Information Service in January 2013:

“[Per the APCI report 2008]

32.22 *According to Article 34, any Iranian who leaves the country illegally, without a valid passport or similar travel documents, will be sentenced to between 1 and 3 years imprisonment, or will receive a fine*

In order to proceed the cases relating to illegal departure, a special court is located in Mehrabad Airport in Tehran

If an Iranian arrives in the country, without a passport or any valid travel documents, the official will arrest them and take them to this court. The court assesses the background of the individual, the date of their departure from the country, the reason for their illegal departure, their connection with any organisations or groups and any other circumstances. The judge will decide the severity of the punishment

*This procedure also applies to people who are deported back to Iran, **not in the possession of a passport containing an exit visa***

In the same passage, the offence of illegal departure from Iran is described as “*easily observable and provable*”. In the following paragraph, an excerpt from the Danish Immigration Services Report is reproduced:

*“... A person who has left Iran illegally **and who is not registered on the list of people who cannot leave Iran** will not face problems with the authorities upon return, though the person may be fined*

*The fine for illegal exit can run up to approximately 5,000 USD. **To the***

knowledge of the Embassy, people who have left Iran illegally are not detained upon return."

[Emphasis added.]

22. The next section of the COI report is entitled "Failed Asylum Seekers". This draws heavily on the Amnesty International Report of May 2011, which states:

"Failed asylum seekers risk arrest if they return to Iran, particularly if forcibly returned, where their asylum application is known to the authorities."

[Our emphasis.]

This is followed by an anecdotal report from an unnamed Judge:

"Asylum seekers are interrogated on return, whether or not they have been political activists in Iran or abroad. If they have tried to conduct propaganda against Iran, then they are culpable and are detained until a judge decides the sentence."

The Amnesty International report is the most recent country evidence of relevance to this appeal. The point was made that it post dates the extant country guidance decision of the Upper Tribunal in SB Iran CG [2009] UK AIT 00053. We have considered in particular paragraph [53] of SB, in the light of the further country evidence presented. We have also considered the subsequent decision of the Upper Tribunal in BA Iran CG [2011] UKUT 36 (IAC). In each of these cases it was held that Iranians who departed their country illegally and return subsequently, whether by compulsion or otherwise, are not in general exposed to a real risk of persecution or ill treatment. We would highlight in particular paragraph [67] of BA:

"While returning from Britain is at present is an increased risk factor, the mere fact that an appellant is returning from Britain does not lead to a risk of persecution."

23. We have considered the Judge's findings, our analysis of their content and scope, the country evidence brought to our attention, the decisions in SB and BA and the arguments addressed on the Appellant's behalf. Having regard to the Appellant's material characteristics, as we have assessed them, we conclude that upon returning to Iran the Appellant will not be exposed to a real risk of persecution or any other form of proscribed treatment, whether on account of his actual or perceived political opinion or otherwise. This equates with the conclusion expressed in paragraph [36] of the FtT's Determination. While we have conducted a somewhat more elaborate exercise than the Judge, her conclusion betrays no error of law.

DECISION

24. On the grounds and for the reasons elaborated above, we dismiss the appeal. The decision of the FtT is hereby affirmed.

Bernard McCloskey.

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Date: 13 February 2014