



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

Appeal Number: AA/08625/2013

THE IMMIGRATION ACTS

**Heard at Stoke-on-Trent
On 18 March 2014**

Determination Sent

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

SHAHROKH MIRZAEI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The appellant, Shahrokh Mirzaei, was born on 26 May 1977 and is a citizen of Iran. The appellant had previously claimed asylum in the United Kingdom in 2003 but had returned voluntarily to Iran in August 2006. He left Iran again on 8 August 2012 travelling by lorry through Turkey to the United Kingdom where he arrived and claimed asylum on 24 August 2012. On 29 August 2013, he was refused asylum and a decision was also taken to remove him from the United Kingdom as an illegal entrant. The appellant appealed against that decision to the First-tier Tribunal (Judge P J

Clarke) which, in a determination dated 12 October 2013, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The grounds of appeal assert that the judge carried out an inadequate assessment of the evidence which led him to find, erroneously, that the appellant's account of past events in Iran was not credible. The instances of the judge's alleged misunderstanding of the evidence, his failures to consider explanations provided by the appellant for apparent inconsistencies and rejections of the appellant's account without giving adequate reasons are numerous and are set out in detail in the grounds of appeal. Having considered the determination very carefully, I have concluded that some of the alleged inadequacies in the determination are made out. I shall give particulars of those instances below. However, it should first be recorded that Judge Clarke has clearly striven to carry out a detailed analysis of the appellant's (somewhat complex) account of past events.
3. The appellant claims to have joined a spiritual group in Iran called Interuniversal Mysticism (hereafter IUM). In the section of the determination headed "credibility findings" the judge, at 82(v), noted that the appellant had been asked at interview about the differences between IUM and Islam as practised in Iran. He had only been able to provide details of one difference (the absence of a need for intermediaries such as imams in the practise of IUM). The judge considered that this "cast doubt on his understanding of IUM." The judge considered that the appellant was "clearly an educated man; and had he been a true follower, I consider he would have been able to explained further differences." Mr McVeety, for the respondent, acknowledged that the judge in reaching this finding has failed to have regard to the various detailed answers regarding IUM which the appellant had given in his asylum interviews. For example, in his interview answer at [40] the appellant has given a detailed answer to a question about the difference between Islam and IUM but the judge makes no reference to this in his determination. Whilst the judge was not obliged to accept that the interview record effectively rebutted the respondent's submission that the appellant had limited knowledge of IUM, I find that he should have engaged more fully with the appellant's evidence, in particular the interview record. Given that there were parts of the appellant's evidence which supported his claim to be a member of IUM, I find that the judge should have explained in greater detail why he found that the appellant was not a true follower of IUM.
4. At [82(vii)] the judge found that the appellant's explanations,

and accounts of his Facebook difficult to follow and contradictory. I am unclear how he was able to access Facebook without the regime [in Iran] being aware. He states that he used a VPN which could evade regime censorship... However he does not explain how those who he wished to access the Facebook pages could do so.

A VPN is a Virtual Private Network which enables a computer to send and receive data across shared or public networks as if it is directly connected to the private network whilst benefitting from the functionality, security and management policies of a private network. As the grounds point out, a VPN does not require the users to access the network through the same item of computer hardware. I accept that the judge appears to have drawn a negative inference from what he perceived to be the appellant's failure or refusal to explain "how those who he wished to access the Facebook pages could do so" whilst a proper understanding of the nature of a VPN may have resolved that apparent anomaly in the appellant's evidence. I accept that the judge has wrongly found that the appellant's account of the use of a VPN diminished his credibility.

5. At [82(x)] the judge found that he was "not satisfied that the appellant placed posters of Karaj [a city in Iran]." The posters bore the photograph of Mohammad Ali Taheri, the founder of IUM. The judge noted that "the only evidence [the appellant] has produced is of another placing of posters on a bridge which, as he accepted, were nothing to do with him." Here, the judge refers back to [45] of his determination and whilst that paragraph deals with the appellant's evidence about putting up posters I can find no reference in the paragraph to the "placing of posters on a bridge." The grounds of appeal assert that the appellant's account of putting up posters is both internally consistent and consistent with the background material. I can identify no proper reason in the determination to explain why the judge was not satisfied that the appellant placed the posters in Karaj as he had claimed. The finding at [82(x)] is little more than a bare assertion that the judge did not believe this part of the account.
6. At [82(xiii)] the judge states that, "I also it implausible and incredible that [the appellant] would have returned to Sepah to ask for his documents back." The appellant had travelled to the Sepah base and asked for the return of his passport and military card. He had been told by the authorities that these documents would be returned to him and he would be informed when he might attend again to collect the documents. Again, it is not at all clear why the judge has rejected this evidence out of hand.
7. As I have indicated above, there is much detailed and accurate analysis of the evidence in the determination. However, in the instances which I have set out above, I find that the judge has either failed to understand the evidence given by the appellant (and, as a consequence, unfairly found the appellant's credibility to have been diminished) or he has asserted that he does not believe parts of the appellant's evidence without giving any or any adequate reasons for such findings. I find that there are sufficient examples of the judge's analysis faltering so as to render the determination as a whole unsafe. I stress that this conclusion does not mean that the appellant should have been believed in all those instances where I find the judge's analysis to be inadequate. It does mean that all the factual findings of the judge should be set aside and the appeal considered *de novo*. Given that extensive oral evidence may be adduced,

that is a task which I consider may be better addressed at a fresh hearing in the First-tier Tribunal which will need to remake the decision.

DECISION

8. The determination of the First-tier Tribunal which is dated 12th October 2013 is set aside. None of the findings of fact are preserved. The matter shall be heard again in the First-tier Tribunal (not Judge P J Clarke) and that Tribunal shall remake the decision.

Signed

Date 2 April 2014

Upper Tribunal Judge Clive Lane