



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

Appeal Number: AA/11113/2013
AA/11114/2013
AA/11115/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 24th June 2014**

**Determination Sent
On 10th July 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

**AZ
MZ
CAC
(ANONYMITY DIRECTED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr James Collins, Counsel instructed by Irving and Co,
Solicitors

For the Respondent: Mr Gregor Jack, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The appellants are citizens of Iran who were born on the (1) 21st September 1975, (2) 24th February 2007 and (3) 4th June 1981. They appeal, with permission, against the decision of the First-tier Tribunal (Judge Wright) to dismiss their appeals against the decision of the respondent to refuse their applications for asylum and to remove them from the United Kingdom. The

first appellant is the husband of the second appellant and the father of the third appellant. All further references to “the appellant” are to the first appellant.

The appellant's case

2. The appellant's case may be summarised as follows.
3. About 19 years ago, the appellant was detained for a period of 8 days due to his participation in an anti-government protest that concerned a fire at a school in which some of the students died.
4. Whilst at university, he was cautioned by the authorities on several occasions as a result of his activities with the Islamic Association. These activities culminated in him being detained and beaten by members of the Iranian internal security forces over a period of nearly two months. Upon his release, he was banned from returning to the university for a period of two semesters.
5. The appellant campaigned on behalf of Mr Khatami in the May 1997 Presidential elections. Mr Khatami was duly elected and the appellant thereafter settled down to his studies, which he completed in 2001. However, his activities as a student prevented further study with a view to him becoming a surgeon, and the authorities denied him a licence in order to practice as a general practitioner. He did however secure employment as a medical practitioner with an oil company in Gachsaran.
6. The appellant was later forced to move to Mahshahr due to his father's trade union activities in Gachsaran. Mahshahr had a significant Arab population, many of whom he treated for injuries sustained during their conflict with the government in 2005. He was however warned by the authorities to desist from doing this.
7. In 2006, the appellant wrote an open letter to the government in which he expressed concern about the adverse effects on public health that were being caused by pollution in Mahshahr. This letter received much publicity in the broadcast and printed media. The appellant was arrested and detained for a period of 2 weeks. He was told that if he retracted the letter his father (who was serving a term of imprisonment for his trade union activities) would be released but, if he did not, he would never see him again and other family members would also be detained. The appellant therefore gave a filmed interview in which he retracted his earlier claims and said that there were no problems with pollution. As a result, the appellant was released on condition that he took no further part in anti-government activities. His father was released shortly afterwards and the appellant was issued with a licence to practice medicine.
8. Upon his release, the appellant opened his own surgery, whilst continuing to work at the hospital attached to the oil company.

9. During the 2009 Presidential election campaign, the appellant campaigned on behalf of Mr Moosavi. However, on the day of the election, the authorities closed down his surgery and seized his computers. He was informed that the closure would be indefinite. Two weeks later, he was sacked from the hospital without being notified of the reason.
10. Two or three months after the election, the appellant returned to Gachsaran where he worked in the medical practice of a friend. During this period, he travelled twice to Shiraz in order to participate in anti-government demonstrations. Whilst in Shiraz, he met a number of friends from the Islamic Association who informed him of the routine rape of prisoners who were being held in Iranian jails. At their request, the appellant signed a petition that was to be sent to Geneva. He also visited an Iranian prison where he examined two prisoners who claimed to have been raped. This was at the beginning of 2010.
11. In June 2010, the appellant was arrested whilst at his father's house in Gachsaran. He was detained in Shiraz for 40 days, during which time he was interrogated about the petition that he had signed. He was then remanded in custody by a judge in Dadgostri. Upon his return to detention in Shiraz, he told his inquisitors that he did not have any further information to give them. However, he suggested that if he was released he would assist them in discovering the identity of others who had signed the petition. He was released for a period of two weeks, in November 2010, upon the security of the title deeds to properties owned by his mother and his brother. This was arranged so that he could attend his father's funeral. However, he went into hiding and stayed for approximately 2 months at the house of a friend in Shiraz. His wife and son remained in Mahshahr
12. In January 2011, the appellant left Iran using a false passport that had been provided to him by an agent. He flew to Dubai where, two days later, he was joined by his wife. He travelled to Abu Dhabi, where he applied for entry clearance to the United Kingdom, in his own name, before returning to Dubai. However, he was forced to return to Iran because his leave to remain in Dubai (which was only valid for 10 days) was due to expire. His wife followed him two or three days' later, and they continued to live at a friend's house in Shiraz. In February 2011, the UK embassy in Abu Dhabi granted the appellant's application for entry clearance. Therefore, in April 2011, the appellant travelled to Turkey, upon a false passport, where he met his wife. They then boarded a flight to the United Kingdom, using the visa that had been granted to the appellant in his own name.
13. The appellant fears that if he returns to Iran he will be arrested and ill-treated because he is wanted in connection with his human rights activities and because he absconded whilst on temporary leave from prison.

The primary decision

14. The respondent's official (hereafter, "the decision-maker") concluded that the appellant's account was not credible. This was because she

considered that there were several aspects of that account that were contradictory, implausible, and contrary to background country information. In reaching this conclusion, the decision-maker gave separate consideration to each of the various aspects of the appellant's history that he claimed had led to his departure from Iran. At paragraph 37 of her explanatory letter to the appellant, she also provided detailed reasons for why she considered that the documents that he had provided in support of his claim were unreliable.

The decision of the First-tier Tribunal

15. The judge noted that the appellant had set out his claim in a Screening and an Asylum Interview, transcripts of each of which were appended to the respondent's bundle of documents [paragraph 4]. He summarised the appellant's claim, in a single sentence, at paragraph 9:

In broad terms, the appellant claimed to fear mistreatment (on return) due to his imputed political opinion.

He then set out the respondent's reasons for rejecting that claim in twenty separate sub-paragraphs [paragraph 11] before summarising the respondent's reasons for rejecting the appellant's other claims (for humanitarian protection and respect for his rights under Article 8) at paragraphs 12 to 19. At paragraph 21, he summarised the respondent's bundle of documents by making explicit reference to the Screening and Asylum Interviews, the appellant's witness statement, and the Reasons for Refusal Letter. He summarised the appellant's bundle of documents by making explicit reference to a further witness statement by the appellant and a statement by his wife, a copy law report, and the appellant's skeleton argument. In neither case did he make express reference to what the appellant claimed were official Iranian documents that he had submitted as support for his claim. The judge thereafter set out the appellant's oral testimony at paragraphs 24 to 27, by noting that the appellant had adopted his witness statement (the contents of which he did not summarise), the appellant's replies to some supplementary questions-in-chief, and a detailed account of the appellant's replies in cross-examination by the Home Office Presenting Officer. He followed this by setting out the oral testimony of the appellant's wife in like manner [paragraphs 29 and 30]. At paragraph 37 and 54, he noted (by way of "postscript") that the appellant's representatives had subsequently sent him a written statement by an interpreter who had been present during the appellant's oral testimony, and who alleged that the Tribunal's interpreter had not accurately translated some of that testimony. Having noted that this objection had not been raised at the hearing, the judge stated that he remained satisfied with the soundness of his findings and his conclusions, and he found that the interpreter's claim was only being raised at this stage in an "attempt by them to frustrate the outcome (in their anticipation of it being negative)". Having directed himself appropriately in relation to the burden and standard of proof, as well as stating that he had placed the evidence "into the context of the situation in Iran", the judge proceeded to give a total of 25 reasons

for why he did not find the appellant's account credible [paragraphs 41, 45, and 47). Finally, at paragraph 48, the judge said that these "negative credibility findings" led him to conclude as follows:

I do not accept the appellant was arrested or detained on any of the occasions mentioned (or released on bail) or that he was (or is or ever has been) of any interest to the Iranian authorities or that he exited Iran illegally, or that the documents submitted listed at paragraph 8(a) to 8(p) of the Refusal Letter dated 9/12/2013 are genuine or that reliance can properly be placed thereon in the round (**Tanveer Ahmed**)

The grounds of appeal

16. The grounds of appeal are extremely lengthy and I intend no disrespect in suggesting that they may be summarised as follows. Firstly, the judge failed to direct himself or apply the quadripartite assessment of credibility in asylum claims that was approved by Brooke LJ in Karanakaran v SSHD [2002] 3 All E R 449. Instead, the judge improperly adopted "a simple binary position". Secondly, the judge failed to give a reasoned consideration of the background evidence, especially that relating to the raping of prisoners in Iranian jails. Thirdly, the judge had provided a very cursory assessment of the appellant's documents, and had put "the cart before the horse" in assessing the credibility of the appellant's account before dismissing those documents as unworthy of further consideration. Fourthly, the cursory reference to the appellant's case, followed by a detailed recitation of that of the respondent, gave an appearance of bias in the judge's determination of the appeal.
17. I am not persuaded that the first two grounds of appeal have merit. So far as the first ground is concerned, the quadripartite analysis of the assessment of evidence (that which is certainly true, that which is probably true, that which is possibly true, and that which is not true at all) was not intended to provide a prescriptive approach to the evaluation of evidence. Thus, in Kaja v SSHD [1995] Imm AR 1, in which the quadripartite analysis of evidence was first propounded, the Tribunal was careful to say that the decision-maker *may* have to take account of a whole bundle of disparate pieces of evidence which *could* fall into one or more of the four categories. Moreover, the judgement of Brooke LJ in Karanakaran suggests that the so-called 'binary approach' is in fact appropriate:

"This approach does not entail the decision-maker (whether the Secretary of State or an adjudicator or the Immigration Appeal Tribunal itself) purporting to find "proved" facts, whether past or present, about which it is satisfied on the balance of probabilities. What it does mean, on the other hand, is that it must not exclude any matters from its consideration when it is assessing the future unless it feels that it can safely discard them because it has no real doubt that they did not in fact occur (or, indeed, that they are not occurring at present). Similarly, if an applicant contends that relevant matters did not happen, the decision-maker should not exclude the possibility that they did not happen (although believing that they probably did) unless it has no real doubt that they did in fact happen."

This approach no doubt reflects the fact that the first three categories of evidence all fall to be counted in the appellant's favour, whereas only the fourth category of evidence can safely be discounted. The judge was thus in my view entitled, in principle at least, to discount the entirety of the appellant's account on the basis that he had "no real doubt" that none of the events described therein had in fact occurred.

18. So far as the second ground of appeal is concerned, it is true to say that the judge made only a general reference to the background country information at paragraph 45 of his determination. However, the evidence that the incidence of rape in Iranian prisons had become something of a political issue in that country could only have taken the appellant's case so far. Thus, even if (as he should have done) the judge had acknowledged that the appellant's account of his involvement in the campaign against the rape of prisoners was consistent with background country information, he would still have been entitled to disbelieve that account for other reasons. It would have been open to the judge, for example, to conclude that the appellant had weaved a fictitious account around events which had almost certainly occurred, but in which he had not been involved.
19. However, I am satisfied that the third and fourth grounds are made out. The third ground of appeal (the judge's perfunctory consideration of the appellant's numerous documents) may in some ways be viewed as a particular example of the complaint in the fourth ground, namely, that the judge's determination gave an appearance of bias. I shall therefore consider these grounds together.
20. The test for apparent bias was laid down by the House of Lords in Magill v Porter [2002] 2 AC 357. The question I have to ask myself is:

"whether the fair-minded observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased".
21. Mr Jack argued that the judge had demonstrated that he fully considered the appellant's account by (a) incorporating it into his determination by reference to the appellants Screening and Asylum Interviews [paragraph 4], and (b) reciting the oral testimony of the appellant [paragraphs 25 and 26]. However, the fair minded observer may well wonder why the judge felt able to summarise the appellant's case in a single sentence, without any reference at all to his narrative, and yet at the same time felt it necessary to spell out, in considerable detail, the entirety of the respondent's case as it appears in the Reasons for Refusal Letter. Furthermore, the judge's recitation of the appellants oral testimony (and that of his wife) involved nothing more than the observation that the appellant had adopted his witness statement, a description of the replies that the appellant had given to a few supplementary questions that had been asked of him by his representative, and a detailed description of Home Office Presenting Officer's cross-examination. The fair-minded observer would not in my view have been able to conclude from this that the Tribunal had given proper

consideration to the appellant's case, and would thus have concluded that there was a real possibility that there had been bias in the determination of his appeal. If an appearance of bias is to be avoided, it is essential that the case of the unsuccessful party is fully considered, if not that of the successful party.

22. Essentially the same problems arise from the judge's treatment of the appellant's documents. At no stage did he attempt to summarise the nature of those documents, still less to examine their contents. Instead, he simply cross-referred the reader to a paragraph in the Reasons for Refusal Letter in which those documents are listed, before dismissing their worth in less than one half of one sentence, at paragraph 48 of his determination. Such a cavalier approach to the appellant's documents would also, in my judgement, lead a fair-minded observer to conclude that there had been a real risk of bias in the determination of the appeal.
23. I am further satisfied that the judge put the 'cart before the horse' when deciding to attach no weight to the appellant's documents. He stated that he had considered the documents "in the round". However, it is clear from the structure of his determination that he had in fact already determined all the facts against the appellant, prior to concluding that no weight attached to his documents. That approach contrasts starkly with the detailed evaluation of those documents that was undertaken by the decision-maker, and was not in any sense redeemed by a passing reference to the reported decision of Tanveer Ahmed v SSHD [2002] INLR 345.
24. I am therefore satisfied that the First-tier Tribunal's determination of this appeal must be set aside and that none of its findings can be preserved. The appellant is entitled to a first-instance determination of his appeal that is manifestly fair and unbiased, and I am therefore satisfied that this is an appropriate case in which to remit the matter to a judge of the First-tier Tribunal (other than Judge Wright) for it to be determined afresh. Enquiries at the relevant hearing centre indicate that this can be accommodated on the 15th December 2014.

Decision

25. The appeal is allowed. The decision to dismiss the appeal is set aside and the appeal is remitted to the First-tier Tribunal to be heard afresh.

Anonymity directed

Signed

Date

David Kelly

Deputy Judge of the Upper Tribunal