



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

Appeal Number: AA/11149/2013

THE IMMIGRATION ACTS

**Heard at Manchester
On 11th November 2014**

**Determination Promulgated
On 11th November 2014**

Before

UPPER TRIBUNAL JUDGE COKER

Between

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Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Hussain of Lei Dat Baig solicitors

For the Respondent: Mr M Diwyncz Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals a decision of the First-tier Tribunal, which dismissed his appeal against a decision to remove him and his wife and child from the UK subsequent to the refusal to recognise him as being in need of international protection.
2. Permission to appeal had been granted on the basis that it was arguable that the First-tier Tribunal Judge failed to take into account or have adequate regard to evidence put before her, which went to the core of the credibility of his account. In particular that she failed to have regard to

- a. The appellants explanation that he enabled the carriage of anti-regime material because of *inter alia* the abuse by the Iranian leaders and their extended families of the VIP service at Iran Air and the general abuse of the system by the leaders;
 - b. The upsetting nature of the poverty that young people and girls were in, given the abuse of the system by the leaders;
 - c. The article on the web which she incorrectly characterised as having only one reference to a man by the same name;
 - d. The appellant's rebuttal statement as regards the existence or otherwise of the claimed arrest warrant.
3. The judge asserts that the activities the appellant claimed to have been involved in were so dangerous as to make it highly unlikely that he would have engaged in such activities without being politically active. She found the website article lacked credibility because it was unsourced and disjointed and it was not apparent who edited the website or who provided information; that he escaped capture relatively easily; that it was incredible that the security forces would not have found him at his mother-in-laws house; that it was significant that he changed his story about the arrest warrant at the hearing.
4. The judge did find it credible on the basis of the extensive evidence produced that the appellant was and had been employed as claimed. There was no challenge to those findings by the respondent.
5. The First-tier Tribunal, although finding the appellant credible as to his employment and his attendance at two demonstrations proceeded to make adverse findings as to his involvement in anti regime activity on the basis that he would not have engaged in such activity because he lived a comfortable lifestyle and would have known how dangerous it was. The judge placed no weight upon the website because it was unsourced and no indication of who edited was given, despite also referring to the extensive Iranian security apparatus and the dangers of engaging in anti regime activity. The judge appears to consider political activity is restricted to declaiming publicly rather than the activity the appellant claims to have undertaken.
6. There is a failure on the part of the judge to engage with the appellant's evidence of the reasons why he did the things he claimed to be. Although the challenge to the determination of the First-tier Tribunal has a high threshold to cross it is clear that the adverse credibility findings made by the judge were predicated upon his findings that the appellant led a comfortable life (contrary to his evidence) and the dangers of engaging in anti regime political activity. The judge gave no reasons for her findings in the light of his evidence. Her blanket assumption that dangerous activities would prevent political involvement require reasons – it is the essence and core of the claim that he has engaged in dangerous activities. It is perhaps trite to say that the very essence of asylum claims is that those claiming asylum claim to do so on the basis of activities they undertake or are perceived to undertake which lead them to be a real risk of being persecuted. If there were no danger they would not be able to mount a successful claim for asylum. The failure to engage with the appellant's account

and the lack of adequate reasoning amount to errors of law such that I set aside the decision to be remade.

7. There has been a failure by the judge to engage with and make adequate findings on the core of the appellant's claim despite having made positive credibility findings as regards his employment. In accordance with the Practice Direction dated 25th September 2012 for the Immigration and Asylum Chamber First-tier Tribunal and Upper Tribunal I remit the appeal to be heard by the First-tier Tribunal afresh.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision and remit the appeal to the First-tier Tribunal to be heard by a judge other than Judge Foudy.

Anonymity

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 an anonymity order despite one not having been specifically requested in the light of the nature and extent of the appellant's claim for asylum.

Upper Tribunal Judge Coker

Date 11th November 2014