



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

Appeal Numbers: AA/03997/2014
AA/04093/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 20 January 2015**

**Determination Promulgated
On 11 February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**MR KEYVAN YAZDANI
MR POUYAN YAZDANI
(ANONYMITY ORDER NOT MADE)**

**First Appellant
Second Appellant**

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr D. Bazini of Counsel
For the Respondent: Mr I. Jarvis, Home Office Presenting Officer

DECISION AND REASONS

The Appellants

1. The Appellants are both citizens of Iran. The first Appellant was born on 3 July 1995. The second Appellant is his elder brother and was born on 11 September 1985. They appeal against a decision of Judge of the First-tier Tribunal Gibbs sitting at Hatton Cross on 21 October 2014. That decision was to dismiss the Appellants' appeals

against decisions of the Respondent dated 2nd June 2014 to refuse their claims for asylum and to remove them from the United Kingdom.

2. On 16 March 2011 the first Appellant applied for a Tier 4 (General) Dependent Child visa as a dependant of his mother, Forough Giahchin. This was duly issued on 29 March 2011, valid until 24 December 2012. The Appellant arrived in the United Kingdom on 15 May 2011. A claim was made for asylum as a dependant of his mother, Ms Giahchin, on 24 November 2012 but this was refused. Judge of the First-tier Tribunal Bennett heard the asylum appeal of the Appellants' mother and of the second Appellant on 14 February 2013 and dismissed the appeals. The Appellants' mother became appeal rights exhausted and the first Appellant made a claim for asylum in his own right on 15 August 2013, the refusal of which has given rise to the present proceedings in his case.
3. The second Appellant applied for a Tier 4 Student visa on 22 June 2012 which was issued on 28 June 2012. He entered the United Kingdom on this visa on 26 September 2012 with a validity until 6 April 2014. He claimed asylum on 5 December 2012 but it was refused by the Respondent on 4 January 2013. Judge Bennett dismissed his appeal against refusal but subsequent to the lodging of an application for Judicial Review the 2nd Appellant was granted a further right of appeal culminating in the refusal which has also given rise to the present proceedings.

The Asylum Claims

4. The Appellants' claims were based on two main reasons. The first was what had happened to their father when he returned to Iran from a visit to his family in the United Kingdom. The Appellants' father was detained at the airport in Iran and was searched and anti-regime political leaflets were found in his luggage. As a result of this he was detained in prison for five months, during which time he was ill-treated. He was then transferred to another prison because of a debt owed to a business partner and ultimately released on condition of paying the outstanding debt in full. The second reason was that in June 2013 the family started to attend a Christian church. The second Appellant had been interested in Christianity in Iran and had not practised Islam since he left Iran. Their brother died in this country and was given a church funeral ceremony which relatives in Iran became aware of and advised the authorities in Iran. The Appellants stated they intend to proselytise Christianity if returned which would bring them to the adverse attention of the authorities in Iran.

The Decision at First Instance

5. The Judge did not find either Appellant to be a credible witness and expressed her concern about what she described as a pattern of family migration to the United Kingdom starting in 2010 with the second Appellant's arrival here. Another aspect of the claims which gave her concern was the variety of reasons given by the Appellants as to why they would be at risk upon return to Iran. These ranged from the father's arrest carrying political leaflets, to their mother's involvement in an illegal abortion, to their conversion to Christianity, to their online activities and that the Iranian Government might be aware of both their conversion to Christianity and

asylum claim in the United Kingdom. The Judge found the very number and timing of these claims to raise concerns about the Appellants' credibility.

6. There was no evidence before her that the family had been politically active in Iran. There were discrepancies about which of the two Appellants had given the offending leaflets to their father. It was not plausible that either Appellant would have put their father at risk in this way. This issue had been canvassed at the earlier asylum appeal of the Appellants' mother before Judge Bennett. Judge Bennett had dismissed those appeals, again not finding the Appellants to be credible. An expert, Dr Fatah, had said that the explanations relied on by the Appellants as to why their father was stopped on arrival in Iran were unlikely. Judge Bennett found the Appellants' explanation as to why they gave their father the leaflets (that they did not think there was any risk) to lack credibility.
7. The position thereafter was complicated by reason of the fact that when the first Appellant came to claim asylum in his own right and had his claim refused the Respondent accepted that it was reasonably likely that the Appellants' father had been detained, although no such concession was made in a letter refusing the second Appellant's claim. The Respondent's position before Judge Gibbs was that the father's detention occurred because of the outstanding debt. The Judge, having regard to the medical evidence before her, was satisfied that the Appellants' father had been detained and ill-treated whilst detained. That was consistent with detention for the debt problem. Dr Fatah's report highlighted that ill-treatment of detainees was a longstanding problem in Iran and the Judge was satisfied that mistreatment in Iranian prisons was reasonably likely per se. The Judge rejected the Appellants' claim that they would be at risk upon return because of their father's detention for possession of anti-government leaflets as she did not find to the lower standard that that was what had happened.
8. Dealing with the conversion to Christianity the Judge found it significant that neither Appellant had raised the claim of conversion to Christianity prior to the appeal hearing. The first Appellant had said in August 2013 that he was an agnostic despite his evidence that he had been attending church for the two months prior to that. A witness statement dated 18 September 2013 had made no mention of Christianity despite the first Appellant's later evidence that it was in that month that he had decided to convert. The issue was not raised in his grounds of appeal. The second Appellant, whose first claim for asylum had been rejected by Judge Bennett, made a fresh application for asylum on the basis of conversion to Christianity. The Appellants claimed that their new faith, Christianity, required them to preach. The Judge rejected this on the basis that the Appellants were attending the Church of England which did not require that from its adherents. The conclusion was that, "The Appellants are focusing on this issue because they believe it will bolster their appeals. I find that this undermines the credibility of their claimed conversions."
9. The Appellants had obtained no evidence from the Iranian Christian Fellowship where they claimed they had first started to attend. The conversions were not reasonably likely to be genuine. It was not credible that the Appellants would have sent photographs of a Christian burial to Iran showing the conversion to Christianity. The Iranian authorities would not be aware that the family had claimed asylum in

the United Kingdom. It was implausible that a third party, Mr Jaffari, would have taken papers from the family relating to the asylum claim. There was no evidence (beyond his own assertion) that the first Appellant had set up a website regarding the release of his father from detention. A Facebook page created by the first Appellant as evidence of the conversion to Christianity was not accepted by the Judge. She also rejected the claim under Article 8 (there is no appeal against that part of her decision).

The Onward Appeal

10. The Appellants appealed against the dismissal of their asylum claims in grounds settled by Counsel who had appeared before the Judge at first instance and who appeared before me. The first point was that the Judge had placed weight on the lack of evidence that any family members have engaged in their planned studies in the United Kingdom. That had not been put by the Respondent or by the Judge during the hearing. It was unfair to take such a point against the Appellants without giving them an opportunity to deal with it. There were numerous certificates for the first Appellant in the bundle which confirmed his studies in the United Kingdom (noticeably the grounds did not refer to any studies by the second Appellant).
11. The second point was that it was not uncommon for a family or person seeking asylum to put forward a number of different reasons for their fears. That was not in itself a reason to doubt their credibility.
12. The third point was that there was no background material or country guidance which suggested that mistreatment amounting to torture in Iranian prisons was so commonplace that it was reasonably likely per se. If the Judge was wrong in concluding that it was then it was very likely that the Appellants' father was not tortured in prison merely for a debt issue but for a Convention related reason. The issue of mistreatment per se was so important it might be suitable for a country guidance case.
13. The Judge had reversed the standard of proof by finding it reasonably likely that the Appellants' father had been released without restriction. The correct approach would have been to consider whether the claim that he was released with conditions was reasonably likely to be true.
14. If the Appellants' conversion to Christianity was not genuine and had been manufactured for the purposes of supporting their asylum claim, the grounds argued that the Appellants would have made sure that this was mentioned at their asylum interview. In fact there was evidence from the Appellants and third parties that the family had involved itself in the church long before the asylum interview. The Appellants belonged to two churches, one of which was Iranian and evangelical. It was accepted by the Judge that conversion from Islam to Christianity was sufficient to put an individual at risk and there was no need therefore for the Appellants to embellish their claim as it did not advance it. Whether conversion to Christianity would put an Appellant at risk per se was again something which might be suitable for country guidance.
15. The Judge in concluding that the Appellants had not obtained any evidence from the Iranian Christian Fellowship had ignored two relevant letters from the Iranian

Christian Fellowship Church which were in the Appellants' bundle at pages 558 and 567 and dated 18 May and 20 April 2014 respectively. I note here that the former document referred to the 2nd Appellant, the latter document referred to the Appellants' mother. The grounds continued that the Judge had failed to make proper findings on the evidence of the church warden who had observed the Appellants and it was clear to him that they were committed and sincere in their beliefs.

16. The family had sent photographs of their father's death and Christian burial as the family wished to have a record of it. The family were not to know that their relatives in Iran would act in such a hostile manner upon receipt of the photographs. As to Mr Jaffari, he had simply taken the documents and there was nothing that the Appellants' mother and her young sons could do to stop him. The Judge had erred in finding that the family had no political affiliation when there was evidence to show the second Appellant demonstrating against the Iranian regime in Malaysia as long ago as 2009. There was a whole range of evidence in relation to websites and other documents.

The Grant of Permission

17. The application for permission to appeal came on the papers before Judge of the First-tier Tribunal Landes. In granting permission to appeal Judge Landes wrote on 5 December 2014 that:

"I consider there is force in the argument that the Judge did not give adequate reasons for her conclusion that mistreatment in Iranian prisons was reasonably likely per se and that she reversed the burden of proof in finding it reasonably likely that the Appellants' father was released without conditions. These points are arguably material as they are central to the credibility of the Appellants' claim.

In addition I consider it arguable that the Judge failed to take account of the written evidence from the Iranian Christian Fellowship. It may be that the Judge meant that the evidence was not detailed and was not oral evidence or related specifically to the second Appellant only but this is not the reason she gave as she referred to the Appellants not having obtained any evidence from the Fellowship. Given that there was such evidence and given that she considered the absence of such evidence to be relevant to the conversion claim, the point is arguably a material one.

A number of other points are raised in the grounds. Although some of the grounds such as paragraph 15 ['what would be the point of manufacturing a claim and then not raise it'] appear to amount to mere argument with the Judge's conclusion I do not intend to restrict the grounds which may be argued."

18. The Respondent replied to the grant of permission by letter dated 22 December 2014. The Judge had made detailed adverse credibility findings in respect of the Appellants and had provided reasoning for each. Findings began at paragraph 29 stating a lack of evidence that the family was politically active and went on to note discrepancies and the implausibility of the Appellants asking their father to carry political leaflets that would place him at risk. The Judge had referred to Dr Fatah's

report in explanation of her finding that the evidence did not support the submission that the Appellant's father was detained due to political activism. She supported her finding about his release with the observation that he was able to leave the country using his own passport. The grounds of appeal amounted to a disagreement with the Judge's findings.

The Hearing before Me

19. In oral submissions Counsel relied on his grounds of onward appeal. The Judge's starting point in finding that there was little evidence of studies was fundamentally flawed. That the Appellants had given a number of different reasons for their claim meant that the Judge had to look at each and every reason. It was a bold assertion of the Judge to say that mistreatment in Iranian prisons was reasonably likely per se. There was no country guidance to say that everyone was at risk of Article 3 treatment in detention, where everyone would include those who were not politically involved. If that was right, any Iranian arriving in the United Kingdom who could show that they were wanted for a criminal matter would be entitled to protection under the Human Rights Convention.
20. The letter dated 18th May 2014 stated that the 2nd Appellant was no longer at the Iranian Christian Fellowship and made no reference to the 1st Appellant. Counsel accepted that it did not give all of the information that one might want but the Judge had said there was no evidence from the Iranian Christian Fellowship and that was inaccurate. It was known that the Appellants did attend. These were the main grounds but reliance was also placed on the remaining paragraphs of the grounds (summarised at paragraphs 15 and 16 above). There were plain material errors of law and the appeal should be remitted back to the First-tier to be reheard.
21. For the Respondent the Presenting Officer argued that there were no material errors of law in the determination. Small peripheral points had been taken by the Appellants to be made into errors of law. There was no misdirection. The Judge had taken into account the immigration history of the Appellants overall. There were findings by Judge Bennett (sitting at Hatton Cross on 14 February 2013) which overlapped with the present appeal proceedings. Although there was evidence of certificates in the Appellants' bundle, this was a very substantial bundle running to some 711 pages and the index had not specified where those documents were.
22. The Judge was not required to enter the arena; sometimes matters became clearer after the hearing. The Judge was referring to the absence of any supporting evidence to show that the family had engaged in studying and all that there was, were the certificates obtained between 2011 and 2013. The most that the first Appellant could say was that there was some evidence of studies. The certificates did not show the substance of what was being studied. Otherwise the evidence was merely assertions in a witness statement and a letter of representations. Bearing in mind the size of the bundle it was not surprising that the Judge might have missed this. In any event it did not go to the question of whether the religious conversion was genuine or the position of the Appellants' father.
23. It was important to note that the Judge had referred in paragraph 28 of her determination to both the number and timing of the claims. Judge Bennett had

dismissed the claim that the family were at risk because of illicit material sent back to Iran. Having made one unsuccessful claim on that ground the Appellants had then sought to make claims on other grounds. The Judge had dealt with a complex case with admirable completeness.

24. The Judge had found that someone in an Iranian prison would be tortured not only if they were a human rights activist. The evidence did not rule out that someone who was a debtor could be mistreated. In short the evidence did not say what the Appellants wanted it to say. It had been asserted that there were bail conditions imposed on the father's release from detention, the Judge had found that there were not. That was not an error of law. There had been no switching of the burden.
25. The Appellants had told the Judge that they continued to receive instruction from the Iranian Christian Fellowship when the evidence in the form of the letter showed that they had stopped attending there. The issue was whether the Appellants had genuinely converted. There might be a number of reasons why the Appellants had not mentioned their conversion earlier, for example they did not want to be interviewed on the point because they did not have enough evidence at that time to support the claim. The Appellants were aware of the case law such as HJ Iran and what might or might not be successful in an asylum claim. The evidence of the church warden was only one part of the evidence about whether the conversion was genuine. The Judge had considered the overall picture. She had not ignored the evidence of the church warden. I pause to note here that the Judge had referred to the evidence of the church warden at paragraph 40. She had expressed no doubt that the evidence was honestly given and the views genuinely held but she had not found in the light of her other findings that that evidence in itself could persuade her that the Appellants' conversions were reasonably likely to be genuine.
26. In response Counsel argued that what the Respondent was trying to do in submissions was to correct deficiencies in the Judge's determination. If the issue of the Appellants' education did not go to credibility and was, as submitted, a peripheral matter, the statement of the Judge that she had that issue in her mind meant that her determination must be materially flawed. On two occasions the Judge had said that she had not been given "any evidence" when there was evidence not just in the form of supporting evidence but also in the form of the certificates. There was no way round that point.
27. The difficulty with stating that the findings of Judge Bennett were the starting point for Judge Gibbs under Devaseelan principles was that Judge Bennett had not accepted that the father had been detained or tortured so the case before Judge Gibbs was a very different one. If it was now accepted that the Appellants' father was detained and tortured, something which had been found not to be credible by Judge Bennett might well be credible now. The Judge could have probed the letters about the conversion and the reverend had confirmed he knew that the Appellants were training in Farsi. If there was some evidence on the point they should be given the benefit of the doubt.

Findings

28. The issue before me was whether the Judge had made a material error or errors such that her determination fell to be set aside and the decision remade. She was dealing with two main claims. The first that the authorities were aware of the family's anti-regime stance because of the detention of their father for attempting to smuggle in illicit material. The second reason was because the Appellants had converted to Christianity and that that was known by the authorities and would be acted upon.
29. The appeals relied heavily on an assessment of the Appellants' credibility. The question of the father's arrest and detention was being re-litigated having been litigated once already before Judge Bennett. He had not found the evidence given to him to be credible and Judge Gibbs did not find the evidence given to her to be any better. There were cogent reasons why both Judge Bennett and subsequently Judge Gibbs had rejected the claim that illicit material had been put into the father's luggage and found by the authorities (see paragraph 6 above).
30. There was a difficulty in the Respondent's position in that one refusal letter had made the concession that the Appellants' father had been detained and ill-treated in detention whilst another refusal letter had not made the same concession. The Judge rightly proceeded on the basis of the concession which was most favourable to the Appellants and sought to examine why in those circumstances the Appellants' father would have been detained if it was clearly implausible that he was detained for possessing illicit material. The Appellants' father himself had said that at least part of the reason why he was detained was because of the debt problem. In those circumstances the Judge was entitled to draw the inference that that was the reason for the detention. It was open to the Judge to conclude that the Appellants' father was then ill-treated because he was in prison and that is what happens in Iranian prisons. What the Judge was seeking to deal with was whether the father's ill-treatment was linked to political activity or otherwise. She concluded that it could not be because the basis on which it was claimed that the father had been detained (possessing illicit material) was inherently implausible. It was reasonable therefore for the Judge to conclude that the Appellants' father had been ill-treated because he was in detention. There was no evidence before the Judge to suggest that did not happen. The evidence she received was that whilst ill treatment was mostly inflicted on those who were politically active it was not solely directed at them.
31. The second main issue the Judge had to deal with was the question of the genuineness of the Appellants' conversion to Christianity. The Judge was entitled to look at the way in which the claim of conversion to Christianity had emerged. She gave cogent reasons why she found the conversion was not genuine. She was particularly impressed by the timing of the claims. The Judge found that if genuine it was reasonable to have expected the Appellants to have mentioned their conversion to Christianity rather earlier than they did (see paragraph 8 above). The Appellants had made two claims in support of their applications for asylum already and both had been rejected by Judge Bennett (these were the smuggling of illicit material by the Appellants' father and involvement in an illegal abortion). The Appellants had now come up with a third ground. It is correct that each ground for asylum has to be given anxious scrutiny. The mere fact that an Appellant makes more than one ground is not of itself a reason to dismiss all grounds for claiming asylum for

example on the basis that one or more grounds have been found not to have substance. However, the Judge did not proceed on that basis. She did not reject the claim of conversion to Christianity because it was yet another claim but rather because there was no substance to it when one looked at the evidence. The Judge was looking at all of the evidence in the round. It was open to her to draw an adverse inference from the fact that the Appellants had a history of making a number of different claims for asylum, all without foundation as well as the fact that this claim too had little evidential foundation.

32. The Appellants had claimed that their new faith required them to preach. In doing so they were evidently unaware that that is not a requirement of the Church of England. The Judge was aware of that point and it increased the suspicion in her mind that the Appellants, with perhaps one eye on relevant case law such as HJ Iran, were tailoring their claim to what they considered would be successful as an asylum claim. The difficulty with the alternative explanation put forward by Counsel that the Appellants were involved with the Iranian Christian Fellowship Church and that that church did require proselytising, is that the evidence submitted simply did not support that the Appellants were still involved with the Iranian Christian Fellowship. The letter dated 18th May 2014 showed the exact opposite (see paragraph above). The 1st Appellant was not mentioned at all. Whilst it is arguable that there was a letter which talked about involvement in the past by the 2nd Appellant there was no evidence to show that either Appellant was still involved with the Iranian Christian Fellowship, the church which did require proselytising.
33. The other matters complained of in the determination, such as the Judge's finding that it was implausible that the Appellants would send photographs of a Christian burial to their relatives in Iran, are simply the expression of a disagreement with the Judge's findings. The Judge's rejection of the claim that Mr Jaffari had taken papers from the Appellants was a conclusion open to her on the evidence. The grounds of appeal amounted to no more than a disagreement with that finding.
34. The grounds made a general complaint that the Judge had drawn an adverse conclusion from a perceived but not actual lack of evidence of studying. As I have indicated, the grounds of appeal do not suggest that the second Appellant had been studying in this country even though he had arrived with entry clearance as a student on 26 September 2012. The evidence of the first Appellant's studies was slight. He had arrived in the United Kingdom at the age of 15 and thus still of compulsory school age. By the time the case was heard by the Judge the first Appellant was 19, a substantial period of time in which the first Appellant could have studied. Yet the evidence before the Judge of the first Appellant's studies, a few certificates buried in a very large bundle, was sparse to say the least.
35. The point being made by the Judge was the lack of evidence that any of the family members had engaged in their planned studies. In other words if the Appellants were genuine students it was reasonable to have expected rather more information about their studies than was produced. It was not for the Judge to enter the arena, it was for the Appellants to prove their case. Their case was that they had come to the United Kingdom to study and yet there appears to be no evidence for the second Appellant's studies and very little evidence indeed for the first Appellant's studies.

The Judge was entitled to draw a conclusion from that. However, it would be wrong to suggest that the Judge had made that her starting point and proceeded from there. It is clear when read as a whole that the Judge took all matters in the round. She had of necessity to set her conclusions out in some form of order and give some reason why she had concerns about the Appellants' credibility. Seen within that context the Judge's remark at paragraph 27 that she placed weight on the lack of evidence about studies was not a new matter being raised for the first time by the Judge but was, in the context of the case, a matter she could properly take note of.

36. I do not find that detailed forensic examination of the Judge's determination made by counsel reveals any error of law. For all their length the grounds of onward appeal are merely a disagreement with the Judge's conclusions and particularly her adverse credibility findings. I dismiss both Appellants' appeals.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellants' appeals.

Appellants' appeals dismissed.

I make no anonymity order as there is no public policy reason for so doing.

Signed this 10th day of February 2015

.....
Deputy Upper Tribunal Judge Woodcraft

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed this 10th day of February 2015

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Deputy Upper Tribunal Judge Woodcraft