Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/09926/2014**

THE IMMIGRATION ACTS

Heard at Columbus House	**Decision & Reasons**
On 29 July 2015	**Promulgated**
	On 28 September 2015

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

KD
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr TD Hodson, Solicitor, instructed by Elder Rahimi Solicitors
For the Respondent: Mr Irwin Richards, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make the order because the appellant is a young asylum seeker who might be at risk just by reason of being identified.

2. The appellant appeals against the decision of the First-tier Tribunal dismissing the appellant's appeal on asylum and human rights grounds against a decision taken on 28 October 2014 refusing to grant him further leave to remain and to remove him to Iran.

Introduction

3. The appellant is a citizen of Iran born in 1994. He claims that he lived in Tehran and worked for a number of years as a sound engineer for a company called "Frontiers of Stage Sound". The company provided the sound equipment for a venue used by the Iranian government for meetings and conferences. The appellant came into regular, close contact with government officials and members of the Iranian regime including security officials and the highest levels of the supreme leadership up to and including the Supreme Leader and the President. That part of the appellant's case was accepted by the respondent.

4. The appellant further claims that in June 2014 he was asked to work on the sound recording equipment for an official meeting attended by the President and other high ranking officials. He was instructed to turn off the recording equipment during the meeting but curiosity got the better of him and he listened for a short time, hearing talk of the raping of young girls and people changing religion and how those things must be kept from the public. A man called D was also mentioned. He left the building and told a work colleague who told him that he was in danger. He went home and started to research the writings of D and printed off material relating to D, sharing it with his friends.

5. The appellant claims that he was stopped and searched a few days later by Sepah and found to be in possession of a walkie-talkie. He was detained and heard reference to him being a "subject matter". He managed to escape by jumping out of a window and caught a taxi to a friend's house. He was told by his uncle that his home had been raided and that his mother and belongings had been taken. He flew to Turkey that night using his own passport and stayed there for three weeks before flying to Malta and on to the UK. He destroyed his documents by flushing them down a toilet at Gatwick airport. He faces death if returned to Iran. He suspects that it was the work colleague who informed the authorities.

The Appeal

6. The appellant appealed to the First-tier Tribunal and attended an oral hearing at Birmingham on 22 December 2014. The judge found that the appellant was working at the high level meeting but did not switch the sound recording equipment on. He would not have been left alone in a booth whilst it was so easy to press record. There was no credible reason for the security guard to leave. There was no credible reason why the appellant would tell the work colleague (who worked for the President's office) what he had overheard. He would not have disclosed any information until he had researched D. The escape account was incredible

because he would not have been placed in a locked room where he exit through an easily opened window. The appellant's account is that he was already being sought at that time. He would not have been left with his mobile phone. It was not credible that he left Iran on his own passport with no issues and he was not at risk upon return. The fact that he would be questioned on return was not sufficient to allow the claim.

The Appeal to the Upper Tribunal

7. The appellant sought permission to appeal on 22 January 2015. The judge ought to have exercised caution and restraint in basing findings upon implausibility – the reasoning overall was unsound. The judge failed to consider the evidence that it was only an assumption on the appellant's part that he had been arrested because of the work colleague. The judge should have considered the possibility that the appellant was in fact mistaken – he was actually stopped at a roadblock and detained after a walkie-talkie was found in his car. The judge accepted that could lead to problems. The judge did not consider that the nature of the appellant's work and his claim of political asylum in the UK would in itself raise suspicions and concerns on the part of the Iranian security forces. The risk of intensive questioning is quite independent of the truth of the contested parts of the appellant's claim.

8. Permission to appeal was granted by the Deputy Upper Tribunal Judge Chapman on 6 May 2015 on the basis that it was arguable that the judge failed to adequately deal with risk on return due to his former employment and by virtue of being a failed asylum seeker. The parties agreed before me that the effect of the grant was that all grounds were arguable.

9. In a rule 24 response dated 2015, the respondent sought to uphold the judge's decision on the basis that the judge was entitled to make adverse credibility findings as set out at paragraphs 23-31 of the decision.

10. Thus, the appeal came before me.

Discussion

11. Mr Hodson submitted that the judge did not find that it was not likely that the appellant would have been left in the technician's booth with the sound turned off. The finding that he would not have been left alone is speculative and the appellant did not "*press record*". The appellant was trained and trusted and there was nothing incredible about the security guard leaving. The findings are based upon assumptions and do not engage with the appellant's trusted position.

12. The appellant only claimed to have heard that he was "the subject in question" after he was detained. The appellant put two and two together but that was no more than an inference and not a watertight reference by any means. He was stopped at a roadblock and not his workplace or residence. The reason for arrest was possession of the walkie talkie. The

judge accepted that arbitrary arrests do take place in Iran. The judge should have assessed the case on the alternative basis i.e. that the arrest was unrelated to the listening incident.

13. Mr Hodson further submitted that even if none of the contested claim is accepted, arrest and interrogation on return would be enough for persecution. There is no need for the appellant's life to be in danger. The objective evidence is that the appellant is likely to be interviewed on return to Iran for 2-3 hours. His identity will be verified and he may be detained for 1-2 days. He has a public profile with the government. Return from the UK is an additional risk factor.

14. Mr Richards submitted that there is no material error of law. This is a fair and balanced decision. Adequate reasons have been given for findings properly open to the judge. There is a raft of adverse findings relating to implausibility and coincidence. The appellant's case was that the arrest was a consequence of what happened at the meeting. He was told that his home had been raided, computer taken away, etc. It is not likely that would have happened if the appellant had just been arrested for a minor misdemeanour. No error of law arises from the credibility findings.

15. Mr Richards further submitted that enforced return to Iran is not sufficient for an asylum claim. There is no evidence that the appellant is anyone other than a man who held the claimed employment and committed no transgressions. He left his employment without a stain on his character. He was allowed to freely leave Iran. There is no reason why return would create a risk of persecutory treatment.

16. Mr Hodson submitted in reply that some of the arguments made by Mr Richards were not mentioned by the judge; for example the raid on the appellant's home took place some time after the escape. The appellant only made an assumption about the reason for the arrest.

17. I am persuaded that the judge has failed to give adequate reasons for his finding that the appellant was not at risk on return, even if the contested parts of his claim are not true. The judge simply states at paragraph 43 of the decision that, "*I fully understand the point being raised but I do not accept his account as detailed above. This point alone is not sufficient in my finding to be a basis to allow his claim*". The judge did not refer to the relevant country guidance or the objective evidence. In effect, there are no reasons as to why a person with the appellant's accepted profile who is a failed asylum seeker in the UK is not reasonably likely to be at risk of treatment amounting to persecution if he is forcibly returned to Iran. That is a material error of law.

18. I also accept that the judge did not consider the possibility that the appellant was detained as a result of a routine stop because he was in possession of a walkie talkie. I find that the failure to consider that version of events was a failure to take into account a conflict of fact on a material matter – the judge effectively only considered the appellant's case on the

basis that he was the subject of targeted detention because of the listening incident. No reasons are given for discounting the alternative reason for detention despite the submissions made by Mr Hodson in the First-tier. The failure to take into account a conflict of fact on a material matter is a further material error of law.

19. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of errors of law and its decision cannot stand. Considering the credibility findings as a whole, I am not persuaded that any findings of fact should be preserved.

Decision

20. Both representatives invited me to order a rehearing in the First-tier Tribunal if I set aside the judge's decision. Bearing in mind paragraph 7.2 of the *Senior President's Practice Statements* I consider that an appropriate course of action. I find that the errors of law infect the decision as a whole and therefore the re-hearing will be de novo with all issues to be considered again by the First-tier Tribunal.

21. Consequently, I set aside the decision of the First-tier Tribunal. I order the appeal to be heard again in the First-Tier Tribunal to be determined de novo by a judge other than the previous First-tier judge.

Signed  Date 26 September 2015

Judge Archer

Deputy Judge of the Upper Tribunal