



IAC-FH-NL-V1

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

Appeal Numbers: AA/11678/2014
AA/11682/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 30th June 2015**

**Decision & Reasons Promulgated
On 8th July 2015**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**MOHSEN KAZEMI
DANIEL ARMANI
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms Pickering, Counsel instructed by Parker Rhodes
Hickmotts

For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellants' appeal against the decision of Judge Dearden made following a hearing at Bradford on 10th February 2015.

Background

2. The appellants are brothers, citizens of Iran and born on 3rd July 1991 and 12th February 1984 respectively. They arrived in the UK on 6th January 2014 and claimed asylum on the same basis, claiming a fear of persecution on return to Iran on account of fearing the Ettela'at following a confrontation concerning smoking, and having converted to Christianity since their arrival here. The judge dismissed the appeal on all grounds. He did not believe that the story which they had told of the events prior to leaving Iran was credible nor that they had genuinely converted to Christianity.

The Grounds of Application

3. The appellants sought permission to appeal in detailed grounds drafted by Ms Pickering which she relied on and expanded upon at the hearing.
4. First it is said that the judge failed to take evidence into account and/or misunderstood the evidence in relation to the incident with the Ettela'at. The judge had failed to record that the first appellant had given clear evidence that when he had previously been asked to throw his cigarette away and had refused, he had been able to carry on smoking unharmed. Moreover, the judge was wrong to find that the second appellant had previous problems with the authorities because of disobeying orders.
5. Next, the judge had failed to give proper reasons for finding that the appellants could not have escaped from the Ettela'at in the way that they did. He had not provided any objective basis as to why he had chosen to disbelieve their account. He had misunderstood the evidence that the first appellant would not be approached by the Ettela'at when smoking a cigarette because smoking was not a political crime. The first appellant said that the Ettela'at were en route towards a group of students and when they passed him they asked him to go back into the house. Furthermore the judge had misdirected himself in making a medical judgment when he found it implausible that the appellant could have run away as claimed.
6. It was accepted that different evidence had been given in respect of the colour of the shirt of the person who had assaulted the first appellant but the judge did not take into account the fact that the second appellant had damaged eyesight in connection with an incident in 2009.
7. He also failed to heed the detailed evidence given in the substantive interview in relation to the subsequent raid on the appellant's home and the arrest of their father. The judge had erred in giving the impression that he required corroboration in stating that the appellants had not been able to produce any confirmatory paperwork in relation to the search of family home.
8. The judge found it not credible that the appellants' father would have been able to secure the money for their escape from Iran overnight, but had not given proper reasons for choosing to disbelieve the appellants'

account when the evidence was that the family were wealthy and no evidence was given as to the sums actually given.

9. With respect to the conversion to Christianity the judge failed to make any findings in respect of the Reverend Borkett's letter. The judge had erred in relying upon the case of Dorodian (02/TH/1537) which was merely a starred decision, and had failed to consider properly the background evidence in respect of Christian converts.
10. Finally the judge had failed to adequately engage with the argument that enforced returnees were at risk.
11. Permission was granted by Designated Judge Macdonald on 23rd March 2015 for the reasons stated in the grounds.
12. On 30th March 2015 the Secretary of State served a reply defending the determination.

Findings and Conclusions

13. There is no material error in this determination.
14. With respect to the argument that the judge had failed to record the first appellant's evidence about having previously been asked to throw a cigarette away it is simply wrong. The judge said:

"He maintains that there was nothing unusual in the Ettela'at arriving because his house overlooked a student complex. He was asked to extinguish his cigarette and go inside the house but the appellant indicates that this was a regular occurrence with the Ettela'at and he declined their invitation to do so."
15. The judge plainly took into account the appellant's evidence. The reference to a failure to comply with orders is irrelevant. The brother's evidence that he had had a brush with the authorities during the 2009 election protests when glass was smashed into the right side of his face, and the reason for that brush is immaterial.
16. Second, the judge gave a number of different reasons for disbelieving the appellant's account of the escape. He was entitled to find it not credible that the appellant, who said that he had been struck by a baton and was in a dazed and confused condition would have been able to escape from seven Ettela'at who were on motorcycles. He recorded the appellant's evidence that their knowledge of narrow passages and steps was superior to that of the Ettela'at but it was open to him to take into account the acknowledgment that the area was patrolled by officers three or four times a week and in any event there was no evidence that the appellants were runners of any repute. The reference to the narrow passageways is only one of a number of reasons for disbelieving the account.

17. There is no error in the judge's reasoning that the first appellant would not be approached by the Ettela'at when he had no political profile and he was simply smoking a cigarette which was not an illegal activity.
18. So far as the inconsistencies in the evidence in relation to the clothing of the Ettela'at was concerned it was plainly open to the judge to hold it against the appellants that the first appellant said that his attacker wore a black shirt and the second that it was white. He was not bound to record the evidence that Mr Armani's eyesight had been damaged.
19. There is no requirement for corroboration in this determination. The judge gave a number of reasons for disbelieving the appellant's account that the house was not raided until after they had left the city, particularly when his home was adjacent to the place where he was smoking.
20. The judge was plainly entitled to find it not credible that the appellants were able to travel to Tehran with a view to leaving the country within an hour. He recorded the explanation that they were from an affluent background but did not find it credible that the money could have been raised in such a short period of time.
21. Ms Pickering urged me to find that cumulatively the judge had made a number of mistakes in his assessment of credibility which cumulatively rendered the determination unsafe. On the contrary this is a very detailed and careful determination in which all of the evidence was properly recorded. The judge's findings were properly open to him for the reasons which he gave.
22. With respect to the conversion to Christianity it is right to say that the judge did not refer to one of the letters in the appellants' bundle, that of the Reverend Phillip Borkett who wrote in support of the first appellant's application to remain in the country. He did however refer to three other letters and to the oral evidence given by Janet Gooch. He recorded that she said that she was not present in order to vouch for the genuineness of Mr Kazemi's conversion and, as the Presenting Officer and Ms Pickering confirmed, their notes correspond with that of the judge albeit that Ms Pickering's note is a little fuller. It is quite clear however that Mrs Gooch did say what the judge recorded.
23. The judge was correct to rely on the case of Dorodian which states that a Minister should invariably be called to give oral evidence in order to establish a claim to have converted to Christianity. The judge said that despite the lack of a Minister being called to give evidence, there was no application before him to adjourn the proceedings to another day. He was entitled to take into account the fact that he had concluded that the appellants had been untruthful in their account of what had happened to them in Iran in his assessment of whether the conversion to Christianity was genuine. He properly applied the relevant case law, FS & Others [2004] UKIAT 00303, which states that for the ordinary convert who is neither a leader, lay or ordained nor a pastor nor a proselytiser or

evangelist the actual degree of risk of persecution or treatment breaching Article 3 is not sufficient to warrant the protection of either Convention.

24. The same is true in relation to the argument on enforced returns. The judge applied the case of SB [2009] UKAIT 00053 as he was required to do. Ms Pickering informed me that the matter is coming before a country guidance panel in September but at present SB remains good law.
25. The grounds and submissions in relation to the judge's credibility findings amount to a sustained disagreement with the decision. Whilst it is right to say that the judge did not refer to the letter from Reverend Borkett, he did refer to the other letters in the bundle, and to the oral evidence. In the context of a thoughtful and properly considered decision, the lack of reference to a single document is not material.

Notice of Decision

26. The original decision will stand. The appellants' appeal is dismissed.
27. No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Taylor