



IAC-FH-NL-V1

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

Appeal Number: AA/05913/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5 January 2016**

**Decision & Reasons Promulgated  
On 21 January 2016**

**Before**

**UPPER TRIBUNAL JUDGE JORDAN**

**Between**

**SD  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr K Gayle, Counsel instructed by Elder Rahimi Solicitors  
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a married woman, a citizen of Iran, who was born on 22 March 1959. She is now aged 56. She appealed against the decision made by the respondent to refuse her asylum claim which was made on 28 March 2013. The decision which was appealed against was made two years later on 23 March 2015 and was the subject of an appeal which came before First-tier Tribunal Judge Steer whose determination of 9 October 2015 is presently under challenge, leave having been granted as a result of grounds of appeal that were settled by Mr Gayle.

2. The broad circumstances of the case are that the appellant arrived on 13 December 2012 under permission that was granted in the form of a two year family visit visa which had been issued on 2 October 2012 and which would have expired and has now expired on 2 October 2014. Events however predate the grant of that visit visa. Her son had been recognised as a refugee on 29 January 2010 in relation to a claim which he made following his departure from Iran in 2009. It is not disputed by the Secretary of State that the son was indeed politically involved and is entitled to recognition as a refugee under the Convention.
3. The key events in this appeal took place on 4 March 2013. On that date the appellant's husband was involved in a road traffic accident. He received serious head injuries and was in a coma. Nothing that I say is designed to marginalise or minimise the impact of that life-changing event. It was life-changing not simply for the appellant's husband but for the appellant herself whose life was undoubtedly entirely upturned by the accident that unfortunately befell her husband. I sympathise both with her husband and with the appellant in the tragic consequences of what occurred on that day. However, according to the judge, it was used as the basis for a claim for asylum.
4. That asylum claim arose because the appellant alleged that on the very day the accident occurred, in fact some hours before the accident according to one account, she received a telephone call from home that the Iranian authorities had ransacked her home and this was as a result of interest that was shown, not simply in her husband but in her, which was interest arising from her son's accepted claim for asylum. The events of her son's claim arose in 2009 and before. It was therefore a problem with such a claim to explain why it took until 4 March 2013 for the authorities to react. This was doubly difficult considering the fact that the appellant herself had made some seven visits to the United Kingdom between 2005 and 2012 and had experienced no difficulties. It was only, according to her, that she experienced difficulties when she last departed on 13 or 14 December 2012 that the authorities had become aware of her link with her son. This was the basis of the claim that was advanced in the claim for asylum that was made on 28 March 2013.
5. It goes without saying that in view of the appellant's husband's hospitalisation on 4 March 2013 and the fact that his mental health has subsequently deteriorated that it was wholly understandable that the wife would wish to remain with her son and that her husband should continue to have the care that he currently receives in the United Kingdom following that traumatic injury. He was at one stage so seriously injured and his behaviour became so irrational that he was in fact sectioned under the Mental Health Act but currently he is under the care of a care home in the United Kingdom. The medical evidence is clear that he is suffering from dementia and he will never recover. He needs constant care.
6. There is of course an implausibility about the coincidence that the claim for asylum should be made on the very day that the husband received his injuries but it is not a question of plausibility with which I am concerned. It

is whether or not the judge reached a number of sustainable conclusions on whether this claim was credible. She did not believe it. She rejected this as a genuine claim that the appellant would face difficulties on return to Iran. Needless to say, one of the principal considerations was that, if there were such a risk, then it was according to the judge incredible that it would have arisen some four years after the events that caused her son to flee. That featured heavily in the judge's reasoning.

7. In the course of the determination the judge set out in paragraphs 61 to 72 a number of reasons why she did not believe the account. One method of determining this appeal is to look broadly at those conclusions and simply say as I find that they were sustainable. Inevitably some may be stronger than others. There may even be a mistake in one such paragraph but broadly it was open to the judge on the material before her to reject the account provided by the appellant as to the risks she faced on the basis of the judge simply did not believe it. That was a finding that was properly open to her. It would have been permissible for me simply to say that the challenges made in the grounds of appeal are no more than disagreement. However out of deference to the detailed grounds of appeal and the submissions that were made by Mr Gayle. I am going to deal with each of the grounds in turn.
8. There is however one general point which is the extent to which the judge was required to put her concerns about credibility to the appellant during the course of her evidence. The challenge which is made on behalf of the appellant by Mr Gayle is in my judgment answered by the sensible approach adopted by the Court of Appeal in the case of *Nageshwaran* [2002] EWCA Civ 173 where distinctions are drawn between those cases where the appellant, in order to avoid a charge that he is not being dealt with fairly, should be confronted with the challenge to credibility and those cases where no such duty arises. In particular the Court of Appeal adopted the realistic approach that credibility was a matter which was not simply determined during the continuance of the hearing but is often a matter which arises when the judge has the ability to consider the evidence and whether the claim is or is not credible. In such circumstances it is not feasible for the judge to recall the parties and put the matters that trouble him or her to the witness so that an answer can be provided. I am satisfied that in this case the issues which were taken against the appellant were issues that the judge was not required to explore fully at the hearing and to put the appellant on notice and ask for her comments in relation to each one of them. I now turn to the various paragraphs which are the subject of complaint.
9. There was an issue as to whether the appellant herself was aware of her son's political activities. This was not central to the case itself but nevertheless there was evidence that was provided in relation to it. The appellant said that she was unaware of her son's political activity and this account was dealt with by her son who gave evidence. He said that he had not informed his mother of his political activities but she would have been aware of them living in the same house. He gave evidence that she was aware of those activities to the extent of him taking part in

demonstrations; leaflets being around the house and length of time this continued for. This could have had a part in her knowing about it. The judge was entitled in my judgment to conclude that his evidence was that circumstances in the house led her to know that he was involved in political activity and that was contradicted by the appellant's account that she did not know.

10. It was stated in paragraph 63 that one of the reasons that the judge took into account was that the appellant did not encounter any difficulties with the Iranian authorities prior to her son leaving Iran sometime in 2009.
11. There was a further discrepancy according to the judge and this is referred to in paragraphs 63 to 65 in relation to whether or not her husband had been arrested on one or two occasions. There were different versions of that in the evidence. It was a matter that the judge could take into account and she did so. In particular she referred in paragraph 64 to the fact that the appellant's son did not make reference to a second claim of arrest. That was not the appellant's account which was that her husband had been arrested on two occasions. It does not matter whether this was central to the case or not, it was open to the judge to find that the evidence about what had occurred to her husband was the subject of inconsistent accounts.
12. There was then a further inconsistency which was recorded in paragraph 65 in relation to whether or not the father of her daughter-in-law had died as a result of the arrest of her daughter and her husband or whether it had taken place as a result of her father trying to secure her escape from Iran. That, too, was the subject of inconsistent pieces of evidence. The death certificate was dated 30 October 2009 whereas the arrest was claimed to have taken place sometime in July 2009 and accordingly it was open to the judge to determine that the appellant would have known that the cause of the death was either the arrest in July 2009 or events which subsequently transpired.
13. In paragraph 66 the judge deals with the claim that was advanced that the appellant and her husband had been released as a result of their giving guarantees as to their son's good behaviour. The difficulty that the judge felt in relation to this evidence was that although the son left in 2009 there were no problems until 2012, according to the appellant. There was no explanation that the judge accepted as to the delay in interest shown by the authorities. The judge properly reasoned that if the son and daughter-in-law did not return as they were required to do if the appellant's evidence was truthful, there is no explanation why the appellant and her husband were not called upon to make good the guarantee prior to December 2012. The appellant had explained that this was because she had travelled under her own name and that the authorities would not therefore have realised that she was travelling (even though she was a guarantor in relation to an obligation with which she had failed to comply) but the judge did not accept that this was the case.

14. Paragraphs 66 and 69 deal with the credibility of the evidence provided by the appellant that they had guaranteed their son and daughter-in-law's return to Iran.
15. That was also supported by the judge's reasoning in paragraph 67 in that curiously, (and indeed as the judge found, incredibly), the appellant's account was not that she and her husband had been threatened with any adverse consequences if they failed to comply with the guarantee that they had given. That was not the evidence that she provided in answer to question 88 of the asylum interview. Instead she said "*No they did not, just they told us to bring our son and daughter-in-law back with us. They said if they come back we will exempt them from what activity they have done. Pardon them*". The judge, quite properly in my judgment, did not accept that this was a likely response on the part of the Iranian authorities if the appellant's son was genuinely somebody who opposed the state. Whilst of course the appellant herself could not speak for the Iranian authorities, it was open to the judge to reject her evidence about the position adopted by the Iranian authorities as a result of the answer that she had given; an answer which was thoroughly implausible and, as the judge found, incredible.
16. In paragraph 68 the judge then dealt head on with the fact that the Iranian authorities did nothing between 2009 and 2013 and it was therefore not credible that suddenly they would show an interest in 2013 as the appellant claimed, coincidentally happening at or nearly at the same date as the husband's accident. It is undoubtedly the case that the judge was fully entitled to treat that as an important factor as to whether it was credible.
17. The judge continues in paragraph 69 dealing with the seven visits that the appellant had made between 2005 and 2012. The explanation that the appellant had provided was that her husband's family name on his passport was the same as her son. She herself had a different name on her passport. However the judge provided four separate reasons why he rejected that account as credible. Those are set out in detail on page 13 of the determination and in each case they are findings where were properly open to the judge although in each case they are challenged by the grounds of appeal.
18. In paragraph 70 the judge continues to analyse the appellant's explanation for not having claimed asylum upon arrival in the United Kingdom on 13 December 2012 if she claims she had had experienced difficulties before then. Her explanation was that she hoped that the authorities would have forgotten about the difficulties by the time she returned. That is a classic example of a piece of evidence that it is for the judge to make findings on. She heard the witnesses. She heard the explanation. It was entirely a matter for her to decide whether she believed it. It is impossible to say as a matter of law that the judge was required to accept the appellant's explanation. She did not do so. It cannot possibly be argued that she was acting irrationally or unlawfully in

refusing to accept that explanation and indeed finding that it was not credible.

19. Further credibility findings were made in relation to the telephone call that she claimed the authorities made to her daughter's telephone. Once again that was factored into her eventual determination that this asylum claim was not credible. In paragraph 72 she speaks of the raid that took place and which prompted, according to her evidence, the claim for asylum that was made on 28 March 2013. In particular she refers to the fact that the appellant's evidence had been inconsistent as to when this crucial telephone call had taken place. In one part of the evidence she says that it was an event that took place on the very day of her husband's accident. On another occasion she said that it had taken place four days before the accident. It is said that the judge in making this adverse finding (and indeed others) failed to take into account the fact that the appellant was suffering from the trauma of her husband's illness and therefore the discrepancies should have carried less weight. It is of course axiomatic in any asylum case or indeed in any case which requires a judgment to be made on the evidence that a judge must give due consideration to the level of experience, understanding and intellectual capacity of a witness as well as her emotional state. There is no obligation upon the part of a decision maker to make in each case a detailed analysis of the appellant's ability to provide accurate evidence. It was not a requirement of this judge to provide additional reasons why, notwithstanding her age and the emotional trauma that she had obviously been through, he did not accept her account as being true. It was perfectly open to the judge to conclude that in this case, as in others, that she did not accept the evidence of the appellant that, notwithstanding her own frailty, the answers that she provided were not credible.
20. In subparagraph (ii) of paragraph 72 the judge refers to what may appear to be a relatively minor matter but it was her claim that the documentation had been taken from their home in the course of the raid whilst at another stage in cross-examination she said that there were no documents to be found and therefore no documentation had in fact been taken. This was a clear inconsistency and it was one which the judge was entitled to rely upon.
21. For my part I place no weight on what the judge said in paragraph 72(iii) which is a matter that concerns whether or not the amendments to the appellant's flight plan was altered prior to or after the raid took place on their home. On the face of it, it would seem to me that the judge may well have got it wrong but it was a minor matter and it cannot upset the other findings that were made.
22. In each of the matters to which I have referred in some detail the challenge made is that the findings were wrong but in my judgment they were findings which were properly open to the judge. She was quite entitled to reach the conclusion that overall the claim was not a credible claim. Inevitably that was a decision taken against the background to which I have referred of a claim made late and arising, so it is said, on the

very day that the appellant's husband suffered a tragic road traffic accident. In those circumstances I dismiss the appeal. It was open to the judge to reach the conclusion that she did and her determination shall stand.

**NOTICE OF DECISION**

The appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge shall stand.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

ANDREW JORDAN  
JUDGE OF THE UPPER TRIBUNAL