



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00940/2018

THE IMMIGRATION ACTS

Heard at Field House
On 16th May 2018

Decision & Reasons Promulgated
On 21st May 2018

Before

Upper Tribunal Judge Chalkley

Between

[F A]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Gayle of Elder Rahimi Solicitors (London)

For the Respondent: Mr S Kotas, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Iran born on [] 1991. He arrived in the United Kingdom on 27th November 2007 with a valid student visa. He had previously been in the United Kingdom in 2006 and returned to Iran.
2. The appellant applied for leave as a student on 20th August 2008 which was granted until 30th November 2009. He was subsequently granted further leave until 17th

January 2011 and again until 31st August 2011 and on 31st August 2011, he again applied for leave as a student.

3. The appellant's student application was refused on 5th January 2013, and it was on 24th January 2013, that he made application for asylum. That application was refused by the respondent on 21st February 2013 and further submissions were made on 22nd October 2014. The appellant appealed that decision to the First-tier Tribunal and his appeal was heard by First-tier Tribunal Judge Twydell at Taylor House on 16th February 2018. The judge made a series of adverse credibility findings in respect of the appellant and his father and dismissed the appellant's appeal on asylum grounds, on humanitarian protection grounds and on human rights grounds. The appellant raised a series of challenges to that decision at paragraphs 3 to 9 of his application and permission was granted by First-tier Tribunal Judge Parkes, because, it was said, the grounds were arguable.
4. At the hearing before me, Mr Gayle told me he relied on the grounds of appeal. At paragraph 26 of the judge's determination, the judge failed properly to understand the core of the appellant's account. The appellant had been engaged in a longstanding feud with [SH], with whom he went to school. This longstanding vendetta had persisted because [SH] was a member of the Basij organisation and over the years, so Mr Gale told me, his influence had become greater and stronger. At paragraph 26 of the determination the judge referred to a printing incident for which the appellant was convicted in 2006. At paragraph 27 the judge makes an adverse finding of credibility, because the appellant's father and the appellant had both failed to mention that on returning to Iran in April 2012, the appellant's father was detained and questioned for three hours at the airport about the appellant. The appellant and his father both gave the explanation that they rather regarded the other detentions as more serious and having more impact than this one but, said Mr Gayle, the judge seems to ignore that explanation.
5. The next challenge is to paragraph 28 of the determination where the evidence of the appellant's father was that he had not returned to Iran on a booked ticket when his mother as suddenly taken ill. He produced his passport, which showed that he returned in March 2014 and not October 2014. The judge was wrong in her evaluation of this evidence. Similarly, at paragraph 29 she errs by failing to place any weight on the letter from the Iranian attorney, Dr Omid Norouzi. The judge makes no allowance for the core interest in the appellant by [SH]. Similarly, at paragraph 30 the judge criticises the evidence of the appellant's mother contained in a signed statement supplied by the mother and says that the respondent had little time to check this evidence or to cross-examine the witness and as a result the judge attaches little weight to this evidence. That ignores the fact that the appellant's mother is in Iran and did not attend the hearing, he said.
6. At paragraph 32 of the determination, the judge's analysis is said to be confusing, because it appears that the judge accepts that the appellant's mother was harassed by an influential Basij and the judge also appears to accept the evidence to this effect from

the Iranian lawyer, Dr Omid Norouzi. The judge goes on, however, to conclude that there is no evidence that the Basij responsible for the harassment is [SH]. There was no other evidence to suggest any involvement of a Basij other than [SH]. Lastly, at paragraph 33 the judge materially errs by failing to consider the explanation that his problems arose when [SH] became influential in the Basij. He was able to use his influence to pursue his vendetta by harassing the appellant's mother and ensuring the detention of the appellant's father.

7. Responding on behalf of the Secretary of State, Mr Kotas suggested that the determination was comprehensive, clear and well-reasoned. It was simply untenable to suggest that the First Tier Tribunal Judge had failed to comprehend the central aspect of the claim. The judge makes it perfectly clear that she understood the appellant's case and rejected it for a multitude of reasons, all of which were rationally open to her on the evidence. The challenges made on behalf of the appellant are all disagreements about the weight to be placed on the evidence. There was no misdirection by the judge as to the burden and standard of proof, which she clearly set out at paragraph 15 of her determination.
8. At paragraph 25 of the determination the judge noted a significant difference in accounts. She said:-

“At the hearing, the appellant stated he helped his two school friends to do some printing namely a form of leaflet about Christians, that he used his own computer and printer at home. He stated he did not have any idea what they did with the leaflets and he helped them approximately fifteen times not actually doing the printing himself, as they used his computer and printer. During cross-examination he was reminded of his replies in the AIR Q11 where he states he attended a seminar twice. He added that what he meant to say was he would have gone to the seminar but did not actually go. I also note asylum interview question 11 states he helped with the printing only two or three times. There is a significant difference between facilitating use of his computer and printer in his own home, once or twice as opposed to approximately fifteen times and actually attending the seminars. I found the appellant to have exaggerated his evidence in this respect and he was also inconsistent as to whether he attended a seminar.”
9. The judge considered the evidence of the appellant and his father and the appellant stated that his father returned to Iran in April 2012 and was questioned for three hours at the airport. He was told by guards who were part of the Basij organisation at the airport that they would find the appellant and kill him. However, the appellant did not mention this incident in his statement dated 22nd October 2014 and neither did his father in his statement dated 22nd October 2014 or his later statement dated 31st January 2018, only referring to it in his oral evidence before the judge. The judge noted the explanations offered.
10. The judge appeared surprised that the appellant's father had not mentioned it in either of his statements because they involved an incident and threats which were made that they would kill his son, the appellant. She found it unlikely that the incident occurred. That was a finding she was entitled to make on the evidence before her submitted he Home Office Presenting Officer. It was entirely rational and properly reasoned. She

considered the explanations offered as to why this incident had not earlier been referred to in witness statements and dismissed those explanations for reasons she sets out.

11. Insofar as the claim that the appellant's father returned to Iran in 2013, the findings of the judge are again clear, logical and adequately reasoned. They were findings she was entitled to make and in paragraph 29 she properly applied *Tanveer Ahmed v Secretary of State for the Home Department** [2002] UKAIT 00439. She has not erred. Similarly, in relation to what she said at paragraph 30, the judge was entitled to place little weight on a signed statement. She could never properly afford the weight to that statement that she would ordinarily afford to oral testimony, because there has simply been no opportunity to test it. The weight to be attached to an individual piece of evidence is a matter for the judge and the criticisms made of the judge are without merit.
12. He told me that at paragraph 32 of her determination, the judge notes that it is the appellant's case that [SH] had been harassing the appellant's mother in Iran and that he is a member of the Basij and, therefore, part of the establishment in Iran, making it impossible for the appellant to find a safe place for his return. She pointed out that the letter from Dr Omid Norouzi simply states that it would be dangerous for the appellant to return to Iran. As she pointed out at paragraph 29, the document states: "It is evident that if my client [the appellant] enters the country, he would be subject to prosecution." The judge points out that there is no explanation as to the rationale behind that statement. In paragraph 33 the judge points out that between the original incident in 2005 and 2010 (during which time the appellant was prosecuted and fined) he had experienced no further difficulties with [SH] or the Basij organisation, either when he was in Iran for two years between 2005 and 2007, or indirectly when he was in the United Kingdom for three years until 2010. She was entitled, therefore, to find it improbable that if [SH] and/or the Basij organisation wanted to kill him or commit injury, harassment or do other harm to the appellant, that there was no evidence of this when the appellant was in Iran up to 2007, before he came to the United Kingdom. She was entitled to find that it was highly improbable that it would commence some two years later in the way the appellant claims or at all. He invited me to dismiss the appeal.
13. Mr Gayle said that as to the appellant's father not mentioning his detention at the airport, his statement does adopt his son's statement and it is in that statement that the appellant does mention his father's detention. The gap in the time during which [SH] appears not to have taken very much interest in the appellant is explained by [SH]'s increased influence. He invited me to allow the appeal and remit it for rehearing.
14. I have very carefully read the determination in the light of the grounds and in the light of the extensive submissions made to me by Mr Gayle. I have concluded that there is simply no merit at all in any of the challenges, which are effectively little more than disagreements with the judge's decision. I adopt Mr Kotas' submissions to me.

15. The first challenge, set out at paragraph 3 of the application for permission to appeal, suggests that the judge erred by failing to consider the explanation for his renewed risk in Iran. However, this is clearly not the case. The judge said at paragraph 16 that the previous claim made by the appellant was based on his being at risk on return to Iran because he was being targeted by [SH], with whom he went to school. When the determination is read as a whole, it is, with respect, abundantly clear that the judge perfectly well understood the appellant's claimed fear from [SH].
16. At paragraph 31, in dealing with the question of risk on return and the issue of relocation, she examined the appellant's evidence about [SH] and the Basij organisation and noted that the appellant claimed that he would be killed by the Basij if he returned to Iran, as since 2010 they had been warning his mother and asking about him. The appellant gives the explanation that they are looking for him because when he was at High School in 2005 he had friends who were Christians and he helped them print off sheets advertising that religion. He did not realise that he was breaking the law at the time. He also relies on having a fight with [SH], as evidenced by a personal vendetta against him.
17. The judge noted that the appellant relied on the evidence of his mother being harassed in Iran and father being interrogated when he returned to Iran. The judge said, at paragraph 34:-

"I find it improbable that if [SH] and/or the Basij organisation wanted to kill him or commit personal injury, harassment or other harm to the appellant that there is no evidence of this when the appellant was in Iran up to 26th November 2007 as he came to the UK as a student on 27th November 2007. He had also returned to Iran, after visiting the UK in 2006, with no apparent problem. Further, as there is no evidence of such activity, I find it highly improbable that it would commence some years later in the way the appellant claims or at all. Finally, if the appellant is correct and his life was in danger in 2010 it is inherently improbable that he would not have bothered to apply for asylum at that point simply because he had a student visa as that visa gives no security or ability to stay in the UK beyond its stated duration. The appellant explains why he did not claim asylum in 2010 (Q8 AIR) because the situation was not serious enough for him to apply for asylum. This evidence contradicts the evidence of the appellant's father. At his statement dated 22nd October 2014 paragraph 3, referring to the appellant's mother being harassed from 2010 onwards, he states: 'The incidents in Iran had a devastating impact on my son's life ... the harassment never stopped and it is still going on. In the end, he had no choice but to claim asylum.' I find the fact he did not apply for asylum in 2010 was because neither [SH] nor any member of the Basij organisation were threatening him directly or via his mother. Based on this evidence I find the appellant has not proved he would be at risk of persecution, in the form of prosecution for apostasy, or otherwise if returned to Iran. In light of my findings, it would not therefore be necessary for the appellant to consider relocating to another part of Iran on his return as I find it improbable he would encounter any difficulties from either [SH] or the Basij organisation upon his return."

18. The second challenge relates to what the judge said at paragraph 27, but there the judge does consider the explanation offered by the appellant and his father and is not satisfied that the incident took place. That was a finding she was entitled to make.

19. The other findings at paragraph 27 are similarly findings open to the judge on the evidence. The fact that the appellant's father was not asked about the exact nature of his mother's illness is, with respect, irrelevant. The fourth challenge suggests that the judge's finding is perverse. With great respect, it is not. The lawyer must surely have realised why he was being asked to write the letter and it simply says that if the appellant returns he would be the subject of prosecution. It gives no explanation as to why. The judge was entitled to find as she did.
20. Similarly, the judge did not err in her treatment of the mother's witness statement. It was inevitable that the judge would give little weight to a signed statement from a witness. The evidence cannot be tested under cross-examination. The appellant's representatives must surely have realised that a judge would give nowhere near as much weight to a signed statement from a witness as they would to the oral evidence from a witness whose evidence is open to scrutiny.
21. The sixth challenge suggests that the judge accepted that the appellant's mother had been harassed by the Basij. It also suggests that the judge appears to have accepted the evidence to this effect from the appellant's Iranian lawyer. In fact, at paragraph 32 there is nothing to indicate that the judge does accept these matters. She accepts that it is the appellant's case that [SH] has been harassing the appellant's mother and is a member of the Basij and accepts that she was provided with a translation of a document from the appellant's attorney in which he claims that it would be dangerous for the appellant to return because the appellant's mother has suffered harassment from the hands of the Basij, but the judge did not say that she accepts this evidence.
22. The last challenge criticises paragraph 33. With respect, there is nothing in paragraph 33 which indicates that the judge has misunderstood the claim. Indeed, it suggests that she has properly understood it and finds it improbable.
23. I am satisfied that the making of the decision by the judge did not involve the making of a material error of law. I uphold the judge's decision. The appellant's appeal is dismissed.

Richard Chalkley

Upper Tribunal Judge Chalkley

TO THE RESPONDENT
FEE AWARD

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

Richard Chalkley

Upper Tribunal Judge Chalkley

Date: 16th May 2018