



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/03686/2013

**THE IMMIGRATION ACTS**

Heard at North Shields  
On 23<sup>rd</sup> August, 2013

Determination Promulgated  
On 23<sup>rd</sup> October, 2013

Before

Upper Tribunal Judge Chalkley

Between

MOHAMMAD SHARIFI RAZAVI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr R Selway, Solicitor from Halliday Reeves  
For the Respondent: Mr C Dewison, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant was born on 11<sup>th</sup> June, 1982 and is a citizen of Iran. He entered the United Kingdom on 3<sup>rd</sup> March, 2013, having left Iran on 8<sup>th</sup> February that year and crossed Turkey hidden in a lorry. On 3<sup>rd</sup> April, 2013, the Secretary of State decided

to remove the appellant as an illegal entrant. The appellant appealed that decision and his appeal was heard at North Shields on 21<sup>st</sup> May, 2013 by First-tier Tribunal Judge Cope.

2. The basis of the appellant's claim for asylum was set out in some length at paragraph 19 of Judge Cope's determination. He said that the appellant lived with his family in Tehran and following the 2009 Presidential elections the appellant claimed to have started to download political and religious materials on to his laptop computer. He apparently deleted them after two or three days once he had read them. He became friends with Rasul, a colleague at work, and on 1<sup>st</sup> February, 2013 during the course of a conversation with Rasul about religion he mentioned a film he had heard called 'Innocence of Muslims'. He said that it could be downloaded from the internet.
3. The appellant and Rasul went to the appellant's house because he had a vast internet connection. Using anti-filter software, the two of them downloaded the film on to the appellant's computer and the appellant maintains they watched it. It was about fourteen minutes long. Rasul asked for a copy of the film to show to his father, so the appellant put a copy onto a CD for him and Rasul took it away with him at about 4 p.m. After midnight, Rasul's mother called the appellant to say that Rasul had not returned home. The following day on his way to work the appellant tried to call Rasul, but there was no answer either on his mobile phone or on his land line. The appellant's mother telephoned the appellant at about 4. p.m. the same day to say that the Iranian intelligence and security forces had raided the appellant's home. They had searched the house and removed his belongings including books, CDs, DVDs and his laptop. In addition they had taken away his father and a car was outside watching the house.
4. The appellant believed that these events must have occurred because Rasul had been detained by the authorities. The appellant destroyed his telephone sim card before dialling a friend of his, Hamad, and arranging to go and stay in Hamad's house on the outskirts of Tehran. The appellant was unable to contact Rasul, but he did speak to his mother at their home. She told the appellant that Rasul had been arrested and that she knew about the film that been given to him. She blamed the appellant and asked him to hand himself into the authorities. The appellant claims that he stayed at his friend's house for about six days and then arrangements were made for him to leave the country.
5. The Immigration Judge did not believe the appellant's account. He found him not to be credible and found his account to be a fabrication. The judge pointed out, at paragraph 29 of his determination, that there was no background evidence before him about the nature or content of the film 'The Innocence of Muslims' and he had not been provided with a copy of it, either by the appellant or the respondent. The judge made various findings and dismissed the appellant's appeal.
6. The appellant was not represented at the hearing. However, he had been represented at a Case Management Review which took place on 3<sup>rd</sup> May.

7. The appellant sought to challenge the decision and in granting permission Judge Simpson said this:

“When seeking permission to appeal grounds were settled for the appellant by solicitors. The grounds seeking permission asserted that the judge had not been in a position to assess the veracity of the appellant's evidence and reach adverse credibility findings without sight of the YouTube page showing the film Innocence of Muslims, which film was at the centre of the appellant's account about why he left Iran and sought asylum.

Having regard to the importance of the principle of the equality of arms in the administration of justice without sight of the above evidence it is considered that the damaging findings reached by the judge concerning the core of the appellant's claim were not properly open to him.”

8. At the hearing before me, Mr Selway pointed out that the Home Office accept that the DVD in question was in the public domain in Iran and has been for some time. He sought to persuade me that there were other problems with the determination and asserted that the judge had made various assumptions. For example, he said that at paragraph 35 of the determination the judge pointed out that the version that the appellant and Rasul watched was fourteen minutes long, but that the respondent had pointed out that this is a trailer version and that apparently the full length version was 72 minutes long. The judge was relying on an assumption.
9. The judge looked at the questions and answers put to the appellant at his asylum interview and noted that the appellant claimed that he had not fully understood the questions put to him by the interviewer and thought he was being asked whether or not there were similar films to Innocence of Muslims. Mr Selway submitted that at paragraph 42 the judge had also erred by assuming that the appellant and Rasul would have heard of the film, to the extent that he was interested in it and had discussed with the appellant, yet apparently he had not heard of it, despite the fact that the president had strongly disapproved of the film. Mr Selway did, in fairness to him, and in my view entirely properly, point out that even despite what he described as being “errors” in the determination, the determination was still sustainable. He relied on the grounds. For the respondent Mr Dewison relied on the Rule 24 response made on behalf of the Secretary of State.
10. I note that at the Case Management Review hearing on 3<sup>rd</sup> May the appellant was represented by a solicitor who has considerable experience in dealing with asylum matters. The appellant, for whatever reason, chose not to be represented at the hearing before the judge. Nonetheless it is clear from the judge's determination that this solicitor assisted the appellant in the presentation of his appeal. There is nothing in the grounds to suggest that the appellant was in any way prejudiced by not being represented at the hearing before the judge. No mention was made at the Case Management Review hearing on 3<sup>rd</sup> May of the DVD in question. It was not produced to the Immigration Judge and I do not believe that he has committed any error by determining the appellant's appeal without sight of it. It was for the appellant to prove his case. The standard of proof is only a very low one, but that does not mean it does not exist.

11. The judge noted, at paragraph 24 of the determination, that the appellant had given an account of events in Iran on four different occasions. On 4<sup>th</sup> March, 2013 in his interview, on 19<sup>th</sup> March, 2013 in his statement of evidence interview, in his witness statement of 8<sup>th</sup> May, 2013 and in his oral evidence to the judge at the hearing. The judge noted that the appellant had been consistent in what he had said about events in Iran and that he had consistently claimed that the appellant and Rasul had downloaded a video considered to be anti-Islamic. He accepted also what the appellant said about the treatment of people perceived by the Iranian authorities to hold anti-Islamic views. He clearly examined the background evidence and found it consistent with the background evidence too. He noted however that the heart of the appellant's claim was that he claimed to be wanted by the Iranian authorities for actual or perceived anti-Islamic views because he watched a video film which was deemed to be against Islam and this had come to the attention of the authorities.
12. At paragraph 29 of his determination the judge pointed out that there was no evidence before him about the nature or contents of the film and he had not been provided with a copy. The judge was aware from the respondent's Reasons for Refusal Letter that the appellant's credibility was in issue and one of the reasons given by the respondent for doubting the appellant's claim was that the version that the appellant and Rasul had claimed to watch was fourteen minutes long, whereas in fact the full version was 74 minutes and the YouTube website contained both. The fourteen minutes version is said to be a trailer. The appellant sought to deal with this point at paragraph 13 of his witness statement and claimed that his answers at questions 70 and 71 of the interview make it clear that he had not fully understood what the interviewer had meant. The appellant thought he was being asked whether or not there were similar films to Innocence of Muslims and his answer to question 71 put to him at the interview shows this. The judge recorded this at paragraph 37 and at paragraph 38 of the determination said

“Having myself looked at the questions and answers at questions 70 to 72 I disagree. The questions are perfectly clear. The interviewer specifically asked about other versions of the same film as the fourteen minutes version that the appellant had said he had watched. Not whether he had watched other different films which were similar to Innocence of Muslims.”

In my view that was a perfectly proper finding for the judge to make.

13. It had also been said that during the course of cross-examination the appellant gave a different answer when questioned about the point by the Presenting Officer. The appellant claimed that he had just talked about the film that he had downloaded himself and that he thought the interviewer meant that version. The judge pointed out that there was no mention made by the appellant in his oral evidence about understanding the question in the interview as understanding about the other film. The judge was entitled to find as he did at paragraph 40 that it was surprising that the appellant was not apparently aware of public criticism of Innocence of Muslims made by the president. The judge was similarly entitled to find a considerable coincidence, and not one that he believed, that Rasul should have heard about the

film *Innocence of Muslims*, to the extent that he was interested in it and then discussed it with the appellant, and yet he had not heard of mentioned to him that no lesser a person than the President of the Islamic Republic strongly disapproved of the film. The point the judge was making and in my view perfectly validly, was that these two individuals must have realised that what they were doing would not be approved of by the authorities.

14. At paragraph 69 the judge pointed out that he had given as much credit as he felt able for the consistencies that he found in the appellant's account, and there was a limited amount of credit that had to be given to him as a witness in relation to the consistency that his account bore to the background evidence about the way people who are thought to be anti- Islamic are regarded by the authorities. He concluded, however, that the claim made by the appellant was a fabrication and did not believe that the appellant had any fear of persecution or serious harm at the hands of the authorities. The judge considered that the appellant would not at any risk were he to be returned and dismissed the appeal.
15. I believe that the judge was entitled to find as he did and I believe that the criticisms made of him for proceeding to make the findings in relation to the claim without sight of the YouTube page which shows *Innocence of Muslims* does not disclose any error of law on his part. The appellant was represented and at no time was it ever suggested on behalf of the appellant that the judge should view the DVD. The appellant, for whatever reason, decided not to be represented at the hearing and failed to adduce any specific evidence in relation to it. That was his choice.
14. There is no error of law in his determination and I uphold the determination of First-tier Tribunal Judge Cope. This appeal is dismissed.

Upper Tribunal Judge Chalkley