



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

Appeal Number: AA 04082 2013

THE IMMIGRATION ACTS

Heard at Field House

**Determination
Promulgated**

On 9 December 2013

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Before

UPPER TRIBUNAL JUDGE PERKINS

Between

HAMID ZAERI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hodson, counsel instructed by Elder Rahimi Solicitors

For the Respondent: Mr J McGirr, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by a citizen of Iran against a decision of the First-tier Tribunal dismissing his appeal against a decision of the respondent to remove him from the United Kingdom. It is his case that he is a refugee or otherwise entitled to international protection.
2. Essentially, the First-tier Tribunal disbelieved the appellant in all material particulars and, consequentially, dismissed the appeal. The grounds supporting the application for permission to appeal are thoughtfully drawn and extensive. Having heard argument this morning I am persuaded the grounds are substantially justified.
3. The real problem here is paragraph 64 of the determination which I consider to be pivotal. I set out the paragraph below. The First-tier Tribunal judge said:

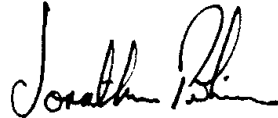
“It is wholly unbelievable that the authorities, who the appellant claimed had an adverse interest in him, would not choose to seek to detain him when he had visited the United Kingdom Embassy to make a visit visa

application, and in particular when he had visited a Chamber of Commerce connected with the Iranian government to obtain documentation to further an application for a visit to South Korea. If the appellant had been detained and questioned about returning to Iran in 2009 it is wholly unbelievable that he would subsequently be allowed to apply for and visit Dubai. The fact that he was able to do so clearly indicates that the Iranian authorities had no interest in him whatsoever.”

4. There are here two quite separate points that are somewhat muddled in the determination.
5. Firstly, the appellant says that he was subject of some attention when he returned to Iran but the authorities made enquiries and decided that his conduct was annoying or embarrassing rather than seriously wrong. I do not see why it should be thought unbelievable that he would be allowed to go anywhere else. A great deal depends on which particular officials noted which particular features of an application.
6. Secondly, the first part of the adverse finding in 64 assumes that the appellant cannot be telling the truth when he says that during his visit to the Chamber of Commerce the authorities noticed endorsements in his passport indicating some dealing with the British Embassy and allowed him to go. According to the determination that cannot be right. Rather, according to the determination, the authorities would have shown an interest in him and detained him. The difficulty is that it is precisely the appellant’s case that the authorities *did* show an interest in him. They did not detain him immediately but, if the appellant is telling the truth, very soon after his visit to the Chamber of Commerce, his home was raided and his computer examined and so on. The interest, if not the detention, that the judge said *ought* to have happened is what the appellant says *did* happen. There is nothing in the papers before me that show it must be assumed that the Chamber of Commerce was in a position to organise his immediate detention and arrest, and I think that would be necessary before any sense can be made of the logic allegedly applied in paragraph 64.
7. I appreciate that there are other comments that are said to indicate adverse credibility on the part of the appellant. They may or may be justified, but they do not legitimise the alleged logic behind paragraph 64 which I find is just not there.
8. I am also concerned about the summary of the appellant’s case at paragraph 17 of the determination where the First-tier Tribunal judge said that the appellant believes his family home was raided because he was accused of spying and collaborating with terrorists. This does not appear to be right. The allegation of collaborating with terrorists appears to relate to his earlier disbelieved asylum claim. The appellant does seem to be saying that his home was raided because he was accused of spying, but the reference of collaborating with terrorists as far as I can see is based on a summary of a summary in the reasons for refusal letter. It does not show a proper appreciation of the appellant’s case because, as far as I can see, he made no such claim.

9. It follows therefore that there are, I find, two quite seriously wrong elements in an adverse credibility finding and I am persuaded that the determination as a whole is therefore unsatisfactory. This of course does not mean that the appellant is entitled to the relief he seeks, but he is entitled to a proper decision. At the moment he has not got one. Mr Hodson argues, and I think he is right, that this is a case that has to go back to the First-tier Tribunal. This is not something that can be repaired. It is something that needs to be done again.
8. I therefore find an error of law. I set aside the decision and order the case to be determined again in the First-tier.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Dated 23 December 2013