



IAC-FH-AR-V1

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

Appeal Number: AA/06956/2013

THE IMMIGRATION ACTS

Heard at Manchester

On 7 October 2014

**Determination
Promulgated**

On 13 November 2014

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

SA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Medly-Daley, Broudie Jackson & Canter

For the Respondent: Miss C Johnstone, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Iran who was born in 1982. He has been granted permission to appeal the decision of First-tier Tribunal Judge De Haney who, for reasons given in his determination dated 17 March 2014, dismissed his appeal on asylum, humanitarian protection and human rights grounds against the decision to remove him as an illegal entrant dated 8 July 2013.
2. The appellant reached the United Kingdom on 8 June 2013 after illegal entry by lorry. He claims to be in need of protection as the consequence

of a run in with the authorities over the keeping of dogs. The appellant ran a pet shop. Because of disapproval by the authorities over the keeping of dogs as pets, the appellant kept his dogs in an orchard away from his shop. Two of the dogs were shot in 2012 and in April or May 2013 the appellant realised that the shootings had been by the authorities as they returned and shot another dog. On hearing the shot the appellant went to the scene. Such was his anger that he turned on one of the two officers and broke the hunting gun that had been used. The appellant then fled to a farm to hide. The day he did so the authorities raided his parent's house where he lived. He then fled the country. The appellant is unable to return to Iran as the council has complained about his business. Anyone with a complaint against the government will be described as a complaint against Iran and religion.

3. The Secretary of State did not believe the appellant, neither did Judge De Haney. The case had come before him by remittal from the Upper Tribunal as a result of error in an earlier decision by First-tier Tribunal Judge J Edwards.
4. Of the four grounds of challenge, two assert procedural error. The first is that the judge had erred by referring to the determination of Judge Edwards; in doing so the appellant had been denied a fair hearing.
5. I do not accept Mr Medly-Daley's submissions on this aspect. It is correct that Judge De Haney listed the determination of Judge Edwards along with the permission to appeal by Judge Simpson, the decision remitting the case by Deputy Upper Tribunal Judge Bruce as well as the directions of Principal Resident Judge Southern.
6. Judge De Haney explained at [10] that he had taken account of all of the documentary evidence particularly the sections referred to by Mr Medly-Daley and Mr Wardall.
7. The decision of Deputy Upper Tribunal Judge Bruce makes it clear that with the agreement of the parties the matter needed to be redetermined afresh, and hence that was the basis on which it was remitted.
8. There is no reason to believe that this experienced specialist judge did anything other than determine the matter afresh as he was required to. Cataloguing the papers recording the history of the proceedings cannot be taken as an indication that the judge had relied on the earlier judge's findings or that they were a factor taken into account in reaching his own conclusions on the appellant's credibility. There is nothing in the language of the determination to support a contrary view. He would be entitled to look at the earlier decisions to see what has been said earlier but this does not appear to have been an issue in the case.
9. The judge is recorded in the second ground to have invited the representatives to confirm the issues and that the issue of credibility was agreed. Reference is made to a skeleton argument submitted prior to the

hearing in terms that risk could be argued in the absence of credibility. The judge had observed that this was contrary to country guidance and that in his view the only issue was credibility.

10. It is argued that there was no relevant country guidance; *SB* (Risk on return - illegal exit) Iran CG [2009] UKAIT 00053 being considered as not having addressed in sufficient detail the processes and investigations involved prior to the punishment of a fine being issued. It is also argued that the situation has moved on since the country guidance was heard based on the Secretary of State's COIS Report that detention conditions in Iran were likely to breach Article 3. No anonymity was granted and the hearing was a public one.
11. This ground can be considered with ground 3 which argues that the evidence in front of the judge (and not disputed by the respondent) was that failed asylum seekers would be arrested and that their backgrounds would be investigated. This would result in detention for a few days (which would be likely to reach Article 3 levels) or alternatively there would be prosecution for propaganda against the regime. The appellant relies on grants of permission to appeal in other cases to support this challenge and in particular the acknowledgment by the Secretary of State that she is unable to return people without a passport containing a valid exit stamp (*R (on the application of JM)* [2014] EWHC 4430 (Admin)).
12. My conclusion on these grounds is as follows. The appellant's evidence was that he had left Iran illegally. The judge concluded in the final sentence of his decision that he did not accept the appellant had left Iran illegally.
13. The only inference from this conclusion is that the appellant had left Iran lawfully and therefore with a valid exit stamp. It is a question of considering the reach of the lie. The only reason given by the appellant, who is apolitical and otherwise has not had any adverse encounters with the authorities, as to why he left was because of the dog incident. That was found by the judge to be untrue. It is not for the judge to search for another reason why the appellant may have left and if so in what circumstances.
14. I readily accept that if the only reason why the judge dismissed the appeal was because the appellant had lied that would be an error. But in this case the judge had regard to the evidence including Mr Medly-Daley's seven page skeleton argument and the cases on which he had relied, including the country guidance decision in *SB*. The judge's conclusions at paragraph 27 clearly show he understood the task before him was to decide whether the appellant faced any risk. He gave valid reasons why he did not. Accordingly I am not persuaded grounds 2 and 3 are made out.
15. This leaves ground 4. Three points are made. The first is that the judge had relied on a failure by the appellant to substantiate his ownership of a

pet shop and the existence of a trade licence. It is argued that the appellant could not be required to substantiate every part of his claim.

16. It is correct that the Secretary of State had not accepted that the appellant had a "farm/orchid". She did not specifically reject the appellant's claim that he had been a pet shop owner. Nevertheless, the judge gave reasons rationally open to him on the evidence for concluding in paragraph [22] that it was not credible the appellant would have been a pet shop owner without knowing the basic facts regarding the appellant's knowledge surrounding the keeping of dogs. The second limb to this ground challenges the judge's understanding expressed in [27] that it was nonsensical that the second official had stood by and watched the incident. The author of the ground may have intended to refer to [24] which deals with this aspect. The judge's conclusion was rationally open to him and this limb is no more than a disagreement.
17. The final aspect of this ground is a similar challenge to the evidential findings. In this respect, the complaint is that the judge had speculated about the disposition of dogs to bark when people were about as to why the appellant was not aware of the presence of the officials. It is argued that not all dogs are disposed to bark at strangers. The judge is criticised for having speculated.
18. In my view this final challenge is a disagreement with findings rationally open to the judge on the evidence that does not identify legal error. Regardless of whether the dogs barked or the employee shouted, I am satisfied that when read as a whole the determination shows that the judge gave adequate reasons for his findings on the evidence that were rationally open to him.
19. Accordingly I am not persuaded that the judge erred in law on the basis of the challenges made and his decision stands.
20. Mr Medly-Daley explained that in the event that error was found and the case was remitted to the First-tier Tribunal the appellant wished to rely on evidence that he had now converted to Christianity. It will be for the appellant to decide whether he wished to make new representations to the Secretary of State about that.
21. This appeal is dismissed.

Signed

Date 12 November 2014



Upper Tribunal Judge Dawson

