



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

Appeal Number: AA/00988/2015

THE IMMIGRATION ACTS

**Heard at Bradford
On 26th August 2015**

**Decision & Reasons
Promulgated
On 17th September 2015**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**HASSAN PANAHI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Shaikh of Counsel instructed by Morgan Dias
Immigration

Consultants

For the Respondent: Ms R Pettersen, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Mensah made following a hearing at Bradford on 23rd February 2015.

Background

2. The appellant is a citizen of Iran. He arrived in the UK on 11th February 2005 and claimed asylum. He was removed to Greece on 12th May 2005 but subsequently re-entered the UK illegally, providing false details to immigration officials in 2008. He was again removed to Greece in the same year. He applied for a marriage visa to the UK on 25th July 2011 in Italy which was refused and the subsequent appeal was dismissed on 15th March 2012. He then travelled to Sweden and attempted to lodge an asylum claim on 19th November 2013. He was removed to the UK by the Swiss authorities on 26th March 2014 and claimed asylum on the same day at Heathrow Airport.
3. The basis for the present claim is that the appellant said that he was a supporter of the KDPI, and distributed leaflets for them. He was arrested by the Ettelaat and detained for six months before being released and fears that if returned he would be killed by the government.
4. The judge set out the evidence and concluded that there was no truth at all in his claims. She recorded that, inter alia, he appeared also to be someone who was willing to enter into a sham marriage in order to gain entry into the UK and wrote:

“To be clear I do not accept that he has not undertaken military service, I do not accept that he left Iran illegally, and I find that he has created a bogus asylum claim as a last ditch attempt to remain in the UK having exhausted all other options.”
5. She then considered the secondary argument put on his behalf which was that the situation in Iran was such that failed asylum seekers per se were at risk of arrest and serious harm.
6. She considered the Operational Guidance Note detailing risks to Kurdish activists which concluded:

“There is no evidence to suggest that an applicant of Kurdish ethnic origin in the absence of any other risk factor would on return face a real risk of ill-treatment or persecution to Article 3 level purely on account of his or her ethnic origin.”
7. She said that the appellant fell squarely within that category.
8. The judge had been provided with a couple of decisions from the Upper Tribunal identifying an error of law in a First-tier decision on substantially the same basis. She distinguished the first because in that case the appellant would have to conceal her conversion to Christianity, and the second on the basis that this appellant would not have to lie.
9. She considered a Country of Origin Information Report dealing with the issue of failed asylum seekers which she said was limited to a small number of cases when it was believed that some have been arrested. An

Amnesty International Report relied on an article appearing in an Iranian newspaper in February 2011 which again suggested that failed asylum seekers could be prosecuted. The judge recorded that there were only three specific cases of arrest which had occurred in 2010 and 2011. which was insufficient evidence to demonstrate that failed asylum seekers were at risk per se. Had there been further arrests since 2011 she would have expected to see them reported.

10. On that basis she dismissed the appeal.

The Grounds of Application

11. There was no challenge to the judge's credibility findings but only to the finding that he would not be at risk on account of having left Iran illegally and as a returning failed asylum seeker.

12. First, the appellant submitted a body of new country material postdating the country guidance case of SB (Iran) [2009] UKIAT 58 which showed an arguable risk on return for failed asylum seekers which was not properly considered by the judge. The evidence from Amnesty International arguably suggested that the act of even making an unsuccessful asylum claim is perceived as a political act against the Iranian Government. The appellant relied on the decision in Farshad Kiani v SSHD [2002] UKIAT 01328 for the proposition that it was not necessary to be a member of a political party to show persecution on the basis of political opinion. The appellant also relied on the respondent's Operational Guidance Note confirming that prison conditions in Iran are so poor that they breach Article 3 and for the acceptance in that note that opponents of the regime would suffer ill-treatment amounting to persecution.

13. Permission to appeal was initially refused by First-tier Tribunal Judge Baker on 17th April 2015 but subsequently granted by Upper Tribunal Judge Perkins on 24th June 2015.

Submissions

14. Ms Shaikh relied on her grounds and submitted that the judge did not properly engage with the material before her which postdated the decision in SB. In particular, her analysis of the OGN and of the Amnesty Report was inadequate. She had not focused her mind on the process of return and failed to take into account the decisions from two Deputy Upper Tribunal Judges identifying errors of law in decisions for exactly that reason.

15. Mrs Petterson defended the determination and submitted that it was clear that the judge had analysed the documentation before her and reached a decision open to her. She drew my attention to the previous entry clearance application which recorded that, prior to 2012, the appellant had obtained an Iranian passport from a Greek Consulate. It was unlikely therefore that he would be returning without proper documentation.

Findings and Conclusions

16. There is no substance in these grounds.
17. First it is quite clear that there is no challenge to the judge's credibility findings. Those findings include a specific rejection of the appellant's claim to have left Iran illegally, a conclusion supported by the evidence in the entry clearance application that the appellant had obtained an Iranian passport in August 2009 with an expiry date of August 2014.
18. Second, it is simply untrue to say that the judge did not engage with the material. She specifically considered the Amnesty Report which referred to a single article published on 26th April 2011. It was plainly open to her to say that if asylum seekers were subjected to ill-treatment between 2012 and 2015 it is highly likely that there would be reports in the public domain and that the evidence from April 2011 was insufficient to demonstrate a real risk to failed asylum seekers per se.
19. The fact that two Deputy Upper Tribunal Judges have found errors of law in decisions which did not engage with submissions and evidence provided in those cases is not authority for the proposition that there is any such error in this case. Neither are binding on the judge, but in any event were considered and distinguished them for the reasons given.

Decision

20. The original judge did not err in law. The decision stands. The appellant's appeal is dismissed.
21. No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Taylor