



IAC-AH-PC-V2

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

Appeal Number: AA/04770/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 15th April 2015**

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

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR MOHSEN SADEGHINEJAD
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Medley-Daley

For the Respondent: Mr G Harrison, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iran born on 11th February 1968. The Appellant's claim for asylum is based upon a fear that if returned to Iran he would face mistreatment due to his conversion to Christianity and an adulteress affair. The Appellant's immigration history is that he claims to have left Iran illegally crossing the border into Turkey on foot and thereafter making his way to the UK where he claimed asylum on arrival on 2nd April 2014.
2. The Appellant's claim for asylum was refused by the Secretary of State on 20th June 2014. In a detailed Notice of Refusal the credibility of the

Appellant's account is not believed as is the Appellant's claim to have converted from Islam to Christianity and to have an adulteress affair. Therefore it was not accepted that the Appellant had been accused of anti-Islamic conduct and it is not accepted by the Secretary of State that the Appellant would be at risk on return for exiting Iran illegally.

3. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Law sitting at Manchester on 12th August 2014. In a detailed determination promulgated on 16th August 2014 the Appellant's appeal was dismissed on asylum and human rights grounds and the Appellant was found not to be in need of humanitarian protection.
4. On 1st September 2014 Grounds of Appeal were lodged to the Upper Tribunal. On 12th September 2014 Judge of the First-tier Tribunal Page refused permission to appeal. On 23rd September 2014 renewed Grounds of Appeal were lodged.
5. On 5th December 2014 Upper Tribunal Judge Coker granted permission to appeal. The judge's reasons were that it was arguable that the First-tier Tribunal Judge erred in law in failing to engage with and make reasoned findings on the submission and Ground of Appeal relating to illegal exit. The other grounds raised were considered by Judge Coker to be weak but permission was granted on all grounds.
6. On 24th December 2014 the Secretary of State responded to the Grounds of Appeal under Rule 24. It was submitted therein that in a comprehensive determination the judge had found the Appellant to be not credible and that the judge had concluded, as was open to him, on the basis of the presented evidence that the Appellant was not a genuine convert to Christianity. The Secretary of State concluded that the judge had applied the ratios of relevant case law and concluded that he will not be at risk for illegally exiting Iran.
7. On 13th January 2015 the Appellant's solicitors lodged a Rule 25 response submitting that the response under Rule 24 failed to engage properly with the Grounds of Appeal and that the issue remained that although the ratio of the case law may have been applied the First-tier Tribunal Judge failed to engage with the arguments that the situation had materially changed since those ratios were determined over five years ago.
8. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the First-tier Tribunal decision. The Appellant appears by his instructed solicitor Mr Medley-Daley. The Secretary of State appears by her Home Office Presenting Officer Mr Harrison.

Submissions/Discussions

9. Mr Medley-Daley submits that the determination makes no reference to additional evidence found in up-to-date CIF Reports and Amnesty International Reports. He submits that there is no reference to the change that has taken place in prison conditions and all these factors were

ignored by the judge and that he has not given reasons for rejecting these factors. He places considerable weight on the decision of the Administrative Court in *Keivan Mahmoudi CO/1700D/2013* where the Honourable Mr Justice Blake stated that there is a risk of First-tier Tribunal Judges summarily disposing of claims by a citation of *SB (risk of return – illegal exit) Iran CG [2009] UKAIT 00053* when a more detailed consideration is called for in a case where this is the sole or central issue. He submits that this is a trap that the judge has fallen into which he was warned against in that authority. He further submits that the case law of *SA (Iran) v the Secretary of State for the Home Department* has been ignored where at paragraph 24 the judge stated:

“There must be a real risk that if she had professed herself to be a Christian, and conducted herself as one, that profession, whether true or not, may be taken in Iran as evidence of apostasy.”

10. Mr Medley-Daley submits that the judge made no findings on the Appellant’s risk on return and that he had not engaged with the evidence even if he has rejected the Appellant’s conversion as not being genuine and that the Appellant may still be at risk despite a lack of a credibility finding on his behalf. Mr Medley-Daley accepts that the judge was entitled to have made his findings as he did with regard to the Appellant’s credibility.
11. He states that he seeks a rehearing so he can bring in a *Dorodian* witness namely a pastor. He asked me to find that there is a material error of law and to set aside the decision of the First-tier Tribunal.
12. Mr Harrison responds by stating it is necessary to read Judge Law’s decision in its entirety in particular his findings which are set out in paragraphs 17 to 34 of his detailed determination. He submits that the judge has gone through the claim thoroughly, made findings and given reasons and he particularly refers me to paragraph 23 with regard to the important findings he has made on credibility. He thereafter takes me to paragraph 24 pointing out that the judge has not just given a cursory glance at the decision in *SB* but has considered the elements required.
13. He submits that the judge has made criticisms leading to a very low (if any) finding of credibility of the Appellant and he has made findings relating to that noting that the Appellant has in his view lied about his conversion and other claims and that he made findings leading to the dismissal of the appeal that he was entitled to. He submits that the determination does not fall into error and that I should dismiss the appeal.
14. Mr Medley-Daley responds by pointing out that the main thrust of the Appellant’s arguments are that relying on the Respondent’s own evidence in the COIF reports no findings had been made and that there has been no consideration of the updated evidence and the Appellant’s risk on return despite the lack of credibility finding.

The Law

15. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
16. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

17. It is the contention of Mr Medley-Daley that the judge has failed to follow the guidance given by Mr Justice Blake in *Mahmoudi* by disposing of the claim by a citation of *SB* when a more detailed consideration is called for. He further considered there has been a failure to consider updated evidence and the risk on return despite the fact there has been an adverse finding of credibility which I acknowledge is a factor to be considered even if there is an adverse finding of credibility.
18. I agree with the principles expressed by Mr Medley-Daley. What I do not agree with is his submission that the First-tier Tribunal Judge has failed to carry out a proper analysis. The judge has made quite damning and critical findings of credibility against the Appellant. The judge has heard the evidence. He has analysed and set out his reasons for doubting the Appellant's credibility particularly at paragraphs 20, 23 and 25. A proper approach to credibility requires an assessment of the evidence and of the general claim. The judge has carried this out. In asylum claims, relevant factors are firstly the internal consistency of the claim, secondly the inherent plausibility of the claim and thirdly the consistency of the claim with external factors of the sort typically found in country guidance. Theoretically it is correct that a claimant need do no more than state his claim but that claim still needs to be examined for consistency and inherent plausibility. This analytical approach has been thoroughly and properly carried out by the First-tier Tribunal Judge. The judge has made conclusions based on the evidence that the Appellant had manufactured

an account to facilitate a claim for asylum. Those were findings that are open to him.

19. Against that background he has gone on to consider in some detail the question of persecution and the reference to *SB (Iran)* and the finding therein that Iranians facing enforced return do not in general face a real risk of persecution or ill-treatment. I acknowledge that that authority is now some six years old but there is nothing to suggest that the judge did not consider all the evidence that was before him and the submission made by Mr Medley-Daley that the judge had made no findings on the Appellant's risk of return is quite clearly incorrect. Such findings are to be found in the detailed reply at paragraph 24. Further at paragraph 27 the judge has emphasised that he has taken into account all the evidence before him including background information and he has noted the position that the Iranian authorities take towards Christians. However this has to be factored against the lack of finding of credibility and the finding that the judge made and which he was entitled to make, that the Appellant would not be placed at risk upon return for having forsaken his religion.
20. The burden of proof was on the Appellant albeit on a lower standard and the judge makes it perfectly clear that the Appellant has failed to discharge that burden of proof. The decision was one that was open to him on the presented evidence, namely that the Appellant was not a genuine convert to Christianity and applying the evidence that was before him including relevant case law the judge was perfectly entitled to find that the Appellant would not be at risk on return. In such circumstances the submissions on the Appellant's behalf amount to little more than disagreement and argument. I consequently find for all the above reasons that the decision of the First-tier Tribunal Judge discloses no material error of law and the appeal is dismissed and the decision of the First-tier Tribunal is maintained.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No fee award is applied for and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris