Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/11747/2014

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 10th July 2015	**On 17th July 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HALL
DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

MR. AHMAD BOHLOULI
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss. G Patel; Counsel
For the Respondent: Mr. G Harrison; Senior Home Office Presenting Officer.

DECISION AND REASONS

1. This is an appeal against a decision and reasons by Designated First-tier Tribunal Judge Baird and First-tier Tribunal Judge Wedderspoon ("the panel") promulgated on 30th April 2015, in which they dismissed an appeal against a decision made by the Secretary of State to refuse an application for asylum.

2. The appeal was heard on 11th March 2015. The panel had before it an appellant's bundle that comprised of a chronology, a witness statement dated 2nd March 2015

made by the Appellant[1] and various pieces of country evidence, and case law. The decision of the panel provides a summary of the appellant's claim for asylum at [3] to [4] and at [5] to [9] they refer to the decision of the Secretary of State made on 3rd December 2014, that gave rise to the appeal. The appellant's evidence is set out at [10] and [11] and at [19] to [27], the panel set out their findings that led to the decision to dismiss the appeal on asylum, humanitarian protection and human rights grounds.

3. The application for permission to appeal runs to some seven pages. Permission to appeal was granted by Designated First-tier Tribunal Judge Macdonald on 29th May 2015. In doing so, he noted *inter alia;*

> "… the grounds of application states that the panel ignored material evidence and made inconsistent findings.
>
> It is arguable that the panel did not take the appellant's witness statement at paragraph 20 into account; it may be arguable that the panel is not clear about whether he did attend a demonstration – see what the panel said at paragraphs 20 and 24. It is also arguable that the panel did not give clear reasons why they considered it unlikely that he lost his documentation – see the end of paragraph 20. It may be arguable that the panel should also have considered the evidence in the appellant's witness statement that he worked for a friend and that was why the authorities did not find him.
>
> The grounds make other points and it is arguable in all the circumstances that the reasoning of the panel was not adequate.
>
> There is also a current issue whether SB Iran continues to be good law."

4. A written response was submitted on behalf of the respondent under the Tribunal Procedure (Upper Tribunal) Rules 2008. The respondent opposes the appellant's appeal and in summary the respondent contends that the panel directed itself appropriately to the evidence, and that it is a matter for the panel to decide the weight to be attached to the evidence.

5. The matter comes before us to consider whether or not the decision of the panel involved the making of a material error of law.

Background

6. A brief summary of the basis of the appellant's claim for asylum is to be found at [3] and [4] of the decision of the panel. The appellant is an Iranian national who claimed that he would face mistreatment due to his political opinion. He claimed to have some involvement in the Green movement and his case, briefly put, is that he attended a demonstration in Tehran following which he was arrested and interrogated. He claimed that he was subjected to regular beatings and abuse following his arrest and that following an attendance at court, he was sentenced to a period of imprisonment for seven years and six months. He claimed that in January 2011 his uncle passed away, and his father arranged for him to attend the funeral by providing a surety of 300 million Toman against the deeds of his house. He was

[1] The index to the appellant's bundle shows the date as 5th March 2015. The statement was signed by the appellant and transalted to him, on 2nd March 2015.

granted one week's leave from prison, but after attending his uncle's funeral, he left to travel to Tabriz. On the suggestion of his brother, the appellant worked for a friend in a masonry factory just outside the city for 3 ½ years before leaving Iran by crossing the border into Turkey, and then making his way by various lorries into the UK.

7. The decision of the panel was to the effect that the appellant had given an inconsistent account in various material respects. The panel concluded that although the appellant has established that there is a reasonable likelihood that he left Iran illegally, the appellant would not be at any risk on return to Iran. The panel found that there is no reasonable likelihood that the appellant is known to the authorities as a political activist, or that he was politically active at all.

The Upper Tribunal Hearing

8. The appellant attended the hearing and was represented by Miss Patel of Counsel. We first heard submissions from Miss Patel who confirmed that she relied upon the matters that are set out in particular, at paragraphs 6 to 28 of the application for permission to appeal. We then heard submissions from Mr Harrison who adopted the matters set out in the written response submitted on behalf of the respondent. Mr Harrison submitted that there is no error of law in the decision of the panel.

9. Before we turn to each of the matters raised by Miss Patel, we note the observations made by Mr. Justice Hadon-Cave in **Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC);**

> "It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost."

10. At paragraph 20 of the decision, the panel state;

> "The Appellant has given an inconsistent account of the circumstances of his exit from Iran. Although the Appellant's account is consistent with the background material and what is referred to in the **BA** case we do not find that the Appellant would be at risk on return to Iran because it is not accepted he was politically active or imprisoned or known to the Iranian authorities as a political activist. The Secretary of State has observed a number of inconsistences in the evidence of the Appellant which we find have not been satisfactorily explained by the Appellant. In particular, the evidence of the Appellant is that he was a member of the Green movement. During his screening interview with the Home Office on 8th August 2014 he stated that he had joined the Green movement on 10th May 2009. The objective information is that the Green movement was not founded until 12th June 2009. The Appellant's version is therefore inconsistent. Further in his screening interview he stated he was issued with a membership card. However in his witness statement he stated he was not a member (see paragraph 20). The card he said was "sort of" a membership card. Further, the Appellant has been inconsistent in terms of his political activities. On the one hand his witness statement says he was not politically active but in direct contradiction to this

> he says he was involved in the organisation of political meetings. He has stated he attended a demonstration following the election and the next day was identified by security staff as being present and arrested. At interview the Appellant stated the footage was not very clear and he did not partake in violence. It is unlikely that an individual who did not live in Tehran, visited the city for one day, partook peacefully in a demonstration; where footage was unclear would be identified and arrested by the security service. He could not provide any documentation about his arrest or sentence. He had managed to keep an exit document from the prison for approximately 3 years but then lost it in the forest. We do not accept that is likely."

11. Miss Patel makes a number of criticisms as to the findings set out in paragraph 20. We examine each in turn. First, she submits that the fact that the appellant's account was consistent with the country evidence clearly should have been properly taken into account in the round, by the Tribunal when assessing his claim. Although the fact that an appellant gives an account that is consistent with the background evidence is relevant to the overall assessment of the claim, that does not absolve the Tribunal from making findings as to the core of the account relied upon by the appellant. The panel considered the core of the appellant's claim, as it was required to, and rejected his account. That much is plain from the opening two sentences of paragraph 20. **BA** was concerned with the risk on return arising from participation in sur place activity and demonstrations within the UK. The Tribunal confirmed that regard must be had to the level of involvement of the individual here, as well as any political activity which the individual might have been involved in Iran, before seeking asylum in Britain. The panel at [20] found that the appellant would not be at risk on return to Iran, because it is not accepted that he was politically active or imprisoned, or known to the Iranian authorities as a political activist. There can be no doubt that that was a conclusion open to the panel for the reasons that they go on to explain in the course of their findings.

12. Second, Miss Patel submits that the panel made a mistake of fact when referring in the decision to the answers as having been given in a screening interview on the 8th August 2014, when in fact, the answers were given at an asylum interview. It is correct that a screening interview was completed on 8th August 2014 and that the inconsistencies referred to by the panel arise from answers given by the Appellant during his substantive asylum interview on 20th November 2014. Miss. Patel submits that in describing the substantive asylum interview as a screening interview, the decision demonstrates that the panel failed to properly consider the appeal. We can see no conceivable basis upon which it can be said that describing the substantive asylum interview as a screening interview, amounts to an error of law, and even less so, one that affected the outcome of the appeal.

13. Third, Miss Patel submits that the panel failed to consider the evidence set out in paragraph 20 of the appellant's witness statement that the date the appellant gave in his asylum interview as May 2009, is the date when the appellant first allowed the Mousavi campaign to use the shop for their meetings and that he attended one demonstration after the election, which was when the Green Movement was formed. The following is recorded in the asylum interview record;

Q. 41. *Were* you a member of Mousavi's Green Movement or just a supporter?

A. I was a member, and our rug shop was turned into a Mousavi campaign base

Q. 42. When did you become a member of the Green Movement?

A. 20.05.2009

Q. 43. What date was the Presidential elections that year?

A. 12.06.2009

Q. 44. So you joined the Movement only in the run up to the election?

A. yes from the day we allowed our shop to become a base I was issued with a membership card and we start promoting the party… I even attended meetings at different houses

14. The appellant states at paragraph 20 of his witness statement made in reply to the respondents decision;

> ".. As I have clarified, I was not a member of Mousavi's party and the dates I gave was when I first allowed the campaign to use the shop. I attended one demonstration following the election which was when the Green Movement was formed."

15. That account given by the appellant is referred to at [10] of the decision in which the panel sets out the evidence given by the appellant at the hearing. As the panel noted at [20] of the decision, "*the evidence of the appellant is that he was a member of the Green movement. During his screening interview with the Home Office… he stated that he had joined the Green movement on 20th May 2009. The objective information is that the Green movement was not founded until 12 June 2009. The appellant's version is therefore inconsistent.*" The appellant had provided inconsistent evidence and it was plainly open to the panel to find that the inconsistencies in the evidence of the appellant had not been satisfactorily explained. In fact no explanation is provided in the witness statement as to why the appellant had expressly stated during the asylum interview that he became a member of the Green movement on 20th May 2009, and had been issued with a membership card, when in fact the Green movement was not founded until 12th June 2009.

16. Fourth, Miss Patel submits that the panel failed to give proper reasons as to why in the context of the country material before them, and the country guidance cases of SB and BA, regarding the number of people who attended the demonstrations following the June 2009 elections, the panel found it unlikely that the appellant attended a demonstration in Iran and was subsequently identified and arrested. Miss Patel further submits that this finding at [20] is inconsistent with the finding at [24] that the appellant had been involved in demonstrations in Iran. In her submissions to us Miss Patel drew attention to the extracts from the case of **BA** confirming that following the June 2009 elections, there were demonstrations and arbitrary arrests of those involved in the protests. It seems to us that the ground advanced by Miss Patel is misconceived and premised upon a misreading of [20] of the decision. Read

carefully, the panel did not reject the appellant's account that he had attended a demonstration in Tehran. What the panel did reject was that the appellant had been identified and arrested by the security service. The point made by the panel upon a proper reading of [20], is that it is unlikely that an individual who did not live in Tehran, who visited the city for one day, who partook peacefully in a demonstration where footage was unclear, would have been identified and arrested by the security service. That was a finding that was open to the panel and is entirely consistent with what is set out subsequently in [24].

> "… we accept that the appellant has been involved in demonstrations in Iran but we do not accept that he was imprisoned as claimed or that the authorities had any continuing interest in him."

17. Fifth, Miss Patel submits that the panel erred in questioning why the appellant has not provided any documentation about his arrest or sentence knowing full well that corroboration is not required in this area of law and it is not always possible for an asylum seeker to obtain documentary evidence. It is submitted that the panel failed to give reasons as to why they do not accept as likely, the appellants claim that he lost the exit papers from prison whilst in Turkey. Miss Patel, who had represented the appellant before the First-tier Tribunal, submitted that his evidence before the panel was that he had lost a small bag with all its contents including his phone, family photos and prison exit papers which were inserted in his diary. The panel has indeed provided reasons why they did not consider that the appellants account, is likely. The reasons are that the appellant had managed to keep an exit document from the prison for approximately three years, but then lost it on his journey to the UK. The appellant may disagree with the finding and the reasons provided, but the panel had the opportunity of hearing the appellant give evidence, having that evidence tested by way of cross-examination before them, and it was open to the panel to form a view as to his credibility and make the findings that they did, for the reasons provided.

18. Miss Patel then turns to paragraph [21] of the decision and submits that the panel failed to take into consideration paragraph 23 of the appellant's witness statement, that it is only since his asylum interview that his brother told him about the house being seized and that he had lied to him previously, because the family did not want to tell him, to worry him. [21] of the decision states;

> ".. The Appellant's evidence about the sanction following the surety has been inconsistent. When asked where his parents were living he stated at the screening interview in the same house (paragraph 158) and they were permitted to stay there for 8 years (paragraph 159). However at paragraph 23 of his witness statement, he says he is now aware the house has been taken from his parents. We agree with the Respondent that these inconsistencies in the evidence give the impression that the Claimant is making up his evidence."

19. At [10] of the decision, the panel records the appellant's evidence that "*following his interview with the Home Office the appellant contacted his brother and was informed that his parents have had their home seized but they did not wish to tell the appellant..*". It is plain that the panel properly had in mind the evidence of the appellant that the house had

been taken from his parents. The panel make express reference to that in [21] of the determination.

20. Miss Patel then submits that the Tribunal erred at [22] of the decision by failing to consider paragraph 17 of the appellant's witness statement that he left for Tabriz from Dorood at the suggestion of his brother because he had a friend he could work for in a masonry factory outside the city. [22] of the decision states;

> "Despite moving to another part of Iran, he was able to work without difficulty for about 3 years in a factory. He has suggested he was in hiding for this period of time and accumulated savings of $8000. We do not accept that as it is said the security services knew the Appellant's identity and he did not return to prison, he was not sought out following his failure to return to prison and captured within this period.

21. Again, at [4] and [10] of the decision, the panel records the appellant's evidence in this respect. It is plain that the panel properly had in mind the evidence of the appellant that the appellant was able to work in a factory. It formed no part of the appellant's case that he had any difficulty during that time. It was plainly therefore open to the panel to reject the appellant's account for the reasons that the panel set out in [23] of the decision.

22. We pause to observe at this point that the approach adopted by Miss Patel, in seeking to mount a challenge to the determination on the grounds that the panel failed to set out all of the matters set out in the appellant's witness statement, is wholly misguided. That is an approach that is positively discouraged. As Mr. Justice Hadon-Cave observed in **Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC)** it is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case.

23. Miss Patel then turned to [23] of the decision which states;

> "... It is not accepted that the Appellant's description of prison assists his credibility since the Appellant was in military service for two years and subject to detention during this period. Further we do not accept the Appellant's account that following the specific targeting of the Appellant by the authorities to arrest him he would be permitted one weeks leave to attend an uncle's burial.

Miss Patel submits that the panel erred in two material respects.

24. First, she submits that the panel proceeds upon a fundamental mistake of fact. That is, the appellant has never claimed to be subjected to detention during the period of his military service. One only has to read the interview record to see that this ground is entirely misconceived;

> Q. 30. has your lack of religious activity ever got you in trouble with the authorities?
>
> A. during my military service I did
>
> Q. 31. What happened?
>
> A. sometimes we would get detention

Q. 32. Can you please clarify what you mean by detention?

A. when it was time to go to the mosque, those who didn't attend were either given an extension on their service or put in detention for up to 48 hours

Q. 120. What prison were you taken to?

A. Heshmatieh prison Tehran

Q. 124. Have you ever lived in Tehran?

A. No, only during my military service

Q. 125. did you know the name of the street because you were an inmate or did you know it was in that street from your military service days?

A. During my military service

25. Miss Patel submits that there was no evidence before the panel that the appellant had been detained in prison during the period of his military service. That is incorrect as is clear from the extract of the interview that we have set out above. The appellant's account given during interview was that he had been in detention during his military service. He knew the name of the street of the prison, not because he had been an inmate there, but because of the period when he was undertaking military service. It was plainly open to the panel to conclude that the appellant's description of the prison did not assist the credibility of his account of being detained following his attendance at the demonstration.

26. Second, Miss Patel submits that the panel failed to give reasons as to why they do not accept the appellant's account that following the specific targeting of the appellant by the authorities to arrest him, he would be permitted one weeks leave to attend an uncle's burial. The reasons are set out in the sentence itself. They are, that there had been, on the appellant's account, a specific targeting of the appellant by the authorities to arrest him. That being so, it was open to the panel to reject the appellants account that he would be permitted one week's leave to attend an uncle's burial.

27. As to [24] of the decision, Miss Patel appears to criticise the panel for taking into account the appellant's failure to claim asylum in France. There is no hint of any suggestion within the findings of the panel that the failure to claim asylum in France was determinative of the assessment of the appellant's credibility, nor was it the starting point. It does however serve to reduce the credibility of an account that the panel had found to be lacking for the reasons that they set out in the preceding paragraphs of the determination.

28. Finally, Miss Patel submits that the panel accepted at [24] of the decision that the appellant has been involved in demonstrations in Iran, but the panel failed to consider whether the appellant would be at risk by reference to the country guidance cases. Furthermore Miss Patel submits that the panel failed to consider the risk on return based upon the finding at [26] that the appellant has established there is a reasonable likelihood that he left Iran illegally.

29. In so far as the risk upon return is concerned the panel records at [17] of the decision, the submissions made on behalf of the appellant. There can be no doubt that the panel was bound by the Country Guidance case of **SB Iran**, unless there was very good reason to depart from it.

30. In **SB (risk on return-illegal exit) Iran CG [2009] UKAIT 00053**, the Tribunal held, insofar as is relevant to this appeal;

> "(i) Events in Iran following the 12 June 2009 presidential elections have led to a government crackdown on persons seen to be opposed to the present government and the Iranian judiciary has become even less independent. Persons who are likely to be perceived by the authorities in Iran as being actively associated with protests against the June 12 election results may face a real risk of persecution or ill treatment, although much will depend on the particular circumstances.
>
> (ii) Iranians facing enforced return do not in general face a real risk of persecution or ill-treatment. That remains the case even if they exited Iran illegally. Having exited Iran illegally is not a significant risk factor, although if it is the case that a person would face difficulties with the authorities for other reasons, such a history could be a factor adding to the level of difficulties he or she is likely to face."

31. The panel accepted, at [24] that the appellant has been involved in demonstrations in Iran. The reference to "demonstrations" rather than "a demonstration", Miss Patel accepted, must be an error. She was right to do so. The appellant's own account is that he has only ever attended one demonstration. His own account of his participation in the demonstration is that he partook peacefully. The panel rejected his account of his arrest and imprisonment and did not accept that the authorities have any continuing interest in him. We can see no reason why the panel should not have applied the country guidance in this appeal, and having done so, it is plain that in the particular circumstances of this appellant, there is no risk upon return. As the panel notes at [25] of the decision, Iranians facing enforced return, do not in general face a real risk of persecution or ill treatment and that remains the case, even if they exited Iran illegally.

Decision:

32. Having very carefully considered the decision of the panel and the grounds rigorously advanced on behalf of the appellant by Miss Patel, it is clear to us that the appeal had been fully ventilated before the panel at the hearing. The panel rejected the appellant's account of his arrest and imprisonment. The panel was not bound to embark on a sentence by sentence review of the appellant's evidence.

33. The making of the decision of the First-tier Tribunal did not involve the making of an error of law affecting the outcome of the decision.

34. The appeal is dismissed.

Signed: Date:
Deputy Upper Tribunal Judge Mandalia