



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

Appeal Number: AA/04093/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 11th December 2015**

**Decision & Reasons
Promulgated
On 13th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

EEA

Appellant

Respondent

Representation:

For the Appellant: Mr Tarlow, Home Office Presenting Officer
For the Respondent: Mr T Hodson of Elder Rahimi Solicitors

DECISION AND REASONS

1. The First-tier Tribunal has made an anonymity order and for the avoidance of any doubt, that order continues. The appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify her. This direction applies

both to the appellant and to the respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

2. This is an appeal against a decision by First-tier Tribunal Judge Iqbal promulgated on 1st September 2015, in which she allowed an appeal against the decision of the respondent of 20th February 2015 to refuse to grant asylum and to remove EEA from the UK by way of directions under s10 of the Immigration and Asylum Act 1999.
3. The appellant is the Secretary of State and the respondent to this appeal, is EEA. However for ease of reference, in the course of this decision I shall adopt the parties' status as it was before the First-tier Tribunal. I shall in this determination, refer to EEA as the appellant and the Secretary of State for the Home Department as the respondent.

Background and the decision of First-tier Tribunal Judge Iqbal

4. The appellant is an Iranian national. She claimed asylum on 30th September 2014. There is no issue as to her identity and nationality. She is of Gashgai (or Qashqai) ethnicity.
5. Three days before the hearing of the appeal before the First-tier Tribunal, on 24th July 2015, the appellant had served some further documents that were relied upon by the appellant. [10] They were, in particular, a letter dated 22nd July 2015 from the appellant's father's attorney and two photographs showing the appellant's injuries sustained following an attack by the Iran security services.
6. The background to the appellant's arrival in the UK and her claim for asylum is set out at paragraphs [11] to [30] of the First-tier Tribunal. Suffice it to say for the purposes of this decision that the appellant provided details of two particular incidents in which her family were targeted. Briefly stated the appellant's account was that in 2011, the appellant's father was approached by the Imam Khomeini Committee who confiscated 50 acres of land from him. The appellant's father took legal action against the committee but lost the claim following a hearing

held at the Engelab Court. The appellant's father owned a separate 10 acres of land in Akbad Abad Shiraz and in 2014, Sepah group members visited him and told him to vacate that land. On 23rd / 24th August 2014, the appellant was involved in a physical altercation with members of the Sepah group. Members of the Sepah group visited the site and there was a physical encounter between the appellant and the group members. The appellant claimed that she had attempted to protect her father and was pushed by the Sepah, falling backwards with her hands on the floor. When she retaliated, she was further injured in the scuffle. During this time her brother arrived, and attempted to help. The appellant recalled hearing gunshots and then escaping with her brother. The appellant claimed to have been driven to the hospital to receive treatment for the injuries sustained. She claimed that her father and uncle had been detained following that incident, but when interviewed she had been unable to clarify basic essential information, such as whether her father was charged with any offences, and when her uncle was released.

7. The appellant also claimed that she has been attending church in the United Kingdom, however she had not thought about converting to Christianity. The respondent, in her decision of 20th February 2015 considered that the appellant's account of what she had learnt so far was credible, but concluded that the appellant is not a practicing Christian convert.
8. The findings of First-tier Tribunal Judge Iqbal are set out at paragraph [31] to [51] of her decision. She began by considering the issues surrounding the appellant's asylum claim noting, at paragraph [34], that the appellant's case does not rest solely on the fact that she is of Qashqai ethnicity or that the incidents that occurred in relation to the "land grab" were due to her ethnicity. She found, at paragraph [35] that "...what has exacerbated the Appellant and family's difficulties with the authorities, is their Qashqai ethnicity...", based upon the objective evidence that is cited at paragraphs [35] and [36].

9. The Judge went on to consider both the events of 2011 and 2014. As to the events of 2011, the Judge states at paragraphs [39] and [40]

“39. In support of this element of her account the Appellant has provided a letter dated 22nd July 2015 from Mr JB, who was the attorney for her father and her uncle. I have considered the letter and I note it states that he had accepted instructions from the landowners in light of the fact that they were in possession of the property deed, further that he had attended the revolutionary court to defend his clients, however the verdict was issued against them and in favour of the committee.

40. I have considered this letter, in the round with the Appellant’s evidence and I find it is consistent and corroborative of the Appellant’s account in relation to the first “land-grab” as well as against the background material. I therefore accept the incident took place to the lower standard of proof applicable; however, it is not this incident that caused the Appellant to flee Iran.”

10. The Judge went on at paragraphs [41] to [43] of her decision to consider the incident that occurred on or around 23rd August 2014 and which caused the appellant to flee Iran. The appellant’s account of the incident is set out at paragraph [41]. The Judge states at paragraphs [42] and [43]:

“42. She claims that it was at this time that she heard gunshots and her brother, who had arrived by this time, took her and fled. The Appellant states that she was taken to hospital and had stiches on her face. At the time her brother did take a picture on his mobile of her face. In relation to this injury, she has now provided two photographs which show serious injuries, consistent with the nature of the injuries she has described. In these circumstances, whilst there is no other documentary evidence to corroborate this incident, when I consider the photographs of the injury in the round with all the other evidence in accordance with the guidance of *Tanveer Ahmed* [2003] UKIAT 00439, I accept to the lower standard of proof applicable, especially as I have already accepted the first incident of 2011, as corroborated by

documentary evidence that the injuries were caused in the way claimed by the Appellant.

43. I also accept to the lower standard of proof, the Appellant's detailed account of how she obtained the photographs and the letter from the attorney, through email from the daughter of their neighbour, who she contacted and who was able to get these from her mother."

11. The Judge then went on to consider whether the appellant would be at risk upon return to Iran. At paragraph [44] of her decision, the Judge states:

"...I have accepted that she was present and was involved in an altercation where the Sepah were attempting to confiscate her father's land and that the Appellant's brother has previously been arrested and that on this occasion, her brother fired shots and she herself, had attacked a Sepah, such that she would have been identified, especially as having fled the scene. Her father and uncle have both been detained, her father released after four days and her paternal uncle still in detention."

12. The Judge went on at paragraphs [45] to [48] to consider whether, on the profile found, the Appellant is someone who on the lower standard of proof applicable, would be identified and targeted on return. She found that the appellant has established that she has a well-founded fear of persecution on return to Iran.

The Grounds of Appeal

13. The respondent advances three grounds of appeal.
14. First, at paragraphs [39] to [40] of her decision the Judge failed to consider relevant objective evidence, before attaching the weight to the documentation relied upon by the appellant, such that the Judge's assessment of credibility is flawed. The respondent claims that the COI report establishes that the Revolutionary Courts do not allow for the

involvement of defence attorneys in court, proceedings. The Judge should therefore not have accepted the letter dated 22nd July 2015 from Mr JB, who was the attorney for her father and her uncle as being credible. The respondent submits that this letter suggests that the attorney attended the Revolutionary Court, in respect of the land dispute. It is not clear, why the Judge accepted that a land dispute would be dealt with in the Revolutionary Court, and the respondent submits it was not open to the Judge to find that the land dispute would be dealt with by the Revolutionary Court, based upon the objective evidence. The respondent submits that the flawed assessment of the evidence in relation to the event in 2011 has infected the Judge's subsequent assessment of the events in 2014.

15. Second, the respondent submits that in light of the Judge's flawed approach to credibility, there was no reason to accept that the appellant would be at risk upon return. There was no evidence of an arrest warrant, or that the appellant was of any continuing interest to the authorities. The respondent submits that the Judge misdirected herself as to the risk upon return in light of what is said in **SB [2009] UKAIT 00053**.
16. Finally, the Judge failed to make any findings as to whether the appellant may be at risk upon return to Iran on account of her attendance at church in the United Kingdom.
17. Permission to appeal was granted by First-tier Tribunal Judge Ransley on 21st September 2015. The matter comes before me to consider whether or not the decision of First-tier Tribunal Judge Iqbal involved the making of a material error of law, and if so, to remake the decision.

The hearing before me

18. On behalf of the respondent, Mr Tarlow adopted the grounds of appeal and submitted that the COI report confirms that there are basically

three types of courts in Iran: (a) Public Courts, (b) Clerical Courts and (c) Revolutionary Courts. Paragraph [11.07] goes on to state:

“The Revolutionary Courts rule on serious offences related to the country’s security, drug trafficking, etc. There are two Revolutionary Courts in Iran. The judgments given by these courts cannot be challenged in any Court in Iran. The Revolutionary Courts do not allow for the involvement of defence attorneys in Court proceedings related to various legal matters addressed by these Courts.

The judges of these courts fulfil additional roles as prosecutors and mediators. All judges in the courts have received a higher education in Islamic Law and most of them are also members of the group of ruling clergies....

....

The Constitution requires all trials to be open to the public unless the court determines that an open trial would be detrimental to public morality or public order, or in case of private disputes, if both parties request that open hearings not be held.”

19. Mr Tarlow submits that in light of the matters set out in the COI report, the Judge’s reliance upon the letter dated 22nd July 2015 from Mr JB, who was the attorney for her father and her uncle, and who claimed that he had attended the revolutionary court to defend his clients, was perverse. Mr Tarlow submits that in any event the proceedings in 2011 were dealt with, and disposed of. He submits that the appellant can be of no further interest to the authorities. He submits that the Judge’s finding in relation to the subsequent incident that occurred on or about 23rd August 2014 is infected by the erroneous approach to the evidence of the 2011 event. In support of that submission, he relies upon what is said in the final sentence at paragraph [42]: “..I accept to the lower standard of proof applicable, especially as I have already accepted the first incident of 2011, as corroborated by documentary evidence that the injuries were caused in the way claimed by the Appellant.”

20. In reply, Mr Hodson relies upon the matters set out in the appellant's rule 24 response to the appeal, dated 8th December 2015. Mr Hodson submits that the First-tier Tribunal Judge had not been provided with a copy of the COI report that is now relied upon by the respondent and her attention was not drawn to the relevant passages. He submits that it cannot be an error of law simply to make a finding which fails to take into account an extract contained in a report where that extract (or even the point it makes), has never been raised by the respondent.
21. Mr Hodson submits that in any event, the COI report does not go as far as that which the respondent contends. For example, the report states that "The Revolutionary Courts rule on serious offences related to the country's security, drug trafficking, etc..". That is not to say that the Revolutionary Courts deal only and exclusively with offences involving national security and drug trafficking. The examples of offences related to the country's security and drug trafficking are plainly not exhaustive. Equally the reference in the report to the Revolutionary Court not allowing for the involvement of defence attorneys in Court proceedings related to various legal matters addressed by these Courts, is not to say that the Revolutionary Courts do not allow for defence attorneys in any cases whatsoever of whatever kind.
22. Finally, Mr Hodson submits that the material now provided by the appellant's representatives shows that there are such other matters within the jurisdiction of the Revolutionary Courts, and further, even the ban on Attorneys at hearings involving national security charges, was lifted in the 1990's.

Decision as to Error of Law

20. The respondent's grounds of appeal amount to a challenge to the findings made by the Judge upon the evidence. In **R (Iran) & Ors -v- SSHD [2005] EWCA Civ 982**, the Court of Appeal drew together the threads of the approach to be adopted in cases where it is claimed that

there is an error of law in the Tribunal's approach to the evidence. Lord Justice Brooke stated:

90. It may now be convenient to draw together the main threads of this long judgment in this way. During the period before its demise when the IAT's powers were restricted to appeals on points of law:

1. Before the IAT could set aside a decision of an adjudicator on the grounds of error of law, it had to be satisfied that the correction of the error would have made a material difference to the outcome, or to the fairness of the proceedings. This principle applied equally to decisions of adjudicators on proportionality in connection with human rights issues;

2. A finding might only be set aside for error of law on the grounds of perversity if it was irrational or unreasonable in the Wednesbury sense, or one that was wholly unsupported by the evidence.

3. A decision should not be set aside for inadequacy of reasons unless the adjudicator failed to identify and record the matters that were critical to his decision on material issues, in such a way that the IAT was unable to understand why he reached that decision.

4. A failure without good reason to apply a relevant country guidance decision might constitute an error of law.

5. At the hearing of an appeal the IAT had to identify an error of law in relation to one or more of the issues raised on the notice of appeal before it could lawfully exercise any of its powers set out in s102(1) of the 2002 Act (other than affirming the adjudicator's decision).

6. Once it had identified an error of law, such that the adjudicator's decision could not stand, the IAT might, if it saw fit, exercise its power to admit up-to-date evidence or it might remit the appeal to the adjudicator with such directions as it thought fit.

7. If the IAT failed to consider an obvious point of Convention jurisprudence which would have availed an applicant, the Court of Appeal might intervene to set aside the IAT's decision on the grounds of error of law even though the point was not raised in the grounds of appeal to the IAT.

23. I have carefully read through the decision of First-tier Tribunal Judge Iqbal and carefully considered the criticisms made by the respondent in

the grounds of appeal and in the submissions made before me, by Mr Tarlow. Having carefully considered the findings and reasons set out at paragraphs [31] to [43] of the decision, in my judgment, the findings made as to the events of 2011 and 2014 were open to the Judge on the evidence. The findings cannot be described as being perverse, irrational or unreasonable in the Wednesbury sense, or findings that were wholly unsupported by the evidence. The findings were made based upon a thorough consideration of the appellant's account and the evidence before the Judge.

24. I accept the submission made by Mr Holden that the extracts from the COI report that the respondent relies upon, do not go as far as that which the respondent contends. The COI report is in any event only relevant to the Judge's assessment of the 2011 incident. Insofar as the 2014 incident is concerned, the appellant relied upon the two photographs that are referred to by the Judge at paragraph [42] of her decision.
25. In my judgement, it was open to the Judge to consider the documents relied upon by the appellant and it is plain that the Judge did so, by reference to the guidance in **Tanveer Ahmed [2003] UKIAT 00439**. The Judge was entitled to find, to the lower standard of proof applicable, that the appellant was present and was involved in an altercation when the Sepah were attempting to confiscate her father's land, such that she would have been identified, especially as having fled the scene.
26. In my judgement, on the findings made, it was open to the Judge to find that the Appellant will be at risk on return firstly being identified and then being detained in line with further investigations given that it is likely that she will be seen as having 'outstanding issues' with the authorities on return.
27. In the circumstances, it seems to me that there was no requirement for the First-tier Tribunal Judge to consider any protection claim based upon

the appellant's attendance at church in the UK, and any failure to address that aspect of the claim would not materially affect the outcome.

28. I find that the decision of the First-tier Tribunal discloses no material error of law and the respondents appeal is therefore dismissed

Notice of Decision

29. The appeal is dismissed and the decision of the First-tier Tribunal shall stand.

30. An anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Mandalia

FEE AWARD

31. No fee has been paid and there can be no fee award.

Deputy Upper Tribunal Judge Mandalia