



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

Appeal Number: AA/07463/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 12 February 2016**

**Decision & Reasons Promulgated  
On 26 February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**AS  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation**

For the Appellant: Mr B. Hoshi, instructed by B.H.T. Immigration Legal Services

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

**Anonymity**

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

**DECISION AND REASONS**

1. The appellant is a citizen of Iran born on 27 June 1997. This appeal arises from the decision of the respondent to refuse the appellant's application for asylum/ humanitarian protection and his ensuing appeal to the First-tier Tribunal ("FtT") which was dismissed.
2. The basis of the appellant's asylum claim is that in around March 2014, aged 16 years old and whilst living with his parents in Iran, he started a relationship with a married woman (although the appellant thought she was divorced) which lasted for about four or five months. The relationship was discovered by the woman's husband. Shortly thereafter he was attacked and beaten and his family received threats. The intelligence services then raided his house, taking his laptop (on which were caricatures of religious leaders) and a Christian bible given to him by a friend. Fearing for his life, he escaped. Since arriving in the UK he has attended church and converted to Christianity.
3. The respondent did not accept that the appellant's conversion to Christianity was genuine and described it as an opportunistic act undertaken in the UK with the sole object of boosting his asylum claim. His account of being involved in an adulterous affair, and of being wanted by the authorities as a consequence, was also not accepted as credible.
4. The appellant appealed and his appeal was heard by FtT Judge Fox. The FtT did not find the appellant's account of the affair in Iran credible. In particular, it did not accept as credible that the affair would have carried on in the appellant's home or that his parents would have tolerated it. At paragraph [60] the FtT stated that the appellant effectively claimed to have lived within a social and religious vacuum separated from the reality of the country conditions which prevail in Iran. At paragraph [62] the FtT stated that "when considered within the prism of country conditions the appellant's claim is not credible".
5. The FtT also did not find the appellant's evidence about his conversion to Christianity credible and identified a number of inconsistencies in his evidence.
6. The appellant sought to rely on a report from Ms Enayat on conditions in Iran in support of his case. The FtT discussed the report at paragraphs [76]-[80] of the decision and concluded that it was unable to rely on the report to support the appeal "when the evidence is considered in the round."
7. The grounds of appeal submit, firstly, that the FtT erred by failing to consider the appellant's age in reaching findings on credibility. He was sixteen when the key incidents took place and 17 when he arrived in the UK.
8. The second ground of appeal is that the FtT, in its assessment of the appellant's affair, made findings based on speculation and inherent probability which were contradicted by objective evidence. In particular,

the FtT failed to give reasons for not accepting the expert evidence of Ms Enayat about the underlying permissiveness in Iranian society which is inconsistent with the findings made by the FtT.

9. The third ground alleges that the FtT failed to properly consider Ms Enayat's expert evidence. This evidence, it is argued, was highly relevant to the assessment of the appellant's credibility.
10. Before me, Mr Hoshi argued, in respect of the first ground, that the FtT, although it recognised the appellant's age, did not consider if a child sensitive approach was required and failed to show how the appellant's age impacted the findings.
11. In respect of the second ground, Mr Hoshi submitted that the FtT made a series of assertions about the implausibility of the appellant's behaviour on the basis of its inconsistency with Iranian values that were not consistent with the evidence before it in the form of a report from the well respected expert Ms Enayat. Moreover, he submitted that the FtT, at paragraphs [62] and [63], relied on a document titled "Iran Country of Origin Report, September 2013" even though that document was not part of the evidence before it. Referring to AM (fair hearing) Sudan [2015] UKUT 00656 (IAC), he argued that the FtT had undertaken inappropriate independent research and it was unfair for the FtT to not put the parties on notice that this report would be relied on.
12. Regarding the third ground of appeal, Mr Hoshi reiterated the point made in the grounds that the FtT had not properly explained why Ms Enayat's report was not accepted.
13. Mr Whitwell argued that the FtT was clearly aware and took into consideration the appellant's age. It had specifically disavowed reliance on the screening interview of the appellant on the basis that he was under 18 and not accompanied by an appropriate adult. Read as a whole, it is apparent the FtT had in mind the appellant's age and maturity.
14. Regarding the second and third grounds, Mr Whitwell accepted that the Country of Origin report was not referred to in the Reasons for Refusal letter but argued that it is a publicly available document and falls within the principle of judicial notice.
15. In respect of Ms Enayat's report, he submitted that the report does no more than describe what is plausible and that it was for the FtT to determine credibility, not Ms Enayat.

### Consideration

16. At paragraphs [62] and [63] of the decision the FtT referred to a document titled: "Iran Country of Origin Report, September 2013". It made specific references to paragraphs within that report (9.05 onwards and 19.19) and cited the report in support of its findings about the credibility on the basis

that the appellant's account was not consistent with objective evidence of conditions in Iran as set out in the report.

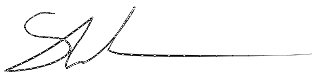
17. It was common ground between the parties that this report was not mentioned in the respondent's refusal letter and was not in the evidence before the FtT. Mr Hoshi commented that it is not available on the respondent's website.
18. As stated in AM (fair hearing) Sudan, it is not for a judge to assemble evidence. *Inter alia*, the headnote to that case states:

If a judge is cognisant of something conceivably material which does not form part of either party's case, this must be brought to the attention of the parties at the earliest possible stage, which duty could in principle extend beyond the hearing date.
19. In my view, the FtT made an error of law by relying on a report that was not raised by, referred to, or part of the case of, either party without first bringing the report to the attention of the parties and giving them an opportunity to make submissions in relation to it. The error was material because it is clear from the decision that the content of the report played a part in shaping the FtT's opinion as to the credibility of the appellant's account when considered in the context of the prevailing conditions in Iran. The consequence of the FtT relying on a report without first bringing it to the attention of the parties is that the hearing was not a fair one and therefore, in accordance with Section 7.2(a) of the Senior President's Practice Statement, the decision should be set aside and remitted to the FtT to be remade afresh.

#### Decision

- a. The decision of the First-tier Tribunal contains a material error of law such that it should be set aside in its entirety and the appeal heard afresh.
- b. The appeal is remitted to the First-tier Tribunal for hearing afresh before a judge other than First tier Tribunal Judge Fox.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 23 February 2016