IAC-AH-DP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/08614/2014

THE IMMIGRATION ACTS

Heard at Employment Tribunal Birmingham	**Decision & Reasons Promulgated**
On 11 March 2016	**On 8 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

MR MOHAMMAD PANAV
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Bhanchu of counsel
For the Respondent: Mr Wilding, a Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Iran who was born on 21 September 1982.

2. The appellant was given permission to appeal to the Upper Tribunal by First-tier Tribunal Judge Sangha, who dismissed the appellant's appeal for asylum, humanitarian protection and on human rights grounds on 29 June 2015.

3. It appears that the appellant made an application for a Tier 4 (General) Student visa at the British Consulate in Istanbul on 19 October 2012. His application was successful and he was granted a visa from 23 October 2012 to 30 May 2014. On 20 September 2012 the appellant arrived at Heathrow Airport with valid entry clearance and subsequently completed his studies at Coventry University in January 2014. However, on 28 May 2014 he claimed asylum and subsequently completed a substantive asylum interview on 19 September 2014. Further representations were received from the appellant and a witness statement dated 22 September 2014 was provided. However, on 8 October 2014 the respondent refused an application. The respondent noted that the appellant had claimed to have taken part in Kurdish activities including distributing leaflets about Mousavi but the respondent did not accept that the appellant had been of interest to the authorities in Iran, having safely arrived in the UK some time previously. He was not a practising Muslim, did not follow a religion and a number of his claims were thought to have been incredible. The respondent had regard to the objective evidence but did not accept the appellant had given an honest and truthful account. It was noted that the appellant had claimed to have worked for an uncle in Ilam in 2006 to 2010, which was inconsistent with his claim to have worked for an uncle for "two and a half years" in his witness statement (paragraph 3). The respondent did not accept that the appellant could have partaken in demonstrations in Tehran whilst he was still working and residing in Ilam. The appellant had claimed that his father was a "Supreme Judge" but it was noted that the appellant had also claimed that his father had participated in a silent march in Tehran (question 92 in the asylum interview). It is suggested that the appellant's father had taken part in the appellant's activities. Furthermore, the appellant's account of his attending a demonstration was inconsistent with international news articles. Overall, the respondent rejected the appellant's account and considered that he had not established a well-founded fear of persecution such as to give support to his asylum claim. He had not suffered serious harm and he could safely return to Iran.

The Appeal Proceedings

4. The appellant appealed to the IAC at Birmingham. The appellant's appeal came before Judge of the First-tier Tribunal Sangha sitting at Sheldon Court, Birmingham on 11 August 2015. At that hearing the appellant was represented by Counsel and the respondent was represented by a HOPO. The Immigration Judge decided that the appellant had not engaged in the activities he claimed to have engaged in. The Immigration Judge found the appellant's account to be incredible. He did not accept the claim that the appellant had distributed leaflets and CDs in support of Mousavi in the three weeks leading up to the elections in 2009 because the appellant had been "working and residing in Ilam" at the time. There was also a discrepancy between the background information in relation to the march, which showed the marchers wearing black, and the appellant's account of the marchers having worn green accessories. The Immigration Judge did

not accept that the appellant's answers to the questions were consistent with the background material more generally, for example, it was suggested that the appellant's father had only found out about his activities when he had posted information through a neighbour's letter box but this contradicted the appellant's claim that he only distributed information to trustworthy persons. The Immigration Judge also noted that the appellant had been able to travel on his own passport out of Ilam and had travelled via India to the UK. In all the circumstances, the Immigration Judge did not accept that the appellant would be of interest to the authorities or, indeed, that he was politically active.

5. At paragraph 38 of his decision the Immigration Judge considered the role of the appellant's uncle, Abbas Panav. The appellant had claimed that Mr Panav was arrested with a friend on 25 April 2014 for "cooperating" with the PJAK Group. The appellant accepted that his uncle was not part of that group and the authorities would have no reason to arrest him. Nevertheless, he had been accused of pro-Kurdish activities by them.

6. The Immigration Judge went on to find that a raid carried out on the appellant's house occurred when the Internal Affairs' Police had come to question the appellant's father. This was in 2014. There were, however, according to the Immigration Judge, inconsistencies in the account which led him to reject this part of the evidence. The Immigration Judge also noted that the court summons that had, allegedly, been issued for the appellant's arrest had not resulted in his arrest. This was surprising given that some time went by after the issue of the warrant before the appellant left Iran.

7. The appellant had claimed in evidence before the FtT that his sister had been arrested and detained but the Immigration Judge had noted that she had not been called to give evidence or asked to provide any written confirmation of this. The respondent did not accept that the appellant's sister was involved in political activities. In order to find that she was, the Immigration Judge would have to accept there was a summons for her arrest. Such evidence was lacking in her view.

8. The Immigration Judge did not accept that the appellant had ceased to be a Muslim, which was an additional part of the appellant's claim. In essence the appellant claimed to fear the strict Islamic authorities in Iran.

9. The Immigration Judge concluded that the appellant would not be at risk on return and then noted the basis on which the appellant had come here (education). For the same or very similar reasons to those given by the respondent the Immigration Judge concluded that the relevant Articles of the European Convention on Human Rights (ECHR) were not engaged.

The Upper Tribunal Proceedings

10. Judge of the First-tier Tribunal Brunnen gave permission to appeal because grounds 2(a)(ii) and 2(a)(iv) appeared to be at least arguable. He noted that the appellant had put forward explanations to address points made against him in the refusal letter. In Judge Brunnen's view, his explanations had not been fully considered before an adverse credibility finding had been made by the Immigration Judge. Secondly grounds 2(b) and (c), which alleged that the Judge erred in failing to consider the criminal record document which had been produced at the time of the appellant's asylum claim. in Judge Brunnen's view, the chronology of events needed to be considered in weighing up the asylum claim.

11. A hearing was fixed and standard directions sent out indicating that the Upper Tribunal would not consider evidence not before the First-tier Tribunal.

12. The respondent opposed the application for permission to appeal indicating that the FtT had directed itself appropriately. The Immigration Judge had taken into account the appellant's own witness statements. These documents had been fully considered at paragraph 5 of the decision. The appeal amounted to no more than a disagreement with the findings of fact made by the Immigration Judge.

13. Directions were sent out. The Upper Tribunal would not consider evidence which had not been before the FtT unless the party seeking to adduce such evidence had made the appropriate application and the Upper Tribunal had decided to admit such evidence.

The Hearing

14. I heard submissions by both representatives. Ms Bhanchu, who represented the appellant, submitted that a number of inconsistencies identified by the Immigration Judge had in fact been addressed by the appellant in his witness statement. The Immigration Judge had not fully taken this into account. The appellant claimed that in fact he travelled to Tehran regularly and therefore the Immigration Judge had been wrong to find (at paragraph 37 of his decision) there was an inconsistency between his attending demonstrations in Tehran whilst working and residing in Ilam. In a nutshell, the appellant had fully explained that he regularly travelled back to Tehran for the purposes of attending such demonstrations. This evidence had simply not been taken into account as fully as it should have been.

15. Secondly, Ms Bhanchu also reminded me of the obligation on the Immigration Judge to give reasons for his decision, referring to the case of **MK (duty to give reasons) [2013] UKUT 00641 (IAC)**. She said that the Immigration Judge had not fully explained his decision. As an example, the appellant had explained at paragraph 9 of his witness statement how his father (a Supreme Judge) was able to demonstrate against the government on pro-Kurdish marches. In any event, the

contention was that the appellant's father had simply lent support to the appellant rather than actually attended such demonstrations. It was suggested in paragraph 37 of the determination that the appellant's contention that he had been targeted by the authorities was not borne out by his account because he says that he had "never encountered by the authorities". However, it was pointed out by Ms Bhanchu that this was not the case. It was the appellant's evidence that his house was raided and his computer was taken. I note, however, that according to paragraph 22 of his witness statement such a "raid" seems to have occurred since the appellant left Iran.

16. Ms Bhanchu also said that her client had explained that his father had not wished to ridicule the appellant's name for fear that he would be blackmailed. This, it was submitted, was perfectly plausible.

17. Ms Bhanchu then referred to paragraph 42 of the decision. The Immigration Judge found that, despite the warrant being issued for the appellant's arrest, his parents had not been arrested. The Immigration Judge did not find that to be credible. Ms Bhanchu pointed out that there was a two-year gap between the issue of the warrant and the raid. Furthermore, I was referred to the country guidance for Iran from 2014. It was submitted that in the light of that objective evidence, the Upper Tribunal ought to conclude that the appellant's evidence was accurate. Unfortunately, Ms Bhanchu was unable to produce a copy of the objective evidence in question.

18. Ms Bhanchu then criticised paragraph 44 of the decision. In that paragraph the Immigration Judge had dealt with the evidence that the appellant had ceased to be an active Muslim but had become interested in Christianity. The Immigration Judge had criticised the appellant for not providing evidence of his renunciation of Islam but, it was suggested by Ms Bhanchu, that the Immigration Judge had not specified what type of evidence he had in mind. In any evident it is not the appellant's case that he "renounced the Muslim religion". According to paragraph 27 of the appellant's witness statement, dated 12 December 2014, his religious beliefs vaguer than they were portrayed by the Immigration Judge.

19. Finally, by reference to paragraph 10 of Ms Bhanchu's skeleton argument (where she submits that the appellant had broadcast over the internet), it was submitted that a detailed assessment of the evidence was needed but that her client appeared to be at risk on return to Ilam.

20. Mr Wilding submitted that the submissions made on behalf of the appellant were fundamentally flawed. The Immigration Judge could not have been more fulsome in his reasoning at paragraph 37. The account was not found to be credible. The centre point of the attack was that there have been inconsistencies between what the appellant had said in his witness statements and the Immigration Judge's findings. This

criticism was not made out when a proper analysis of the decision was embarked on.

21. The Immigration Judge had explained in paragraph 37 why he did not accept that it was credible the appellant could both be attending demonstrations in Tehran and residing in Ilam. It was the appellant's evidence before the FtT that he spent three weeks in Tehran but this was rejected by the Immigration Judge in paragraph 37. The Judge made it clear that he did not accept the appellant's account which was inconsistent with other evidence including that relating to the colour of the clothing on the march.

22. Mr Wilding turned to paragraph 38 of the decision, where the appellant claimed that his uncle and friend (Ihshan) were arrested at a group meeting on 25 April 2014. This, it was alleged, was before "cooperating with the PJAK Group". The Immigration Judge did not accept that the appellant's uncle had ever been arrested and when he had been "helping families that were over seven years before his arrest". The Immigration Judge also pointed out that if the appellant was correct in saying that he had been distributing "green material" including music, it was not considered plausible that the Iranian authorities would wait nine years before taking his activities seriously. In any event, it was the appellant's evidence that he would only distribute to trusted individuals. In particular, the appellant had claimed that he only put leaflets through doors when he knew they were supporters.

23. Mr Wilding also pointed out that paragraph 38 of the decision contained other important adverse findings. It was not clear how he had received the summons from Iran, for example. He had claimed that it had been emailed to him. However, no copy had been produced. The account of his family home being raided was also rejected by the Immigration Judge. The Immigration Judge had made a careful assessment of all points.

24. Finally, Mr Wilding dealt with a point raised by Ms Bhanchu towards the end of her submissions. She suggested that her client had also been blogging in Iran and this was an additional risk factor. Mr Wilding pointed out this had not been raised in the grounds of appeal nor had it been raised before the Immigration Judge and I should therefore discard this comment. He invited me to find overall that the decision was cogent and sustainable.

25. Ms Bhanchu responded to say that if I found an error of law I was invited to hold a fresh hearing. She had dealt with at least eight points of alleged inconsistency in the decision. All these points were addressed and answered by her client and in her skeleton argument. She pointed out that her reference to blogging was not a new departure in that it had been referred to in the decision that the appellant had used the internet. I was invited to remit the matter back for a fresh hearing as the entire case was

flawed. I believe that Ms Bhanchu suggested at one point this should be to the First-tier Tribunal.

Discussion

26. The appellant claims to be an Iranian Kurd from Tehran, who was born on 21 September 1982. His father was from Iraq. He claims to have raised funds for Kurds as to have been part of the green movement. His father was a Supreme Judge, but. was a supporter of the movement's aims? His uncle, who employed the appellant in Ilam, was sympathetic to the movement's aims. The appellant claims to have been a supporter of Mousavi and claims that the government of Iran believed that he was a supporter of an extremist group called the PJAK. In addition, the appellant claims that he is a lapsed member of the Islamic faith and that the authorities believe he and his uncle were activists for the PJAK. The appellant attended certain demonstrations in Iran in 2009 in support of the movement. He claims that he distributed leaflets about Mousavi as well as CDs and other items. He encouraged people to vote for Mousavi. The appellant was beaten and kicked by police when he attended demonstrations in Tehran.

27. The appellant claims to have travelled to the UK under a Tier 4 (General) Student visa obtained from the British Consulate General in Istanbul in 2012. Having arrived in 2012 the appellant remained and completed his studies at Coventry University but claimed asylum at the end of his period of leave.

28. The Immigration Judge did not believe the appellant's account. He noted the application was made shortly before his leave was due to expire and in his view was "wholly fabricated".

29. The issues before me are:

    (1) Whether the Immigration Judge fully considered the appellant's explanations for any alleged inconsistencies in his witness statement dated 12 December 2014 and in his other evidence?

    (2) Linked to (1), whether the Immigration Judge had given full and adequate reasons for his decision within the guidance offered in the case of **MK** and whether he adequately identify which parts of the case for the appellant he accepted and which parts he rejected, having given full reasons for his conclusions?

    (3) Whether in the light of the appellant's past involvement with anti-government forces in Iran, the Immigration Judge had been justified in dismissing the appellant's claim?

Conclusions

30. I have fully considered Ms Blanchu's arguments, re-read the respondent's detailed reasons for refusal and fully considered the detailed submissions advanced by Mr Wilding in response. Having done so I conclude that the Immigration Judge was entitled to reach the conclusions that he reached. As Mr Wilding submitted, he fully and thoroughly considered the arguments for the appellant, in particular, at paragraphs 37 et seq. of his decision. There were subtleties in the appellant's explanation contained in the witness statement of 12 December 2012 which were not fully explained by the Immigration Judge but these do not alter his fundamental conclusions. He found sufficient inconsistencies in the appellant's account to be reject that account. Additionally, the significant delay by the appellant in advancing his claim enabled the Immigration Judge to conclude that it was wholly fabricated. These are not conclusions that any Judge would come to lightly. If there were gaps in the Immigration Judge's reasoning these were not important gaps and the chronology of the appellant's involvement with anti-government groups, going back as it did to 2009, does not help to establish that he would now be at risk on return. In any event, the Immigration Judge fully considered these aspects including his alleged affiliation with the PJAK, the alleged summons and raids on his family's home and all other aspects of the case. I cannot fault this determination other than to observe that there were aspects that the Immigration Judge could have gone into in even greater detail than he did.

31. For these reasons I have concluded that there was no material error in the decision of the First-tier Tribunal.

Decision

I find there was no material error in the decision of the First-tier Tribunal and accordingly this appeal is dismissed. The decision of the First-tier Tribunal to dismiss the appeal on all grounds advanced stands.

Anonymity

The First-tier Tribunal made no anonymity order and I make no order either.

Signed Date

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT
FEE AWARD

The First-tier Tribunal made no fee award and I make no fee award either.

Signed Date

Deputy Upper Tribunal Judge Hanbury