Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/07715/2015**

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly	**Decision & Reasons Promulgated**
On 7 May 2017	**On 9 May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

AMIR JAHANDIDEH aka MARDAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Nicholson counsel instructed by GMIAU
For the Respondent: Mr C Bates Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. The Appellant was born on 3 June 1981 and is a national of Iran.

3. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
4. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Thorne promulgated on 13 September 2016 which dismissed the Appellant's appeal against the decision of the Respondent dated 14 December 2015 to refuse his claim for refugee protection based on his claim that he was of adverse interest to the Iranian authorities because of his political opinions and religious beliefs.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Thorne ("the Judge") dismissed the appeal against the Respondent's decision.
6. Grounds of appeal were lodged arguing:
   (a) That the Judge failed adequately to engage with the medical evidence contained in Dr Lords report which confirmed that scars were diagnostic of his claimed torture.
   (b) The Judge erred in that he arrived at a negative assessment of the Appellants credibility before considering the medical evidence.
   (c) The Judge erred in failing to take account of the internet posts that the Appellant submitted on the day of hearing which albeit untranslated contained visual material that was critical of the regime.
7. On 23 November 2016 First-tier Tribunal Judge Froom refused permission to appeal. The application was renewed and Upper Tribunal Judge Plimmer gave permission to appeal.

8. At the hearing I heard submissions from Mr Nicholson on behalf of the Appellant that :

   (a) What the Judge wrote at paragraphs 54-55 was critical in that arguably he had already made up his mind about the Appellants credibility before he considered the medical evidence.

   (b) The Judge only noted that the Appellant had PTSD but did not note his physical injuries.

   (c) In relation to the Facebook entries they were untranslated but the Judge admitted them. Evidence was adduced in relation to the poet Karo and was

referenced in the submissions. Nothing in the decision reflected consideration of that evidence.

(d) The Judge did not deal with the issue of the Appellants lack of beliefs and the risk this posed other than at paragraph 58 and what he said was inadequate.

(e) The Judge failed to fully engage with the risk factors set out in SSH when determining the risk on return at paragraph 59.

(f) The Judge failed to specifically consider those factors set out in paragraph 353B of the Immigration Rules in particular the delay in making a decision and not all of the delay was the Appellants fault.

9. On behalf of the Respondent Mr Bates submitted that :

(a) In relation to the delay it was open to the Judge to find that the Appellant had failed to apply for asylum promptly and that this was in fact relevant to his overall credibility.

(b) In relation to the diagnostic findings the Appellant claimed that he had been assaulted while the Judge may have accepted that the Judge had injuries as a result of a beating he had to assess if that occurred in the way the Appellant described.

(c) While the Judge allowed the Appellant to adduce the Facebook screenshots as they were untranslated they had no context.

(d) The Judge was also entitled to take into account that the events in issue occurred 17 years ago: he claimed that the events occurred in 1999 and he had returned to Iran in 2003 without any problem.

(e) In relation to SSH and the risk on return the Appellant was simply a failed asylum seeker and therefore the finding that he was not at risk was open to him.

Finding on Material Error

10. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.

11. The decision of the Judge is challenged on the basis that he made adverse credibility findings and then rejected the medical evidence on that basis. I am satisfied that this suggestion is based on a failure to read the decision fairly and as a whole. The Judge in his decision sets out in some detail the Appellants claim including the claim that he was detained and tortured by the Iranian authorities at paragraph 5 and this was confirmed in both his witness statement and oral evidence which the Judge took into account. The Judge details paragraph 22 the Appellants claims about his torture and the associated findings as set out in a medical report from Dr Lord dated 19.11.201.

12. In reaching his decision the structure of the findings is that the Judge set out at paragraph 49-53 a number of significant adverse findings based on the Appellants immigration history including: the use of a false passport; a claim for asylum in the UK in 2006 then leaving for Japan before it was resolved using a second false passport; A claim for asylum in the UK in 2007 using a false name and date of birth; Absconding ;A claim for asylum on 20/10/2009 ;An application for voluntary return to Iran on 29/11/09 ;Failure to contact the Respondent again until 11/04/2014.

13. The Judge then specifically at paragraph 54 states that in reaching the conclusion that the Appellant was not an honest or reliable witness he had taken into account the medical evidence. The Judges analysis of the medical evidence at paragraph 22 which has not itself been challenged as incorrect is that anal rape could not be confirmed or refuted; the stab in the eye while it occurred could have been an accident; it was impossible to say that he had been slapped; the scars to his face and foot and arm were diagnostic of blows and there had at some point been a diagnosis of PTSD. In S v SSHD 2006 EWCA Civ 1153 **the** Court of Appeal said that an error of law only arose in this type of situation where there was artificial separation amounting to a structural failing, and not where there was a mere error of appreciation of the medical evidence. Mibanga was distinguished. In that case, the medical evidence had been so powerful and extraordinary that it took the case into an exceptional area. The Court of Appeal said that HE (2004) UKIAT 00321 was relevant to the case in so far as, where medical evidence merely confirmed that a person's physical condition was consistent with his claim, the effect of the evidence was only not to negate the

claim. It did not offer significant separate support for the claim. The CA said that Mibanga was not to be regarded as laying down a rule of law as to the order in which judicial fact finders were to approach evidential material before them. In this case an explanation as to why the medical evidence did not carry weight had been given by the IJ. I am satisfied that the medical evidence in this case did not offer significant separate support for the claim because while some of the injuries were diagnostic of blows they could not , of course, corroborate in this case the sort of incident that led to such blows. Given the findings made as a whole as to the Appellants credibility the Judge was entitled to reject the Appellants claim as to who inflicted the blows and did so looking at the evidence as a whole.

14. In relation to the Judges approach to the internet evidence in would appear that the Judge allowed the Appellant to adduce on the day of hearing the Appellants Facebook Pages ad blog pages. The weight that he gave to such documents was a matter for him in the overall context of the adverse credibility findings he had made. He adduced such evidence in part to support his claim that he had a lack of religious beliefs that would draw adverse attention to him from the Iranian authorities. The Judge at paragraph 58 was entitled to give little weight to the documents because firstly they were untranslated and also because he was clearly not satisfied that they had been 'published on the internet': the fact that an Appellant has a blog or indeed a Facebook page does not mean that either are publicly accessible as 'settings' for these on the internet, public or private, were not adduced in evidence. He was thus entitled to find that there was nothing before him to suggest that the authorities were aware of the existence of the blog or his Facebook page.

15. In the light of all his findings the Judge was entitled to conclude at paragraph 59 that the Appellant was simply a failed asylum seeker on return and would not be of interest: he gave a brief but adequate analysis of SSH.

16. In relation to the claim that the Judge failed to adequately address paragraph 353B of the Rules I note that no such allegation was made in the grounds of appeal and no notice was given of any intention to amend the grounds of appeal in accordance with the Tribunal Procedure (Upper Tribunal) Immigration Rules 2014. However even if there had been such a ground of appeal while I accept that the Judge did not specifically refer to paragraph 353B I am satisfied that in

his comprehensive and detailed assessment of the circumstances of this case that the Judge took into account all relevant factors. The only matter that Mr Nicholson appeared to be able to identify which the Judge had not specifically referred to was the delay. However given the uncontested immigration history set out in the decision I am satisfied that it is difficult to identify what period of delay Mr Nicholson relies on that was attributable to any lack of action by the Respondent and which would outweigh the other factors identified in the case to justify a grant of leave outside the Rules.

17. I was therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

18. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

19. **The appeal is dismissed.**

Signed Date 8.5.2017

Deputy Upper Tribunal Judge Birrell