



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

Appeal Number: PA/00953/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 12 May 2017**

**Decision & Reasons
Promulgated
On 15 August 2018**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

M--- M--- S---
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hodson, Counsel employed by Elder Rahimi Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make this order because there is a risk that publicity about the case might of itself make it impossible to return the Appellant safely.
2. The appellant is a citizen of Iran. He appeals with the permission of the First-tier Tribunal a decision of First-tier Tribunal Judge Jones QC promulgated on 6

March 2017 dismissing the appellant's appeal against the decision of the respondent to refuse him asylum or ancillary protection. The judge granting permission said:

"It is arguable that the Judge went behind facts accepted by the Respondent and in doing so sought evidence that was not in issue and that this undermined the factual matrix by which the risk assessment was to be undertaken. All grounds may be argued."

3. There are two decision letters to consider. The first is dated 5 July 2013 and the second is dated 17 January 2017.
4. I begin by considering the first letter. This shows that the appellant entered the United Kingdom lawfully with a visa as a student and during the currency of his leave he claimed asylum. It was an important part of his case that he feared persecution because of work that he had done for the BBC and prayed in aid of his case a claim that a cousin had been detained by the authorities because of work that the cousin had done for the BBC. Importantly the details of that part of the claim were not believed.
5. However the respondent accepted some of the appellant's case. At paragraph 6f of the Refusal Letter it is recorded that the appellant "began working for the BBC in September 2011 for the BB World Service. They have a dubbing section which you work for and the World Service refers you to BBC Farsi. You are not directly employed by BBC Farsi". These answers are a summary of answers to questions the appellant gave at interview.
6. At paragraph 10 of the letter there are bullet points acknowledging the evidence in support of the appellant's claim to have worked for the BBC. These are identified as bank statements for the period 28 June 2012 to 22 August 2012, two BBC World Service invoices in the appellant's name dated 9 September 2011 and three invitations to dubbing sessions for BBC Persia dated February 2013. At paragraph 13 there is the express finding that "your claim to have worked for the BBC is accepted".
7. The decision letter dated 17 January 2017 followed further submissions made by the appellant shortly before his "student leave" came to an end. For reasons that do not seem to be in any way to his discredit the respondent took time to make the decision.
8. Although the respondent made clear her view in that letter that the appellant had been untruthful about the experiences of members of his family in Iran and, the respondent clearly did not accept that the appellant had established that his activities had come to the attention of the Iranian state, or were reasonably likely to, there is nothing in the January letter to suggest that the Secretary of State has resiled from her findings that the appellant has worked for the BBC.
9. The First-tier Tribunal Judge dismissed the appeal. Paragraph 22 of his decision is puzzling. The judge said:

"I find as a fact that the appellant has done minimal work as an independent contractor for the BBC, limited to one occasion in 2011 and programmes mentioned in the pay advice for January 2011. I reject the appellant's evidence that he has done any other significant amount of work for the BBC. I reject his

evidence that he had or would have had any documents relating thereto issued to him by the BBC. It is not credible that such a vast and bureaucratic Corporation would not have generated, at the very least, pay advices of the type which were issued to the appellant dated 8 September 2011 and 17 February 2017.”

10. I do wonder if the judge has missed out the word “not” somewhere in the above. There were documents purporting to be pay documents from the BBC dated February 2017 showing payments to the appellant for work done. I cannot make any sense of paragraph 22 in the judge’s decision. He finds expressly that the appellant has done no work since 2011 but then seems to approve of the document dated 17 February 2017 as indicative of the kind of evidence that might be expected to prove a claim that he has disbelieved.
11. Earlier in the decision at paragraph 15 the judge said “I should say at once that it emerged during the appellant’s oral evidence that he did not work for the BBC in the sense of being an employee”. This is a troubling remark because, as far as I can see, it was never the appellant’s case that he was an employee of the BBC. He had never claimed to have done more than a certain amount of work of an artistic nature that he did not think would cause him any trouble in Iran. Whereas the judge refers to it having “emerged during the appellant’s oral evidence” it seems to me that that is a finding that can easily be made without the sense of triumph by reading the papers.
12. I find Mr Hodson’s submission that the judge’s credibility findings might have been polluted by obscure findings that, to some extent at least, disbelieved matters that had been accepted by the Secretary of State, irresistible.
13. There is another point of concern. At paragraph 28 of his Decision and Reasons the First-tier Tribunal Judge, appropriately, asked himself if the appeal would have succeeded if the appellant’s actual assertions had been made out. The judge decided this question in the negative. He referred to passages in the appellant’s bundle and said:

“I have perused those passages relied upon by Mr Gayle which, in my judgment, go no further than supporting the proposition that somebody who works for the BBC or is perceived to have worked for the BBC would face nothing more than intimidation, harassment or temporary detention. The concept of persecution requires a high threshold to be reached.”
14. I find it concerning that a judge would take such a cavalier attitude to the prospects of being intimidated, harassed or detained (even only temporarily), by the agents of the Iranian state. I have looked at the documents relied upon by Mr Gayle in the First-tier Tribunal. These are documents from apparently credible sources showing the high degree of suspicion that the authorities can exhibit towards the BBC and those who have done work for the organisation.
15. At page 52 there is an extract from the Human Rights Watch report “Iran: Free Journalists Swept Up in Raids”, 29 January 2013:

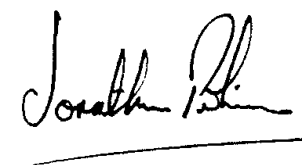
“Recently, Iran’s Press TV broadcast a report critical of BBC Persian called ‘Eye on the Fox’. In the report, several prisoners were shown ‘confessing’ to working for BBC Persian, an act the government sees as a crime. The footage, reportedly provided to Press TV by the Revolutionary Guards’ Intelligence Unit, was filmed secretly in Evin Prison interrogation rooms.”

16. I have to say that this sounds rather like persecution to me.
17. Mr Hodson submitted that I should allow the appeal without the need for a further hearing on the basis that the accepted evidence created a risk for the appellant. With respect to Mr Hodson that argument is not foolish or fanciful but, even allowing for the low standard of proof, I do see some difficulty for the appellant in showing that there is a real risk of his actions coming to the attention of the authorities. At the very least it is better that this a sound credibility finding and the appeal can be determined in the light of what the appellant has shown that he has done and might do.
18. I have decided that it is fair to both parties that the case is reheard in the First-tier Tribunal when there can be expected to be proper findings on the appellant's case and certainly findings that have not been spoiled by an adverse credibility finding that should not have been made. If on further consideration the appellant is disbelieved, it is still open to the appellant to argue that he is at risk because of what he has already done and nothing I have said above is intended to guide the outcome of that argument in either direction.
19. It follows that the First-tier Tribunal erred in law and I set aside its decision and I direct that the appeal be re-determined in the First-tier Tribunal.

Decision

20. To the extent indicate above the appeal is allowed.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Dated 2 June 2017