Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09777/2019

THE IMMIGRATION ACTS

At: Manchester CJC (remote hearing) **Decision & Reasons Promulgated**
Heard on: 28th July 2020 **On 5 August 2020**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

AE
(anonymity direction made)

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: **Mrs Johnrose Broudie Jackson and Canter**
For the Respondent: **Mrs Aboni, Senior Home Office Presenting Officer**

DECISION AND REASONS

1. The Appellant is a national of Iran born in 1986. He appeals with permission against the decision of the First-tier Tribunal (Judge Bannerman) to dismiss his appeal on protection grounds.

Basis of the Protection Claim

2. When the Appellant arrived in the United Kingdom and claimed asylum in April 2019 the basis of his claim was as follows.

3. As a conscript in the Iranian army in 2008 the Appellant was given a flash drive by a friend which contained irreverent caricatures of Iranian political leaders. On the day that the Appellant was returning it to its owner he was approached by the Commander of the barracks. The Commander confiscated the drive. Nothing happened until four months later the Appellant was abducted by Ettelaat officers who put him in the boot of a car and took him to an unknown place. He was interrogated and tortured over a three-week period. At one point the owner of the flash drive was brought into the Appellant's room and the Appellant told his friend to confess to its ownership – he told him that he had "told everything". In the meantime the Appellant's family home in Tehran was raided. The Ettelaat found coins and artefacts from the time of the Shah. The Appellant was told that these things demonstrated that he was "pro-tyrant" – after that he was transferred to an official detention centre and the torture got worse. The Appellant was interrogated about whether he belonged to a political opposition group. The Ettelaat had also confiscated a 'Turksat' satellite receiver from the Appellant's home, which they claimed was a "sender". They accused him of using this equipment to broadcast offensive images of Iranian leaders. The Appellant was released after the intervention of a family friend who had connections with the government. He was sent to a barracks far from Tehran, near the Iraqi border, where he served the remaining 6 months of his military service. After this the Appellant was allowed to return home. This incident was relied upon as giving important background to the risk of harm currently feared by the Appellant.

4. Ten years later the Appellant was working in central Tehran, selling tools. In June 2018 a series of demonstrations took place in the area, with people protesting about the economic situation in Iran. Traders in the bazaar closed their shops and started to join the demonstrations. The Appellant took part, and took footage on his mobile telephone. Police and plain clothes officers attacked the protestors, trying to disperse the crowds by beating people up. The protests died down after three days when senior members of the judiciary made an announcement saying that anyone caught attending would be executed.

5. In July 2018 the Appellant found that his laptop was malfunctioning. He had a friend who worked in IT and he asked him to have a look at it. The friend identified that it wasn't a software problem. It was a hardware issue and he would need to take the computer to someone else for them to fix it. Shortly after this the Appellant received a telephone call from his friend who told him that his laptop had been confiscated by the authorities. The Appellant knew that the footage of the protests was on his laptop. He became afraid and immediately went into hiding. He was with a friend on a farm in Shahryar when he found out that his home in Tehran had been raided. His wife, and then a few days later his parents, were taken in for questioning. The Appellant spoke to members of his family who urged him to leave the country. An uncle made the arrangements and he left, crossing the border into Turkey.

6. The basis of the Appellant's claim was therefore that he faced a well-founded fear of persecution in Iran for reasons of his political opinion. The footage of the protests found on his laptop established that he had been on the demonstration. In light of the

Appellant's history as perceived by Iran's internal intelligence agency, there was additionally a danger that he might be accused of holding the footage for the purpose of creating anti-state propaganda.

7. The Respondent accepted that if all of this was true, the Appellant would face a real risk of serious harm if returned to Iran today. The claim was however refused on the grounds that the account was untrue. This was the matter in issue before the First-tier Tribunal.

The Decision of the First-tier Tribunal

8. The First-tier Tribunal concluded that it did not find the Appellant to be credible. At its §59 it said:

> "He was stumbling in his evidence and was completely unable to explain why on the one hand he had said that had met his friend in custody face to face from at first and then later said he hadn't. His evidence was confused and incredible. There was also the issue at the screening interview of saying that he had never been effectively in custody and that he had not been in the armed services, both of which he later turned completely around on"

9. It went on to find, in respect of both of the incidents described, that they "simply didn't ring true". The appeal was accordingly dismissed.

Error of Law: Discussion and Findings

10. The Appellant was granted permission to appeal to the Upper Tribunal by Upper Tribunal Judge Kamara on the 6th April 2020. The grounds raise several points but this is in essence a reasons challenge.

11. I have summarised the Appellant's evidence as I have at §3-6 above to illustrate two things.

12. First, that it is helpful, at the outset of any protection claim, to understand what the basis of the claim is. Anyone reading this decision can understand the Appellant's claims, both about past events in Iran and about his future fears. The same cannot be said for the reader of the First-tier Tribunal decision. That begins by setting out the *Respondent*'s case, before going on to summarise what I assume to be evidence given under cross-examination. Whilst it cannot be said that this was a structural failing amounting to an error of law, it certainly makes the decision very difficult to read. A clear understanding of the Appellant's case – rather than the reasons that it has been refused – should be the starting point of any decision. This will assist the decision maker in understanding the evidence, the points made in favour and against, and in contextualising any issue of law. Here it is alleged that the Tribunal has become confused about what the evidence actually was, and absent any defined summary of his case that is hard to gainsay.

13. The alleged confusion arises at paragraph 59 of the decision, set out at my §8 above. Although this is not identified in the decision, the parties agree that the Tribunal

must have been referring to the alleged incident when the Appellant was detained in 2008. The Tribunal found that the Appellant was "completely unable to explain why on the one hand he had said that had met his friend in custody face to face from at first and then later said he hadn't". Mrs Johnrose submits that the Tribunal is entirely mistaken in finding contradiction in the Appellant's evidence. The evidence given at the asylum interview on this point appears at Q94-98 of the transcript. The Appellant there describes how officers brought his friend (the owner of the flash drive) into the interrogation room and how he told his friend to admit that the drive was his. Under cross-examination at the hearing the Appellant was asked whether his friend was there when he had told officers that the drive belonged to him. The Appellant said that he was. The Appellant was then asked "did he ever admit it was his" to which the Appellant replied "I kept repeating this during questioning. I never saw (my friend) again". Mrs Johnrose submits, with good reason, that the evidence given by the Appellant at his asylum interview, and at the hearing, was in fact the same. The Appellant did not deny that he saw his friend whilst being held in detention – indeed he had confirmed that this was the case. At its highest all that can be said about his final response was that it was not an answer to the question put: if the Appellant did not know whether his friend made any admissions, he should simply have said so.

14. The second reason that I have set out the evidence of the Appellant as I have is in order to illustrate that even reduced to its most basic elements, it is an account that contains significant vignettes of detail, for instance the confiscation of the 'pro-tyrant' coins from the time of the Shah. Such details are of little assistance to a Tribunal in evaluating future risk, but they are certainly worthy of some attention when it comes to deciding whether this story is reasonably likely to be true. There is no such evaluation in the decision of the First-tier Tribunal. The very brief findings consist of no more than the judge finding that the evidence did not have the "ring of truth" about it. That is not adequate reasoning. Whilst there may not be error in the phrase itself, it is without more meaningless. If the judge meant to convey that he found the account to be inherently implausible, either by reference to the country background material or as a matter of logic, he should have said so and explained why. As it is the matters that are mentioned as weighing against the Appellant are left entirely unexplained. For instance, the Judge finds it to be "incredible" that the Appellant's friend would call him to tell him that the laptop had been confiscated. Neither the Appellant, nor I, have any idea why that might be "incredible". That is a conclusion, not reasoning.

15. The final point made by Mrs Johnrose is that the Tribunal has failed to take material evidence into account. At its §59 the Tribunal notes that the Appellant replied "no" when asked during the screening process whether he had completed military service or ever been detained. Those replies being at variance with the Appellant's case as it later emerged, the Tribunal drew adverse inference from those them. Even taking into account the guidance in YL (rely on SEF) China [2004] UKIAT 00145, that it was entitled to do. What it was not entitled to do was to completely ignore the Appellant's subsequent explanations for the answers he gave, set out in his witness statement dated the 29th May 2019, his asylum interview on the 7th August 2019 and in a letter from those representing him on the 20th August 2019. Where claimants are

not read back screening interview records, and where they have no independent interpreter present, their subsequent clarifications must as a matter of fairness be taken into account.

16. I am accordingly satisfied that the decision of the First-tier Tribunal is flawed for material errors of law and I set it aside. In the circumstances the parties agreed that the most just disposal at this stage would be remittal for hearing *de novo* in the First-tier Tribunal by any judge other than Bannerman.

Anonymity Order

17. This appeal concerns a claim for protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

> "Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

Decisions

18. The determination of the First-tier Tribunal contains material error of law and it is set aside.

19. The matter is remitted for hearing *de novo* in the First-tier Tribunal by a Judge other than Judge Bannerman.

20. There is an order for anonymity.

Upper Tribunal Judge Bruce
28th July 2020