



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-002771  
First Tier No: PA/53958/2021  
IA/11542/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 3 October 2023**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**MMK  
(anonymity order made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Holmes, Counsel instructed by Batley Law  
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

**Heard at Phoenix House (Bradford) on 25 September 2023**

**DECISION AND REASONS**

1. The Appellant is a national of the Islamic Republic of Iran born in 1979. He appeals with permission against the decision of the First-tier Tribunal (Judge O'Hanlon) to dismiss his appeal on protection and human rights grounds.
2. The basis of the Appellant's claim before Judge O'Hanlon was that he has a well-founded fear of persecution in Iran for reasons of his political opinion. The Appellant states that he is a monarchist and atheist who is opposed to the Islamic regime. In 2017 he received warnings from the government after he took part in a pro-monarchist march, and in 2019 his home was raided, and personal effects

including his computer seized, after he also took part in the widespread protests about the price of oil.

3. Judge O’Hanlon disbelieved the Appellant about the core elements of his claim. He found the account advanced to be internally inconsistent, lacking in detail and “extremely vague”. He did not believe that the Iranian authorities have an adverse interest in the Appellant, or that the Appellant is genuinely engaged in politics to the degree he claims. He expressly found the Appellant to have exaggerated the extent of his activities before he left Iran. He dismissed the appeal.
4. The Appellant now appeals on the grounds that the decision of the First-tier Tribunal is flawed for the following errors:
  - i) Mistake of fact;
  - ii) Reaching adverse conclusions with evidential foundation
  - iii) Procedural fairness
5. In reality, however, the appeal all rests on one premise. That the Tribunal identified discrepancy and vagueness in the Appellant’s account where in fact there was none.

**Ground (i): Mistake of Fact**

**Ground (ii): evidential foundation**

6. At §50 of its decision the First-tier Tribunal cites from the Appellant’s asylum screening interview. It records that the Appellant says [at question 4.1] that:

“he had been ‘involved in recent demonstrations and uprisings’”.

The Judge concludes from this that: “the Appellant has exaggerated his activities, referring to demonstrations in the plural and referring to taking part in uprisings”.

7. Mr Holmes takes issue with that characterisation on the basis that the Judge simply got that wrong. The Appellant’s screening interview in fact reads:

“I have been involved in *the* recent Iranian demonstrations and uprisings”

He points out that there were widespread demonstrations (plural) and uprisings (plural) in Iran in November 2019. The Appellant’s answer does not, however, suggest that he had attended more than one. The omission of “the” in the Judge’s quote changes the meaning of the Appellant’s response from him making reference to the “recent Iranian demonstrations and uprisings”, in which he had some involvement, to him having directly attended multiple “demonstrations and uprisings”. Mr Holmes submits that it is directly material to the Judge’s conclusions as it is one of a number of “minor” (to use the Judge’s own word) alleged “inconsistencies” that the Judge relies upon to despatch the Appellant’s entire case.

8. For the Respondent Mr Diwnycz did not disagree that the words recorded in the screening interview had been mistranscribed by the Judge. I accept that there was an error of fact here, and that it was plainly material to the overall decision, since the Tribunal did draw direct negative inference when in fact it should not have done so. There was no evidential basis for its conclusion.

### **Ground (iii): Procedural Fairness**

9. This ground was added after permission had been granted, with the permission of Upper Tribunal Judge Smith. It concerns a fault not of the Tribunal, but of the Respondent, or more specifically an interpreter engaged by the Respondent to assist the Appellant in his substantive asylum interview. It is submitted that the transcript of the Appellant's asylum interview provided by the Respondent is misleading and inaccurate, and that the answers given by the Appellant were not accurately or fully set out in that record. The Appellant has obtained a recording of the interview, and has engaged an independent interpreter, Mahnaz Shojaei of Shojaei Translation Services to prepare another transcript. Ms Shojaei has identified a number of instances where the Appellant's evidence, given in Farsi, is not recorded by the immigration officer. Ms Shojaei did attend the hearing before me, but upon an indication from Mr Diwnycz that he did not intend to cross examine her or challenge her translation, she was released.

10. The grounds give several examples.

11. At Q5 the asylum interview record shows that the Appellant was asked:

Q: You also participated in a gathering/march in the commemoration of Korush however after this gathering you received a message from a 1111 number telling not to participate in this again, your friends told you this was a message from Ettella'at

A: I cooperated a year before and I received a text message but this one was a voice message and my friend told me this was a message from the intelligence service Ettella'at, the previous time was 7-8-1395 (28 October 2016) that was the previous year the last message I received was on 1-3-1396 (29 October 2017). The first year I participated and the second time I did not because of the message telling us not to participate

12. Mr Holmes contrasts this with the transcript made from the interview recording by Mahnaz Shojaei. What this reveals is that Q5 consisted of approximately 4 minutes of follow-up questioning and answers from the Appellant, all in Farsi, and none of it reflected in the asylum interview record. Mr Holmes' grounds put it like this: "It is immediately apparent that the interpreter, in effect, takes over conduct of the interview, both reframing the questions put, and asking a series of follow-up questions. It is a remarkable exchange". This is a significant omission from the record he says, because the Appellant is later criticised for giving vague and inconsistent evidence - at §48 of the Tribunal's decision - when in fact he did no such thing.
13. Another example arises at §52 of the Tribunal's decision. The 'inconsistency' identified is between the Appellant having said at Q9 of his interview that he was

notified by his “landlord” of a visit to his house, and between his oral evidence that he was notified by his “landlady’s son”. The interview record says this:

“then I received a call from my landlord as I was living separately saying they had raided the house”

The transcript by Mahnaz Shojaei sets out that what the Appellant actually said in Farsi was this:

“I received a call from my landlord’s/ landlady’s son. It was about a year that I was living separately. My landlord’s / Landlady’s son called me...”

It is noted that in Farsi there is no gender specific term for landlord/lady. During the hearing the Appellant was asked in cross examination why he had previously mentioned a landlord and had then referred in his live evidence to his landlady’s son. He told the HOPO:

“It was the homeowner, I didn’t say it was ma[n] or women, I was asked who told you about this, I said it was his son”.

This explanation is apparently not given credence by the Tribunal, but as Mr Holmes has established, it was the truth. That is precisely what the Appellant said at interview.

14. At §46, the Judge takes a point against the Appellant based upon Q37 of his second asylum interview. Q37 of the Respondent’s interview notes read:

Q: How many of these friends did you attend the demonstration with?

A: I don't not know because it was not planned and we went there randomly without any plan to see what was going on.

The Tribunal says of this response: “I find, extremely vague, an issue that should be fairly straightforward, namely how many people did he attend the demonstration with”. The transcript now obtained tends to indicate that, unbeknownst to the Judge, the Appellant was not in fact asked how many friends he attended the demonstration with. The transcript records the question put in Farsi: “[unclear words] how many attended in this demonstration, how many”. He was in fact asked to say how many people were in attendance, not how many people he went there with.

15. These three examples form the centrepiece of the judges negative credibility findings. As the new transcript illustrates, they were negative findings without foundation. I'm satisfied that this is an error of procedural unfairness of the type identified in MM (unfairness; E & R) Sudan [2014] UKUT 00105 (IAC). Before me the parties were in agreement that the errors go to the heart of the Tribunal's decision and for that reason it must be set aside in its entirety. The parties were further in agreement that the nature of the error, and the extent of the fact finding required, means that in the interests of justice this matter should be remitted so that the decision can be taken afresh. I find as fact that the transcript provided by Mahnaz Shojaei should now be treated as an authoritative record of the Appellant’s asylum interview.

**Decision**

16. The decision of the First-tier Tribunal is set aside.
17. The decision in the appeal must be remade in the First-tier Tribunal by a judge other than judge O'Hanlon.
18. An anonymity order remains in place.

Upper Tribunal Judge Bruce  
Immigration and Asylum Chamber  
26<sup>th</sup> September 2023