



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/05114/2013

THE IMMIGRATION ACTS

Heard at Field House
On 14 October 2013

Date sent
On 30 October 2013

Before

THE HON. MR JUSTICE COLLINS SITTING AS A JUDGE OF THE UPPER
TRIBUNAL
UPPER TRIBUNAL JUDGE ESHUN

Between

VAHID SHAHBAZI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Halim, instructed by Kesar & Co Solicitors
For the Respondent: Mrs Karen Pal, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the dismissal by First-tier Tribunal Judge of the appellant's appeal against the refusal of his asylum claim. He arrived in this country in July 2012 entering in the back of a lorry having been assisted, it seems, to leave Iran, the country of his nationality, by means of an agent.

2. He left Iran essentially because of an incident which occurred at the wedding which he was attending. He has a cousin who is a member of the Revolutionary Guard and whom he has never particularly liked. There has also been a family dispute in relation to an inheritance. It is not necessary for us to go into any detail at all. In any event at the wedding reception it seems that according to his account he saw his mother being involved in a dispute with his maternal uncle who it was alleged had cheated her. He went to the assistance of his mother and his cousin, that is the uncle's son, in the Revolutionary Guard attacked him, kicked him, and he was pushed and fell over a table. He picked up a plate which he threw at the cousin, unfortunately hitting him in the face and breaking his nose. The cousin then drew his gun but fired it into the air. In any event when this happened and in the heat of the moment the appellant admits that he made observations to this effect, namely that the cousin was abusing his position, that he, and all those from the top including the Supreme Leader, were corrupt bastards. That was not a sensible thing to say, particularly in the presence of a member of the Revolutionary Guard, because it is a criminal offence in Iran to make that sort of observation about those in power, but in particular the Supreme Leader.
3. It was fear of the consequences of his action that led him, he said, to decide that he needed to leave the country and so it was that he found his way here.
4. He produced before the Immigration Judge a photocopy of what he said was a summons. Indeed on its face it appears to be a summons to court to face an accusation of insulting the Supreme Leader and spreading insubstantial rumours against the regime. That is what the warrant appears to say.
5. The Immigration Judge found against the appellant on the issue of credibility and one of the key matters that led him to doubt the appellant related to this court summons. What he said in his determination was that the objective material stated that in the case of criminal offences warrants were served personally on the accused and if the accused were not found they may be published and he noted that the date of the summons which had been said to have been served on the appellant's parents, was 23 June 2012. He left on 5 June but the judge said that he did not find it plausible that a summons would have been served in his absence or that his parents could have come to possess a genuine document.
6. However that is contrary to the material that was before him on the situation in the country, the date of the Country of Origin Information Report on Iran being 16 January 2013. Paragraph 11.49 says so far as material, in order to invite an individual to a judicial body the summons must be issued, a copy of the document must be served on the defendant or a family member and signed by both the serving bailiff and the recipient to show the date of service.

7. The copy that we have does bear two signatures and the Immigration Judge was clearly wrong to take the view that it did not accord with the objective material. On the face of it it did and his conclusion was that based on his findings on the summons itself and based on his findings on the appellant and having considered the remoteness of the appellant's cousin from the state authorities he did not find his claim in this respect plausible. True it is that there were a number of problems in relation to his account as to how he had travelled from Iran to the United Kingdom and the fact that he had not claimed asylum initially where he had stopped for a time. That was capable no doubt of damaging his credibility but was hardly central to the issue which the Immigration Judge had to determine. Accordingly his adverse findings are based upon a misapprehension of the true position and in fairness it has not been suggested on behalf of the Secretary of State that the Immigration Judge did approach the matter in the correct way.
8. The fact is of course that we have a 16½ year old with a family in Iran who decided that as a result of an incident he should leave and on the face of it is difficult to see why he should have left unless he was afraid of something, but what he may have been afraid of was perhaps the possibility of prosecution. His cousin being a member of the Revolutionary Guard would no doubt be able to tell the relevant court authorities or the police or whoever is responsible and obtain the summons. There seems to us to be nothing particularly implausible in that possibility. But it is a criminal offence and although the appellant relies on imputed political opinion it may be that in reality he faces prosecution rather than persecution. On the other hand, it is clear that it may be that the offence which he has allegedly committed becomes over-political and so it may be possible that it can properly be regarded as crossing the borderline between prosecution and persecution. That may depend at least in part upon what the possible penalties are for the offence which is alleged.
9. In all the circumstances we take the view that this decision by the Immigration Judge cannot stand. However, in the light of the material that is before us we do not feel it would be proper for us to make a positive finding that this appellant qualifies for either asylum or humanitarian protection. It seems to us that there is a need for the Secretary of State to reconsider the matter on a proper basis, bearing in mind that the original overall findings that his account was not believed must be reconsidered.
10. However, as we say, there are a number of problems in the account that was given. Those no doubt will be taken into account and the Secretary of State will have an opportunity to consider if she wishes to make further enquiries whether the summons produced is in fact genuine, and to consider whether this indeed could be said to amount to persecution on the assumption that it is a valid warrant.
11. We note that there is apparently a moratorium at the moment on returns to Iran. Accordingly that is a further good reason for remitting this to the Secretary of State for the matter to be considered afresh in the light of all the information and in the light of the views that we have expressed.

12. Accordingly this appeal is to the extent that we have indicated allowed.

Signed

Date

The Hon. Mr Justice Collins