



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

**Appeal Number:
AA/01397/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On 9 October 2014 On 10 October 2014
Determination
promulgated**

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

H Z
(Anonymity direction made)

Appellant

and

**Secretary of State for the Home Department
Respondent**

Representation

For the Appellant: Mr T Hodson of Elder Rahimi Solicitors.
For the Respondent: Ms K Pal, Home Office Presenting Officer.

DETERMINATION: ERROR OF LAW

1. This is an appeal against the decision of First-tier Tribunal Judge R J N B Morris promulgated on 29 April 2014, dismissing the Appellant's appeal against the decision dated 14 February 2014 to remove her from the UK following the refusal of his application for asylum.

Background

2. The Appellant is a national of Iran born on 6 July 1986. His immigration history is summarised in the cover sheet to the Respondent's bundle: it is unnecessary to repeat the entirety of that history here. The Appellant first claimed asylum in April 2011; his application was refused (with no right of appeal) for reasons set out in a reasons for refusal letter ('RFRL') and a supplementary RFRL both dated 12 May 2011. The Appellant made further submissions in respect of his asylum claim on 27 March 2012, and in due course was again refused asylum for reasons set out in a RFRL dated 14 February 2014. A Notice of Immigration Decision also dated 14 February 2014 was served on the Appellant in consequence on 19 February 2014.

3. The Appellant appealed to the IAC.

4. The Appellant's appeal was dismissed by the First-tier Tribunal for reasons set out in the determination promulgated on 29 April 2014.

5. The Appellant applied for permission to appeal to the Upper Tribunal which was initially refused by First-tier Tribunal Judge Grant-Hutchison on 20 May 2014 but subsequently granted by Upper Tribunal Judge Allen on 10 July 2014.

Error of Law

6. The key elements to the Appellant's claim for asylum - though not its totality - may be summarised for present purposes as these. Whilst present in the UK as a student the Appellant attended a number of demonstrations outside the Iranian embassy in London against the results of the June 2009 presidential election; during a visit to Iran commencing on 31 July 2009 the Appellant was questioned at the airport concerning his attendance at such demonstrations and was subsequently contacted and asked to cooperate by becoming an informant; the Appellant felt he had no choice but to agree, and was told that he would be contacted by someone following his return to the UK; the Appellant was indeed contacted but did not attend the meeting then arranged; subsequently, the Appellant's father was taken for questioning by the intelligence services in Iran; still later, the Appellant came to learn that a verdict had been announced convicting him *in absentia* to 2 years imprisonment for activities against the regime.

7. The First-tier Tribunal Judge did not believe the Appellant's account. She gave extensive reasons for her conclusion. In my judgement, some of those reasons are sustainable. However, some of them are not - as detailed below. Although there is much substance to aspects of the Judge's reasoning, bearing in mind the 'in the round' nature of the evaluation of risk in an asylum claim, the

standard of proof, and the 'anxious scrutiny' required, I am just persuaded that it would not be 'safe' to uphold the Judge's overall findings as being unaffected by those aspects where she has fallen into error.

8. I am satisfied that the following matters taken cumulatively amount to a deficiency of reasoning, such as to constitute an error of law.

(i) At paragraph 16(i) the Judge purports to identify inconsistency in the Appellant's reasons for being at risk of persecution. I find there to be a lack of clarity of reasoning in this regard. At his screening interview the Appellant refers both to a religious aspect to his claim (question 4.1 - and also see the clarification provided at the substantive interview in respect of the screening interview, Respondent's bundle C 14) - and to a political dimension by way of his reference to attendance at demonstrations in London (question 4.2). The Appellant in his substantive interview also refers both to his attendance at demonstrations (together with the adverse interest this attracted when he returned to Iran in 2009), and being potentially branded as anti-Islam or an enemy of God. The answer given to question 82 - which the Judge considers significant - is no more than a summary of the preceding matters. The Appellant again refers both to the political dimension and the religious dimension in his witness statement. I can identify no particular discrepancy on this basis. Moreover, it seems to me that the Judge sets up a false dichotomy by distinguishing between participation in anti-regime demonstrations and political opinion.

(ii) Further in this context in respect of paragraph 16(ii) I accept the criticism made on the Appellant's behalf of the Judge's apparent failure to recognise that the theocratic nature of the regime in Iran meant that anti-regime activity could be perceived as the activity of an 'enemy of God'. In this latter regard the Judge appears to have disregarded the country information to which he was referred on this very point - US State Department Report 2013 "*prosecutors frequently used moharebeh ['enmity towards God'] as a criminal charge against political dissidents and journalists, referring to struggling against the precepts of Islam and against the state that upholds those precepts*" (Appellant's bundle A3).

(iii) I pause to note that Ms Pal conceded that these aspects of the Judge's reasoning at paragraph 16(i) and (ii) of the determination were deficient.

(iv) In my judgement there is considerable substance to the matters identified by the Judge at paragraph 16(v)(a) as to the supporting documentary evidence in relation to the Iranian authorities supposed adverse interest in the Appellant and his conviction *in absentia*. There is a lack of narrative clarity in the Appellant's own account, and apparent variation in respect of the other sources of evidence, as identified by the Judge. However, this is to a very limited extent undermined by the use by the Judge of the wrong date in respect of the verdict. This is undermined in a more serious way by the Judge's apparent inversion of the standard of proof in the following line: "*I find that there is a real possibility that this lawyer was never appointed*". Yet further, and perhaps most concerning, the Judge seemingly converts the references in the background materials to court verdicts not "*normally*" being handed down (see RFLR 14 February 2014, paragraph 26 quoting from paragraph 11.64 of the Country of Origin Information Service Report dated 26 September 2013) to "*Court Verdicts are not handed out*". Taken together, whilst it might be said that there was a sound basis from which it would be possible to reach an adverse assessment of the Appellant's claim to have been sought by the authorities and convicted *in absentia* and to reject the supporting documents in this regard, I am not satisfied that the Judge's evaluation of such matters has reached the requisite level of anxious scrutiny because of the identified deficiencies in the reasoning process.

(v) Similarly the Judge, also without any apparent evidential basis, converts what is at best an improbable event into an inconceivable event at paragraph 20(iv).

9. Although criticisms were made of other aspects of the Judge's reasoning I find, taken in isolation, that there was nothing of substance in the attempt to impugn the reasoning at paragraph 16(iii) and (vi). Further, as regards the supposed discrepancy in the presentation of the Appellants claim, it seems to me the potentially more significant point is that the matter that is at the very core of the claim – not the attendance of demonstrations *simpliciter* but the attempt to recruit the Appellant as an informant and his subsequent non-cooperation – is not referred to at all in the screening interview.

10. Further, over and above those matters identified at 16(v)(b), there appears to be a yet more significant discrepancy as between the document said by the Appellant to be the court verdict and the attorney's letter concerning the court verdict in that the case number differs (1290 or 1390). Further, the Articles of the Penal Code, said to constitute the offences that are referenced in the attorney's letter are not cited in the verdict. The extent to which this

may be attributable in the former case to mistranslation or mistranscription, and in the latter case to the lawyer simply providing additional information, is unclear - but may properly be the subject of further consideration at the rehearing of this appeal

11. Be that as it may, in all of the circumstances, whilst the Judge's overall conclusion is not a surprising conclusion given the nature of the evidence and the sustainably reasoned difficulties identified with it - this is not a case where it may be said that an adverse assessment of the core elements of the Appellant's claim is inevitable in any event. Accordingly, I conclude that the determination of the First-tier Tribunal must be set aside and remade.

12. In circumstances where the challenge to the decision of Judge Morris was essentially in respect of credibility findings it was common ground between the representatives that the appeal should be reheard before the First-tier Tribunal with all issues at large. I endorse such an approach

13. It is not necessary to make any specific Directions for the further conduct of the appeal. Both parties are at liberty to file any further evidence upon which they seek to rely up to 7 days prior to the re-listed hearing.

Decision

14. The decision of the First-tier Tribunal Judge contained an error of law and is set aside.

15. The decision in the appeal is to be remade before the First-tier Tribunal by any judge other than First-tier Tribunal Judge R J N B Morris.

Deputy Judge of the Upper Tribunal I. A. Lewis 9 October 2014