Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/03319/2014

THE IMMIGRATION ACTS

Heard at Newport	**Determination Promulgated**
On 3 December 2014	**On 16 January 2015**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

NR
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Edwards instructed by Duncan Lewis & Co Solicitors
For the Respondent: Mr I Richards, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal is subject to an anonymity order made by the First-tier Tribunal pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited me to rescind the order and I continue it pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

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Introduction

2. The appellant is a citizen of Iran who was born on 12 May 1961. He arrived in the United Kingdom on 7 April 2014 and claimed asylum. On 1 May 2014, the Secretary of State refused to grant the appellant asylum and made a decision to remove him to Iran by way of directions under s.10 of the Immigration and Asylum Act 1999.

3. The appellant appealed to the First-tier Tribunal. In a determination promulgated on 11 August 2014, Judge Harries dismissed the appellant's appeal on asylum, humanitarian protection and human rights grounds. On 1 September 2014, the First-tier Tribunal (Judge P J G White) granted the appellant permission to appeal to the Upper Tribunal. Thus, the appeal came before me.

The Appellant's Claim

4. The appellant's claim for asylum was based on the following background facts. He claimed that he had worked as a technical engineer with the State TV and Radio Network. In 1999, he stopped a radio broadcast of the Supreme Leader because he disagreed with it but his conduct was excused by his employers when he said it was a technical fault. However, in 2006 he again stopped a TV programme in a similar way but, even though he again claimed it was a technical fault, on this occasion he was sacked by his employer.

5. Thereafter, the appellant started up his own business. He claims that he was politically active supporting Mr Khatami, a reformist. He participated in demonstrations after the 2009 presidential election and was arrested and detained before being released under an amnesty for political prisoners. He claimed that whilst he was detained he was slapped in the face but he experienced no problems with the authorities after he was released.

6. The appellant says that towards the end of 2010, he was bundled into a car by unknown persons who punched him, threatened him with death and stabbed him in the back, at the base of his neck, with a knife. The ordeal lasted for about half an hour before he was thrown from the car. The appellant claims that these individuals were Hezbollah and that their purpose was to hurt him to stop his political activities.

7. The appellant left Shiraz where he then lived and moved to a village which he considered a safe place and where he had relatives. He remained there without any problems until 9 February 2014. On that day, the appellant claimed that men in plain clothes knocked on his door with a warrant to search his house. They were seen on the intercom and the appellant fled through the backdoor. The men searched his house and an arrest warrant was presented to his wife. They seized a computer, books and leaflets.

8. The appellant went to stay at a friends' house for a few days before travelling by coach to Tehran where he stayed with another friend for a few

days before leaving Iran on 11 March 2014 and travelling via Turkey to the United Kingdom where he arrived on 7 April 2014.

9. The appellant claims to be a supporter of President Rouhani who was elected in the 2013 presidential election. The appellant claims that his political activities, even as a supporter of the current President, created a real risk of persecution or serious ill-treatment because hardliners within the Iranian government oppose President Rouhani and his supporters.

The Judge's Decision

10. Judge Harries did not accept that the appellant was at risk on return to Iran. At paragraph 29 she stated that:

> "….looked at in the round the appellant's claim is not plausible."

11. At paragraph 31 she stated that:

> "I do not accept the core elements of the appellant's claim, including his claim to have been detained and ill-treated by the authorities."

12. In paragraph 37, having concluded that no adverse inference could be drawn under s.8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 from the appellant's failure to claim asylum in Turkey, Judge Harries stated:

> "I have, however, for all the reasons set out above, reached adverse credibility findings for other reasons having considered the totality of the evidence. I find that the evidence as a whole does not reach the required standard to establish an asylum, humanitarian or human rights claim. I find the evidence to be implausible and insufficiently reliable to establish the core aspects of the claim."

The Grounds

13. The appellant's grounds of appeal, drafted by Mr Edwards who represented the appellant at the hearing before me, set out four grounds.

   1. The Judge failed to make a finding on the issue of whether the appellant had, towards the end of 2010, been bundled into a car by plain-clothed Hezbollah operatives. This was a central element of the claim, and consideration of this claim would therefore materially affect the Judge's assessment of the claim as a whole.

   2. The Judge failed to make a finding on the issue of whether support for President Rouhani would be considered subversive by the authorities, or elements of the authorities in Iran. It is relevant to the issue of the appellant's political profile in Iran, and is therefore material to the risk on return.

   3. The Judge failed to take into account the appellant's detailed account of his 2009 protest activity and subsequent detention in

his asylum interview, and the objective evidence for corroborating the account. She failed to apply anxious scrutiny to this element of the claim and erred in finding at [31] "there is a lack of supporting evidence" for this aspect of the claim, which was an issue material to the question of whether the appellant would face a risk upon return.

4. It was procedurally improper for the Judge to have made the finding that the appellant had not participated in the 2009 protests or been detained, because the appellant had not been cross-examined on this aspect of the claim.

14. In granting permission to appeal, Judge White considered that grounds 1 and 2 were arguable. He did not, however, exclude consideration of grounds 3 and 4 and Mr Edwards addressed me on those grounds in his oral submissions.

Grounds 1 and 3

15. Ground 1 ground relates to the appellant's account that towards the end of 2010 he was bundled into a car by Hezbollah and stabbed with a knife at the base of his neck.

16. Mr Edwards submitted that the Judge referred to this incident at paragraphs 7 and 13 of her determination setting out respectively the appellant's claim and the respondent's case. However, in reaching her findings at paragraphs 17 onwards, she made no reference to this aspect of the appellant's account. He submitted that, although she specifically rejected the other aspects of the appellant's account, she made no findings in relation to the 2010 "Hezbollah incident". This, he submitted was an error of law and, on reading paragraph 30 of the Judge's determination, he submitted that she had clearly overlooked the 2010 event as she said that it was not credible that the appellant would have "9 trouble-free years" which, Mr Edwards submitted, overlooked the 2010 incident. He referred me to the document entitled "Iran's Hardline Vigilantes and the Prospect for Reform" dated 12 June 2001 at pages 107-109 of the appellant's bundle which referred to vigilante groups including Hezbollah who, Mr Edwards submitted on the basis of this report, were sponsored by "powerful figures within the Government". He submitted that the Judge's failure to consider this discreet incident in 2010 was material to her adverse credibility findings.

17. On behalf of the respondent, Mr Richards submitted that the Judge had evaluated the whole of the appellant's evidence and had not believed what she was being told. He submitted that the Judge's statement in paragraph 31 that she did not "accept the core elements of the appellant's claim, including his claim to have been detained and ill-treated by the authorities" had to be read also in the light of her finding in paragraph 29 that having looked at the evidence in the round "the appellant's claim is not plausible".

Mr Richards submitted that the Judge had given adequate reasons for her conclusion.

18. Although Mr Edwards' submissions have a superficial attraction, they are in my judgement not well founded. To the extent that it is said that the Judge made no finding in relation to the 2010 incident, that cannot be sustained on a fair reading of the whole of the Judge's determination. Mr Edwards placed great reliance upon what the Judge said in paragraph 31 in relation to not accepting the core elements of the appellant's claim including his claim to be detained and ill treated by the authorities and submitted, in effect, that only related to his claimed detention following the 2009 presidential election. However, that is not a fair reading of those words and pays no regard to the word "including" referring to the appellant's detention and ill-treatment. The "core elements" of the appellant's claim included the 2010 "Hezbollah incident". In addition, the Judge also stated that the appellant's claim was "not plausible" (see para 29 of her determination) and repeated, again, that the evidence was implausible and insufficiently reliable to establish the core aspects of the claim at paragraph 37. There is no doubt that the Judge, therefore, rejected the appellant's account as a whole including the 2010 Hezbollah incident.

19. Mr Edwards' submission that the Judge had been wrong in paragraph 30 to refer to "9 trouble-free years" and had thereby ignored the 2010 "Hezbollah incident" is, in truth, in substance a reasons challenge. On the face of it, it does seem to be problematic as the appellant's case was not that he had lived trouble-free for 9 years until 2014. That would have been, in effect, to have failed to grasp his account that he had been abducted by Hezbollah in 2010 and also that he had not been arrested following the presidential election in 2009 whilst demonstrating. It is difficult to see precisely what the Judge had in mind by this comment (see also para 8 of her determination).

20. The issue is whether, if that reason is inadequate, looking at the totality of the Judge's reasoning her ultimate adverse finding on the reliability of the appellant's account is sustainable.

21. The Judge's reasoning is set out at length at paragraphs 17-39 of her determination. At paragraphs 22-23 of the determination, the Judge rejected a reason relied upon by the respondent for not accepting the claimed visit to the family home in February 2014 on the basis that he had not mentioned it in his screening interview. The Judge referred to Part 6 where the appellant had said in relation to what documents or other evidence he had to support his claim:

> "Only the scar on my neck. The people who came to our home did not bring anything."

22. That latter sentence, the Judge concluded, could only refer to the February 2014 visit.

23. However, the Judge then identified an inconsistency between that evidence and the evidence given by the appellant in his asylum interview as follows:

> "However, this evidence conflicts with the appellant's evidence in the asylum interview at B9, Question 12, that the men who came to his house in 2014 had a search warrant in their hand and also had an arrest warrant for him. I accept that he said subsequently that no document was left with his wife but there is a conflict in the evidence."

24. That conflict in the evidence is not challenged in the grounds.

25. The Judge then went on at paras 24-26 to consider the appellant's evidence as it evolved over the lifetime of his claim:

> "24. The reference in the screening interview, on 16th April 2014, to the February 2014 visit to his home is fleeting, without reference to the date or the existence of warrants. At this stage he attributes his reason for leaving Iran to the events in 2010 but the focus of the claim had in my view altered by the time of the asylum interview conducted on 24th April 2014 with much greater emphasis on later events. I take this view notwithstanding the purpose of the screening interview and its intended brevity. The appellant's claim in my view lacks coherence between the different events he sets out and as the claim progresses the context of them is adapted to provide a link between them.
>
> 25. In my view the appellant does not give a very clear account in interview of his activities in interfering with broadcasts or how those contribute to his claim These events as described early on in the appellant's claim are not relayed by him in such a way to show that he attracted adverse interest from the authorities. In his recent statement, dated 10th June 2014, adopted as his evidence in chief at the hearing, he clarifies matters by stating that in 1999 he stopped the broadcast of the Supreme Leader by cutting the electricity because of his political disagreement with its content. However, he passed this off as a technical fault with his employers. In 2006 he interfered with the electricity supply to prevent another broadcast and explained this as a technical fault but was sacked. In his statement he claims that he was questioned about the incident before being sacked and since then his employers have called his wife to say he must come to answer further questions.
>
> 26. In interview the appellant makes no mention of his wife being contacted by his employers about the need for further questioning. The appellant's first response in cross-examination explaining his fears on return to Iran was to refer to his interference in 2006 with the broadcast. He added very significant evidence at the hearing, not previously mentioned in his claim, namely that 3 months after he was sacked he was supposed to go to court, first of all internally with the organisation and then, if sufficiently serious, he would have been taken to the

> public court. He said that he denied and refused what they said he had done...."

27. Having set that evidence out, the Judge concluded:

> "I find the appellant's credibility to be undermined by this significant escalation in detail. As the claim progresses in my view the appellant seeks to enhance the political significance of events."

28. At paragraph 27 the Judge further referred to a "continuing addition of detail" in relation to the February 2014 visit to the appellant's home. The Judge said this:

> "The appellant's oral evidence differed significantly from his evidence in interview; in oral evidence he said the men knocked his door in 2014 because he had not attended the hearing referred to above; the organisation told the judiciary and someone from the judiciary knocked his door. I consider that this continuing addition of detail undermines the claim in an effort to link events to make a more coherent claim. In his oral evidence the appellant continued to link the 2014 visit to the house to his activities in 2006. In cross-examination the appellant stated that the authorities had not been back to his house in Iran but they have said he must hand himself in."

29. The Judge's reasoning in paragraphs 24-27 is not, in itself, directly challenged in any of the grounds. In my judgment, both the reasoning and conclusion was properly open to the Judge to support her view that the reliability or credibility of the appellant's account was damaged.

30. At paragraphs 28-30, the Judge further considered the evidence concluding the appellant's account to be "not plausible" as follows:

> "28. In oral evidence the appellant said his wife had been told of charges against him because of the destruction with the broadcasting network; they knew he had listened to the BBC. The broadcasting organisation thought he was related to a person in BBC Persia, but he was not. The relay of such information to his wife is not explicit in the appellant's evidence in interview. The appellant said in oral evidence that when his house was searched a computer case, ideological leaflets and magazines were taken; some of the leaflets were banned. The appellant was asked why he would keep high risk material at home and he replied that the leaflets had been hidden in a safe place, namely his bedroom drawer, but this was not so secretive that the materials were not found. The authorities had to look for these items to find them. Asked again why he would take this risk the appellant explained that he kept materials at home as discussion material.
>
> 29. I find that looked at in the round the appellant's claim is not plausible. He claims to have a profile with the authorities which attracted adverse interest in him and leaves him at risk but I find no coherent explanation to explain how this profile was achieved. There is a conflict with his claim to have concealed his political activities in his media employment to cover his tracks but he

> unnecessarily keeps political materials at home. It is submitted for the appellant that his support for Mr Rouhani would still be considered subversive by the authorities, in spite of his successful election. He claims that when items were seized from his home evidence was found of his Rouhani support, but this was not apparent from his evidence in interview.
>
> 30. I find that the authorities have made little attempt to find or pursue the appellant if they were genuinely interested in him, for the reasons claimed. There was a single visit to his house and he remained for 31 days in Iran before leaving the country, albeit not at his home address. I do not find it credible that there would have been 9 trouble-free years for the appellant in Iran before the authorities came looking for him for again if he were of genuine interest to them. The appellant states that his 2 daughters are at university in Iran, but not in Shiraz; he said one reason for leaving the country was his fear that their lives were in danger. The appellant states that he keeps weekly contact by telephone with his family in Iran but no harm has come to his wife or daughters. I find that these circumstances are not consistent with the appellant's claim to be of a life-threatening level of interest to the authorities for political or any other reasons."

31. Then, at paragraph 31 the Judge stated her conclusion which I have referred to above that she did not accept

> "the core elements of the appellant's claim, including his claim to have been detained and ill-treated by the authorities".

32. Whilst paragraph 30 contains the reason for doubting the appellant's credibility based upon "9 trouble-free years" it contains an additional reason, namely that he had remained for 31 days in Iran before leaving which was inconsistent with the authorities being "genuinely interested in him" and his family had experienced no difficulties or interest in them from the authorities. Whilst these may not be the most forceful of the Judge's reasons, they do have to be seen as part of the totality of the Judge's reasons beginning, in effect, at paras 23 onwards of her determination.

33. At paragraph 31, the Judge added a further reason namely that there was a "lack of supporting evidence for the claim" and then went on to consider the "authentication report" at paras 31-36 which she considered to be unreliable.

34. The grounds take no issue with the Judge's view on that "authentication report" based upon a series of questions posed by an anonymous "purported expert". As I have said, the reasoning of the Judge is not challenged and, in any event, the Judge's reasoning particularly at paras 34-36 is entirely convincing.

35. As regards the "lack of supporting evidence" that is a matter raised by Mr Edwards in Ground 3. It is convenient to deal with that reason here.

36. Mr Edwards submitted that the Judge was wrong to say that there was a "lack of supporting evidence". In the written grounds he relied upon the appellant's evidence at question 4.2 of his screening interview dealing with the release of prisoners after an incident at the Kahrizak jail at the instigation of the Supreme Leader Khatami (see also question 86 of the appellant's interview at B23). Mr Edwards submitted that this evidence was supported by a document at D2 of the respondent's bundle dated 28 July 2009 entitled "Kahrizak prison holding Iranian protesters, ordered closed after abuses" which refers to the closure of Kahrizak prison on the orders of the Supreme Leader Khamenei. Mr Edwards also relied upon the background evidence relating to the crackdown following the 2009 election. He submitted that the appellant's evidence was internally consistent and was consistent with this background evidence.

37. There is, in my judgment, no substance to this ground. As regards the 2009 election and its aftermath, there is no doubt that this experienced judge was no doubt aware of that general background. In any event, the background evidence does not unseat the Judge's reasoning specific to the appellant's particular account based upon inconsistencies in the evidence and the Judge's entirely justifiable conclusion that the appellant's account was, over time, enhanced in an attempt to establish the political significance of the events he claimed had occurred. As regards the evidence concerning the closure of Kahrizak prison, this does not, of course, relate to the appellant's particular circumstances. He has never claimed to have been detained there but rather in Adel Abad prison. The appellant's evidence on this concerned a matter which was, no doubt, in the public domain in Iran. Whilst his evidence is consistent with the background evidence on the closure of his prison, it sheds no light on the particular circumstances of the appellant and his account which the Judge, on the basis of her reasons based upon his particular account, found to be implausible and not credible.

38. Given the Judge's rejection (entirely justifiably) of the "authentication report" – which is not now challenged – the Judge did not fail to consider supporting documentation which could, in any material way, have affected the Judge's findings.

39. For these reasons, I reject Grounds 1 and 3.

Ground 2

40. Mr Edwards submitted that the Judge had failed to consider whether the appellant would be at risk as a supporter of President Rouhani. He relied upon three documents at pages 95, 99 and 101 of the appellant's bundle respectively. These documents, he submitted, demonstrated that despite Rouhani being President of Iran, there remained conservative and hardline elements in the Iranian establishment which disapproved of President Rouhani and, as a consequence, put the appellant at risk as a supporter of the President.

41. The three documents do establish that President Rouhani is a reformist political figure and that there are hardliners within the Iranian establishment who disagree with his stance. The document at page 99 entitled "Rouhani at 100 days: Few New Freedoms Yet" refers to his campaign on an "ambitious platform that included free speech, release of political prisoners and gender equality." The document goes on to note, that despite these promises, the Iranian government has failed fully to deliver. For example, although the Government announced the release of some 80 political prisoners in September 2013, by November 2013 only half had actually been freed. The document at page 95 entitled "The End of Rouhani's Honeymoon" (dated 18 February 2014) states that:

> "The honeymoon that Iran's hardliners extended to President Hassan Rouhani after his June 2013 election is coming to an end. As they have in the past, particularly during the Presidency of Mohammad Khatami, the conservative factions within the State are reasserting their power against a perceived reformist threat."

42. The document goes on to relate what maybe described, at its highest, to be an internal political struggle between hardliners and Rouhani as to internal and foreign policy.

43. That point is also made in the document at page 101 entitled "It's a Sabotage" which again, in effect, highlight tensions and internal struggle between hardliners and Rouhani and his supporters, for example in their dealings with the West and in relation to Iran's nuclear capability.

44. Mr Edwards is correct that Judge Harries made no reference to this material although it was part of the appellant's submissions recorded at paragraph 29 of the determination as: "his support for Mr Rouhani would still be considered subversive by the authorities, in spite of his successful election."

45. There are in my judgment, two principal reasons why this ground cannot succeed.

46. First, the Judge made an adverse credibility finding against the appellant. It was the appellant's claim that he was a supporter of Rouhani but given the adverse credibility finding the Judge did not accept that claim - which was a "core element" of his claim. There was, therefore, no evidential basis upon which it could be argued that the background material demonstrated a risk to the appellant as a Rouhani supporter.

47. Secondly, in any event, the background evidence to which I have been referred does not come anywhere near establishing that a Rouhani supporter would, as such, be at risk of persecution or serious ill-treatment at the hands of the Iranian authorities directed by hard-liners. Mr Edwards did not draw my attention to any examples of ill-treatment to Rouhani supporters in the material to which I was referred. The appellant was, at best, characterised as a low level supporter of Rouhani even on his own account. There was no evidence before the Judge that such individuals

were at risk of persecution or serious ill-treatment. As Mr Richards submitted, it would be remarkable if there was unanimous support in Iran or within the Iranian Government for President Rouhani but, even given that, the news and blog report at pages 95-102 do not establish a real risk to the appellant on return to Iran even if he is a Rouhani supporter.

48. That, in my judgement, also disposes of any challenge to the Judge's decision based on SB (Risk on Return – Illegal Exit) Iran CG [2009] UKAIT 00053.

49. For these reasons, I reject Ground 2.

Ground 4

50. This ground seeks to argue that the Judge was wrong to find that the appellant had not participated in the 2009 protests and had subsequently been detained because the appellant was not cross-examined on this aspect of the claim. Reliance is placed upon a passage in the judgment of Lord Judge CJ in R v Farooqi [2013] EWCA Crim 1649 at [112] that:

> "[Counsel's] critical comments about prosecution witnesses were advanced without the witness (or the prosecution) having been given a fair opportunity to address and answer the criticism. The fairness principle operates both ways. The defendant must have a fair trial. It is however equally unfair to an individual witness to postpone criticism of his conduct until closing submissions are made to the jury, not least because if given the opportunity, the witness whose behaviour is impugned may have a complete or partial answer to the criticism. All this is elementary."

51. On behalf of the appellant, it is said that this equally applies in proceedings before the First-tier Tribunal such that the appellant, who was not cross-examined on this issue was treated unfairly as he may have had a partial or complete answer to the respondent's case.

52. The simple answer to this ground is that the appellant did have a fair opportunity to deal with the respondent's case. The respondent's case was set out in the refusal letter including her rejection of the appellant's account that he had been arrested, detained and ill-treated following demonstrations in 2009. The appellant (and his legal representatives) could be in no doubt of the respondent's case before the Judge. That, of course, may reflect a difference between this jurisdiction and the criminal jurisdiction where the prosecution's case, and in particular the challenge to any witnesses' evidence, may well arise only in questions put to defence witnesses or, as in Farooqi, put to prosecution witnesses by defence counsel. Here, by contrast, the appellant had a full opportunity in giving evidence, first to know what was being said by the respondent against him, and secondly to give such evidence as he wished so as to deal with that case and to seek to persuade the Judge to believe him. The appellant could expect no more as a matter of fairness.

53. For these reasons, I also reject Ground 4.

Decision

54. For these reasons, the First-tier Tribunal's decision to dismiss the appellant's appeal on all grounds did not involve the making of a material error of law. The decision to dismiss the appeal stands.

55. The appellant's appeal to the Upper Tribunal is accordingly dismissed.

Signed

A Grubb
Judge of the Upper Tribunal

Date: **3 December 2014**