Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: AA/04844/2015
AA/04845/2015
AA/04843/2015

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 30 October 2015	**On 6 November 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

MR SEYED HASSAN SAJJADI MASOUEH
MRS NAHALBEMAMI NIKOU
MASTER SEYED SOAD SAJJADI MASOULEH
(Anonymity directions not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr F Singarajah of Counsel
For the respondent: Ms J Isherwood, Senior Presenting Officer

DETERMINATION AND REASONS

1. The appellants are nationals of Iran born on 31 August 1967, 31 March 1974 and 5 November 1998 respectively. They are husband and wife and son. They appeal to the Upper Tribunal against the determination of First-tier Tribunal Judge Juss dated 9 July 2015 refusing their appeals against the

decision of the respondent dated 9 March 2015 refusing their applications for asylum and humanitarian protection in the United Kingdom. As the appeals of the second and third appellant's dependent on that of the first appellant, I shall refer to the main appellant as "the appellant".

2. Permission to appeal was granted by first-tier Tribunal Judge Fisher on 30 July 2015 stating that it is arguable that the Judge's conclusion that the appellant did not satisfy the requirements of paragraph 339L of the immigration rules was in error, in that his evidence was not coherent and plausible.

First-tier Tribunal's findings

3. The Judge in his determination made the following findings which I summarise. Careful consideration has been given to all the documentary evidence and to the oral evidence. "I remind myself that the real question, as always in these cases, was, notwithstanding that which had happened for this appellant to return."

4. First the appellant's claim that Mr Panaian brought a lap top hard drive to the company where the appellant worked and asked for it to be repaired as soon as possible. When he came to collect his hard drive, he started to shout and argue at the reception. The technical department told Mr Panaian to buy a new hard drive and he objected. When he found out that his data had been copied onto the company's server, he wanted to speak to the chief executive of the company. The appellant explained to Mr Panaian that this was the only solution and after arguing for one hour, he accepted. After an hour, he returned with a new hard drive. The speed in which he returned with a new hard drive, made the appellant suspicious. Therefore the appellant made a copy of the information and left work.

5. Later he checked the information and found that it was top-secret information about high-ranking officials in Iran. After four months, the appellant discovered further information of a highly sensitive nature. The information was about political leaders orders to kill.

6. The appellant give the information to a blogger friend of his by the name of Majid who used this information in his blog. The appellant did not have any problems as a result of being seized of this information while it Iran. It was not until he was in the United Kingdom did he realise that copying this information was problematic. This was when his friend from Iran telephoned him to warn him not to return because government officials had raided the company and obtained access to personal computers.

7. The next day the Iranians security forces raided the appellant's house and obtained access to his computer. However by his own account, and as is specifically stated by Mr Richardson's skeleton argument, the appellant only acquired this information out of curiosity and in innocence. He had no intention himself of using it and nor did he use it. No documents have been issued in relation to the appellant by the Iranian authorities. It is not

accepted that the reason for this is that intelligence did not issue documents.

8. Second the appellant's computer by his own admission is password protected. The appellant has had no contact with his employers in Iran. The authorities have not been back to his workplace or to his home since the raids. Furthermore, the appellant himself has not been politically active since he came to the United Kingdom. In the circumstances, all the appellant was doing was carrying out his job because he had the appropriate skills and there is no reasonable possibility of him being apprehended or coming "under the radar" were he to return to Iran. Most of the documents, in any event are over 25 years old.

9. Not only did the appellant experienced no problems in Iran, but he left together with his family on their own passports on 27 June 2013. The appellant's claim is implausible given that he left the country on 27 June 2013 and the raids were taking place at his home on 24th or 25 July 2013. In which case the Iranians authorities were embarking upon a futile task by raiding his workplace or is home on those dates. Had they intended to apprehend the appellant they would have stopped him at the airport or waited until he returned before conducting the raids, which would have ensured that the appellant was not alerted, as one would expect in relation to such a high profile matter as the involvement of the highest ranking officials of the State in murder. For all these reasons, the claim is simply not credible.

10. The appellant has contrived to put forward an asylum claim in circumstances where he has safely relocated with his family into the United Kingdom. The claim is entirely lacking in credibility. For all these reasons I reject his asylum claim for the reasons given.

The grounds of appeal.

11. The appellant grounds of appeals are as follows, which I summarise. The Judge found at paragraph 12 that the appellant's evidence is not coherent and plausible as set out in paragraph 339L of the Immigration Rules. Having said this, it is reasonable to expect a list of reasons for why the appellant's account was found to be incoherent and implausible and there is no such list. At paragraph 13 the Judge states that no documents had been issues in relation to the raid by the Iranian authorities. I do not accept that the reason for this is that intelligence do not issue such documents. This does not shed any light on the Judges findings that the appellant's account was incoherent or implausible.

12. In so far as the Judge might be suggested that the absence of arrest warrant or similar document in some way undermines the appellant's case, which is far from clear he is, it is submitted that as the appellant's case was that he came to the attention of the authorities *sur plus*, he

could not have been realistically expected to know whether such documents existed, let alone to produce the same.

13. The Judge stated at paragraph 14 that the appellant was doing his job and there was no reasonable possibility of him being apprehended or coming under the radar (*sic*) were he to return to Iran. This comment connected as it is to an assessment of risk, in no way can be categorised as an example of incoherent implausibility on the part of the appellant. The appellant was not just doing his job as stated by the Judge but he stole sensitive information, which was subsequently used by an anti-government blogger. This was the one and only plausibility reason for rejecting the appellant's claim.

14. The Judge states that the failure by the Iranians authorities to stop the appellant at the airport when he left Iran, and the fact that they only raided his workplace and home after the he had left the country, suggest that his account is untrue. The authorities only learned of the appellant's involvement in the dissemination of the sensitive material after he had left Iran. The Judge's findings as to the expected behaviour of the intelligence services in Iran is unsound.

15. Furthermore, rejection of an asylum claim on the grounds that the persecuting authority has acted in an implausible manner will frequently provide unsound bases for such rejection. **HK [2006] EW CA 1037** and **Awala v Secretary of State [2005] CSOH 73** refer in respect of inherent improbability. The rejection of the story grounds of implausibility must be done, unreasonably drawn inferences and not simply on conjecture or speculation". The entitlement of the factfinder to rely "on his own common sense and his ability, as a practical and informed person, to identify what is or is not plausible". The appellant's social and cultural background must be taken into account when determining plausibility.

16. For the reasons given, the determination is unsound and that the appeal should be remitted to the first-tier Tribunal to be reheard by a different Judge.

The hearing

17. At the hearing I heard submissions from both parties as to whether there is an error of law in the determination.

Findings as to whether there is an error of law

18. I have given anxious scrutiny to the determination of the First – tier Tribunal Judge and have taken into account the grounds of appeal. The grounds appeal essentially state that the Judge did not give adequate reasons for finding the appellant's evidence not coherent and plausible.

19. The Judge fell into material error by his failure to give cogent reasons for finding the appellant and his claim not credible. Although the Judge stated

in his determination that he found that the appellant's asylum claim has been contrived, it was required of him to give full reasons for not accepting the appellant's evidence.

20. The Judge also made inconsistent findings on the facts. The Judge found that the appellant did not have had any problems prior to leaving Iran on 27 June 2013 and he would have if his claim of stealing sensitive government data was true. The appellant's evidence however was that the Iranian authorities did not know about the stolen data until they arrested Majid who had used the information in his blog on the Internet. This is why the raids only took place on 24 or 25 July 2013 which is after the appellant had left the country. Furthermore, the Judge found at paragraph 13 that the appellant acquired the information out of curiosity and innocence and "had no intention himself of using it nor did he use it". This is not accurate because the appellants claim was that he did use the information by giving it to a blogger who used it in his website. This finding also brought the Judge into error.

21. The Judge stated that he does not find credible that the security forces in Iran would not have left some form of documentation when they raided the appellant's house. The Judge gave no basis for why he believed that they must have left some document during the raid. I have been invited to accept that the Judge's view was based on the how the security forces in the United Kingdom operate in that they would be bound by law to issue some document to enter a person's house.

22. The Judge did not make specific and explicit findings as to which evidence he accepted and which he did not. Therefore in the absence of such findings, it is difficult, in the circumstances, to understand the Judge's reasoning.

23. I find that the Judge has failed to give adequate reasons for his findings and this amounts to a material error of law. It may be that a differently constituted Tribunal may come to the same conclusion, but the appellant is entitled to know the reasons for why his claim was dismissed.

24. I find that a material error of law has been established in the determination. I direct that the appeal be remitted to the First-tier Tribunal for a hearing *de novo* for findings of fact to be made on the appellant's credibility and to the credibility of his claim. The appeal be placed before any First-tier Tribunal Judge other than Judge Juss on the first available date.

DECISION

Appeal allowed to the extent that it is remitted back to the First-tier Tribunal

Dated this 30th day of October 2015

Signed by

A Deputy Judge of the Upper Tribunal
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Mrs S Chana