



IAC-AH-SAR-VI

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

Appeal Number: AA/05797/2014

THE IMMIGRATION ACTS

**Heard at Centre City Tower, Birmingham
On 7th October 2015**

**Decision & Reasons Promulgated
On 20th October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR MEHRAN AZIMI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss H Masih (Counsel)

For the Respondent: Mr D Mills (HOPO)

DECISION AND REASONS

1. This is an appeal against a determination of Judge of the First-tier Tribunal Obhi, promulgated on 30th September 2014, following a hearing at Birmingham, Sheldon Court on 12th September 2014. In the determination, the judge dismissed the appeal of Mr Mehran Azimi. The Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Iran, who was born on 3rd September 1985. He applied for asylum, having arrived in the UK on 17th April 2014, after he was informed of his entry as an illegal entrant and of his liability to removal.

The Appellant's Claim

3. The Appellant's claim is that he fears persecution by the state authorities in Iran because of his connections with bloggers, because web bloggers use facilities in his shop, and because he assisted them in providing them with printed literature and DCSs, and this eventually came to the attention of the authorities, who assumed that he was also a blogger and also assumed that he was being anti-Islamic.

The Judge's Findings

4. The judge made positive findings in favour of the Appellant at paragraph 30 of the determination observing that,

"The core of his account has remained consistent. The fact that he ran an internet café and that he was a Masters student is not disputed. His claim that he did not oversee the content of his customers' use of the café, is considered not to be credible. The Appellant states that he allowed his clients complete confidentiality. The Secretary of State considers it unlikely that he would not have oversee what the users were doing, as he was placed in a university setting and it was likely that there may be political opinion expressed. I am not sure that this is an automatic assumption by someone who may not have been exposed to political opinion; not all students are, particularly in a regime like Iran. I therefore accept that the Appellant's claim that he allowed the users of the café to have complete confidentiality ... the Appellant is an educated person, he has maintained this throughout. I agree with Miss Masih that there does not appear to be any evidence to suggest that the Appellant has embellished his account" (paragraph 30).

5. However, the judge also went on to make additional findings which undermine the Appellant's credibility observing that,

"There are, however, aspects of the Appellant's claim which are less credible". These related to, "the fact that he was released at all if he was considered to be a political threat and the lack of real investigation by the authorities as to where he has gone or any repercussions for the family who have openly allowed him to go. There are regular telephone calls by him to his parents. One would assume that the authorities would be able to check these things and would know what was going on ..." (paragraph 32).

6. The judge also observed that,

"I note further from the COIR Report that court summons would not be served by post, and having initially said that this summons was the Appellant corrects this in his later evidence and says that he said it had been posted because that is what his wife said. However, considering that the Appellant is an intelligent man who lived in Iran, who had been through the court process, he would know that summons are not sent by post, and would have queried the claim" (paragraph 34).

7. The appeal was dismissed.

Grounds of Application

8. The grounds of application suggest that the judge made conflicting and inconsistent findings of credibility which amounted to an irrational determination.
9. On 20th October 2014, permission to appeal was granted.
10. On 14th November 2014, a Rule 24 response was entered to the effect that detailed analysis had been carried out by the judge at paragraphs 29 to 34, which did warrant the findings made by the judge, such as to avoid their becoming irrational.
11. At the hearing before me, Miss Masih, relied upon her grounds of application. She pointed out that the judge at paragraphs 30 and 31 of the determination had accepted that the Appellant's account had remained consistent. Any errors that there may have been in this account were simply errors. Indeed the judge went on to say that the core aspects of the claim were plausible.
12. However, subsequently, when the judge considered the documentary evidence, particularly in relation to the summons letter, and two letters from the Appellant's father, and a letter from the Appellant's wife, she failed to state what weight would be attached, if any, to each piece of evidence, as she did not apply the case of **Tanveer Ahmed** to the assessment of this documentary evidence.
13. Furthermore, the judge made additional findings of fact at paragraphs 32 to 34, such as drawing an adverse inference from the fact that the Appellant did not know about the raid on his father's house (paragraph 32) and his initial evidence concerning receipt of the summons (paragraph 34), but failed to take into account the contents of the letters provided by the Appellant's family members, which went directly to this issue.
14. Additionally, the judge looked at the document referred to as a court summons (at paragraphs 33 to 34) which was titled "Summons letter to the accused" and finds that the documents were "curious" because "the presentation of a summons to his wife seems odd in these circumstances".
15. However, these findings are made in the absence of a consideration of the property deed and bail document, which the judge did find to be plausible, without giving adequate reasons.

The Hearing

16. At the hearing before me on 7th October 2015, Mr David Mills, appearing as Senior Home Office Presenting Officer, submitted at the outset of the hearing that he would have to concede that the judge's findings did amount to a determination which was inconsistent and therefore unsustainable.
17. He particularly drew attention to the way in which the summons had been sent by post, according to the Appellant's wife, notwithstanding additional evidence that did go directly to this issue, which was not considered by the judge.
18. Secondly, Mr Mills submitted that there was now also an additional issue in terms of the Appellant's conversion from the Shia Islamic faith to the Christian faith, which

would have necessitated a new application being made by the Appellant, so that it was altogether better that all these issues were considered together, after a remittal had been made to another Tribunal below.

19. Miss Masih, replied to say that if the error of law was conceded, and there was to be a remittal, then the full bundle of documents should be returned to the Appellant, because there had been a change of legal representation, involving both a change of solicitors and of Counsel, such that the Appellant's side did not now have all the documents that they had previously relied upon.

Error of Law

20. I am satisfied that the making of the decision by the judge involved the making of an error of law for the reasons that have been given and stated in Miss Masih's clear and succinct grounds of application.
21. I do not accept that the fact that there is now an additional dimension to this case, namely, the conversion of the Appellant to the Christian faith, can be used in any way to impugn the determination of the judge before whom these facts were not known, but I accept that to all practical intents and purposes, once the matter returns back to the First-tier Tribunal, to be heard by a judge other than Judge Obhi, that evidence on these matters will require to be heard.
22. For all these reasons, this appeal is allowed to the extent that it is remitted back to a judge at Sheldon Court, Birmingham to be heard by a Tribunal other than that of Judge Obhi at the first available date. The matter is to be set down for a three hour hearing, with three witnesses to be called, and a Farsi interpreter, and all the available documents that are in the Tribunal file are, upon application by the Appellant's solicitors, to be returned to the Appellant's representatives.

Notice of Decision

23. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. The determination is set aside. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal in Birmingham, Sheldon Court, to be heard by a judge other than Judge Obhi on a de novo basis with all issues remaining outstanding.
24. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

16th October 2015