Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/09540/2013**

THE IMMIGRATION ACTS

Heard at: Manchester	**Decision Promulgated**
On: 21st November 2014	**On: 17th March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

MRF
(anonymity direction made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Ms Johnrose, Broudie Jackson and Canter
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iran date of birth 17th April 1985. He appeals with permission[1] the decision of the First-tier Tribunal (Judge Hague) to dismiss his appeal against the Respondent's decision to refuse him entry to the United Kingdom[2]. That decision followed rejection of the Appellant's claim to international protection.

2. The Appellant claimed asylum on arrival advancing a fear of persecution in Iran for reasons of his imputed political opinion. He had

[1] Permission was refused on the 27th January 2014 by First-tier Tribunal Judge Chohan but granted on the 25th February 2014, upon renewed application, by Upper Tribunal Judge Coker
[2] Decision dated 4th October 2013

worked in high-end hotels and had been employed providing catering at the British embassy. He had contact with foreign visitors to Iran. He claimed that as a result he had been subject to what appears to have been an extra-judicial detention – people he believes to have been agents of the security services had kidnapped and tortured him and accused him of being a spy. That was the first plank of the Appellant's case before the First-tier Tribunal. The second was that since his arrival in the UK he had converted to Christianity: he therefore also feared persecution for reasons of his religious belief.

3. The First-tier Tribunal rejected the political asylum claim. The account was held to be "implausible": there did not appear to be any reason why he had been detained, the intentions of the authorities had not been revealed during questioning and there was no background material to support the Appellant's claim that a work colleague had been executed. Nor was there medical evidence to support the Appellant's claim to have been severely tortured. In respect of the conversion claim the Appellant relied on the evidence of a Reverend Ferguson and Mrs Stanley, who both attested to their belief in the sincerity of the Appellant' spiritual conversion. Judge Hague was not swayed by their assessment. Although he accepted it to be made in good faith he considered that the Appellant's minimal knowledge of Christianity and his relatively short period of Church attendance revealed this to be a cynical ploy. The appeal was dismissed on all grounds.

4. The grounds of appeal are that the First-tier Tribunal has made the following errors of law:

   i) Unfairly characterising the account of political persecution as "implausible". In making this finding the Tribunal failed to place the account in the context of the country background material and it amounted to impermissible speculation about how the security services in Iran might be expected to behave: HK v SSHD [2006] EWCA Civ 1037 and Awala v SSHD [2005] CSOH 73.

   ii) Failure to take account of the evidence. The Tribunal found that the Appellant had been "vague and non committal" about the reason why the authorities might be interested in him. In fact he had set out at some length in his asylum interview and his interview why the authorities were interested in him (his contact with the British embassy and various foreigners). In relation to the alleged conversion it is submitted that the Tribunal has failed to take account of the express evidence of Reverend Ferguson that he had closely observed and assessed the Appellant over a six-month period prior to baptising him.

   iii) Making contradictory findings. The determination states that the Appellant's knowledge of Christianity had not been tested; it is then found that his knowledge is lacking. The grounds

submit that one cannot logically follow the other. If the Appellant has not been tested it cannot be said that he has failed a test.

iv) Failing to conduct a discrete risk assessment on the basis of the unchallenged fact that the Appellant had been regularly attending church for six months: here the grounds rely on the comments of Gilbart J in SA (Iran) [2012] EWHC 2575 to the effect that in the Iranian context these facts themselves may place the subject at risk, even if the attendance was cynical.

v) Failure to give reasons. The Appellant had produced a summons said to originate from Iran. This had been rejected on the basis that its late production suggested "recent manufacture". It is submitted that this did not amount to a reason.

vi) Failure to conduct a discrete risk assessment on the basis that the Appellant would be returned to Iran as a failed asylum seeker. The country guidance indicated that he would face questioning on arrival, and that if he was found to have left Iran illegally he would face detention: the Respondent's current Operational Guidance Note indicates that in such circumstances there would a real risk of ill treatment amounting to a breach of Article 3 ECHR.

5. The Respondent did not provide a Rule 24 response and before me Mr Diwnycz made no submissions in defence of the determination.

My Findings

6. At the heart of the analysis of the original asylum claim is the finding, at paragraph 8, that the Appellant's arrest in Iran is "implausible". The determination states that "there is nothing in his history to put him under suspicion… The Appellant is not a spy, and as a cook and hotel receptionist he has no obvious sources of information or access that could be of any interest to any foreign power". With respect to the First-tier Tribunal, I agree that this reasoning is unsustainable. It presupposes that the Iranian security services are likely to act in a reasonable, and rational, manner. Given the background evidence that is not an assumption that can be safely made. As the numerous authorities cited in the grounds point out, it is dangerous to assess what is "plausible" in a foreign state in the context of what is "plausible" in our own. As Lord Neuberger put it in HK:

> 28. Further, in many asylum cases, some, even most, of the appellant's story may seem inherently unlikely but that does not mean that it is untrue. The ingredients of the story, and the story as a whole, have to be considered against the available country evidence and reliable expert evidence, and other familiar factors, such as consistency with what the appellant has said before, and with other factual evidence (where there is any).

> 29. Inherent probability, which may be helpful in many domestic cases, can be a dangerous, even a wholly inappropriate, factor to rely on in some asylum cases. Much of the evidence will be referable to societies with customs and circumstances which are very different from those of which the members of the fact-finding tribunal have any (even second-hand) experience. Indeed, it is likely that the country which an asylum-seeker has left will be suffering from the sort of problems and dislocations with which the overwhelming majority of residents of this country will be wholly unfamiliar. The point is well made in *Hathaway on Law of Refugee Status* (1991) at page 81:
>
> "In assessing the general human rights information, decision-makers must constantly be on guard to avoid implicitly recharacterizing the nature of the risk based on their own perceptions of reasonability."
>
> 30. Inherent improbability in the context of asylum cases was discussed at some length by Lord Brodie in *Awala –v- Secretary of State* [2005] CSOH 73. At paragraph 22, he pointed out that it was "not proper to reject an applicant's account *merely* on the basis that it is not credible or not plausible. To say that an applicant's account is not credible is to state a conclusion" (emphasis added). At paragraph 24, he said that rejection of a story on grounds of implausibility must be done "on reasonably drawn inferences and not simply on conjecture or speculation". He went on to emphasise, as did Pill LJ in *Ghaisari*, the entitlement of the fact-finder to rely "on his common sense and his ability, as a practical and informed person, to identify what is or is not plausible". However, he accepted that "there will be cases where actions which may appear implausible if judged by...Scottish standards, might be plausible when considered within the context of the applicant's social and cultural background".

7. In this case the country background material did indicate that the Iranian state routinely subjected its citizens to arbitrary arrest, irregular detention and ill treatment. There was no evidential basis to reject the Appellant's contention that they viewed the activities of foreigners with suspicion, or that they might be interested in an Iranian with some connection, no matter how tenuous, to the British embassy. I therefore find ground (i) is made out.

8. It follows that I need not deal with ground (ii) in any detail save to say that I accept that there was evidence that the Tribunal does not appear to have taken into account. In respect of ground (v) the Tribunal was entitled to be suspicious about the timing of the summons, and I am not satisfied that this in itself would amount to an error of law.

9. It was accepted by Mr Diwnycz that the Tribunal had failed to address the 'failed asylum seeker' point that was taken by Appellant's counsel, who relied principally on the uncontentious material in Respondent's own OGN. The Court of Appeal and High Court have already granted permission on the point in numerous cases[3] and I am satisfied that the failure to deal with a specific submission was an error of law.

[3] See for instance R v UT (IAC) and SSHD ona MA (Iran) C5/2014/0227, R v UT (IAC) and SSHD ona RA (Iran) C5/2014/0437, R v UT (IAC) and SSHD ona SM (Iran) CO/2972/14

10. Grounds (iii) and (iv) relate to the claimed Christian faith of the Appellant. In submissions before me Mr Diwnycz agreed that it would be difficult to extricate the Tribunal's assessment of the Appellant's faith from its credibility findings on his political asylum claim. Since the latter have been set aside it is therefore difficult to see how the former would not be infected by the same error. I am further persuaded that the Tribunal has not paid sufficient attention to the apparently detailed evidence of Reverend Ferguson about how he was qualified to assess the Appellant, and how he actually did it. The Reverend expressly rejected the contention that he had baptised the Appellant simply because he had came to church every week for six months. As to the SA (Iran) risk assessment – ie was there a risk of serious harm even if the conversion was cynical – this is absent from this determination.

11. For the foregoing reasons this decision must be set aside it its entirely. The parties agreed that if this was the outcome it would be appropriate, given the extent of judicial fact finding[4] required, that this matter be remitted to the First-tier Tribunal for re-making.

Decisions

12. The determination of the First-tier Tribunal does contain an error of law and it is set aside.

13. Having regard to the alleged facts in this case, and having regard to the Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: *Anonymity Orders*, I make an order for anonymity:

> "Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings".

14. The decision is to be re-made in the First-tier Tribunal.

Deputy Upper Tribunal Judge Bruce
3rd March

[4] Practice Statements for the Immigration and Asylum Chamber of the Upper Tribunal paragraph 7 (b) provides that an appeal may be remitted to the First-tier Tribunal where "the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal".

2015