



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

Appeal Number: AA/10020/2014

THE IMMIGRATION ACTS

**Heard at Glasgow
On 27 May 2015**

**Determination issued
On 4 June 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

KOUROSH SHABASTANI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D McGlashan, of McGlashan MacKay, Solicitors

For the Respondent: Mrs S Saddiq, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. By determination promulgated on 12 January 2015 First-tier Tribunal Judge Hands dismissed the appellant's appeal against refusal of asylum.
2. Paragraph 16 of the determination says:

"At the commencement of the hearing, Mr McGlashan indicated that he had been able to obtain a video of the appellant performing his rap song and had been able to bring a laptop to the hearing which would be able to play it. Mr Govan [the Presenting Officer] objected to the playing of the video as there had been no previous reference to it and a copy had not been provided to the respondent's office. He had not had the opportunity to investigate the source of the video. Mr McGlashan explained the appellant

had only been able to email it to him recently as there was some difficulty with the playing format and he would have no objection to allowing Mr Govan some time to view the video and consider his position. After considering the submissions, I decided not to allow the video to be played.”

3. Permission to appeal to the Upper Tribunal was granted on one ground only: alleged unfairness in declining to admit into evidence the video, said to show the appellant performing a rap song and talking about his experiences in detention.
4. No further evidence about the video accompanied the grounds.
5. In a Rule 24 response to the grant of permission the respondent argues that although the judge is said to have given no reasons on this point, she must have upheld the respondent’s reasons; that the appellant’s credibility was cogently rejected; and that the video could not have added materially to his case.
6. The UT issued directions on 28 April 2015, which amongst other matters reminded parties of the need to apply if they sought to introduce any further evidence.
7. On 27 May 2015 the appellant tendered his “inventory of productions 4”: (1) cd video of appellant’s... highly political rap song against the Islamic regime” and (2) certified English translation of appellant’s rap song.
8. Mr McGlashan submitted that it had been unfair not to allow the cd to be played. He accepted that the performance was in Farsi and that no transcript had been available. He said he had been suggesting that there should be an adjournment for a translation to be made. Otherwise, there would have been no point in admitting the evidence.
9. Mrs Saddiq said that her colleague’s file minute recorded that having enquired half an hour before the hearing, there was no indication of further evidence, yet when it began there was a request to play a video recording. That came far too late and with no explanation, so her colleague was right to object. The reasons he gave were recorded at paragraph 16 and were rightly upheld by the judge. It could have served no purpose to play a recording in Farsi. At paragraph 34 the judge accepted that the appellant had provided a video to his representative but found it would have added little. Now that a transcript and translation were belatedly provided, there was nothing in them to make any difference. The judge had given good reasons for finding the appellant’s evidence incoherent and unpersuasive. The appellant had not shown any unfairness. He had not given any meaningful explanation of why it took so long to produce the recording. There had been a case management review hearing in advance of the substantive hearing, when no potential problem was intimated.
10. Mr McGlashan in reply said the matter did not arise only at the hearing, because it was in the appellant’s statement that a recording existed. It

was not in cd format at the time of the hearing, having only recently been emailed to the appellant's phone from Iran and then to his representatives. It went to the core of the appellant's case that he had written and performed rap songs with his friends in Iran. The transcribed content was plainly critical of the regime.

11. I reserved my determination.
12. The transcribed and translated song does appear critical of the cruelties of the Iranian regime.
13. There was no intimation in advance of a possible problem relating to video evidence. A mention buried in a statement is not enough. Any difficulty should have been made clear at the case management review on 8 December 2014. To raise the issue only when the hearing began, having told the other side half an hour earlier that there was no further evidence, called for strong justification. It has still not been explained with any clarity why this item became available only at the last possible moment.
14. The application was not advanced or at least not clearly advanced at the hearing as one calling for an adjournment. It was suggested that the video be played to the tribunal for any value it might have, which would be more a fishing expedition than proper leading of evidence.
15. The grounds of appeal to the UT were not accompanied by any transcript and translation, without which it is doubtful whether the case merited a grant of permission.
16. The production of the transcript in the UT is another matter delayed to the last moment. The transcript includes no mention of the appellant talking about his experiences in detention, which was previously said also to feature.
17. Cases should not too readily go against appellants for procedural shortcomings. Not all these shortcomings may be attributable to the appellant himself. However, there is an unsatisfactory history on his side.
18. The question is whether the judge gave the appellant a fair hearing. As matters emerged before her, there was no good reason for the evidence to arrive so late. No legal error arises from her sustaining the respondent's objections. In any event, her determination makes it plain that the appellant was not prejudiced by non-admission of the video.
19. The reasons of the judge for rejecting the appellant's account are cogent. They include the following at paragraph 30:

"I accept the appellant performed rap songs with his friends in private ... he claims to have written two songs, one of which has political connotations however the one he claims was released by his friends on the internet was not the political one. I do not find it is reasonably likely this would have brought him to the adverse attention of the Iranian authorities."

20. That is as favourable a view of the issue as the appellant could have expected, if the video had been played and the transcript provided. The judge would have come to the same conclusions.
21. The determination of the First-tier Tribunal shall stand.
22. No anonymity direction has been requested or made.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

1 June 2015
Upper Tribunal Judge Macleman