IAC-AH-DN-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05622/2015

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 9 February 2016	**On 9 March 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

SHAHIN DARVISHNARENJBON
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss R Pickering, instructed by Bankfield Heath Solicitors
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Shahin Darvishnarenjbon, was born on 12 August 1988 and is a male citizen of Iran. The appellant first came to the United Kingdom as a visitor and subsequently returned as a student claiming asylum shortly before his post-study visa expired in December 2013. On 17 March 2015, a decision was made to refuse to grant the appellant asylum and to

remove him from the United Kingdom by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. He appealed to the First-tier Tribunal (Judge Aspden) which, in a decision promulgated on 2 September 2015 dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. There are three grounds of appeal. First, the appellant submits that the judge failed properly to apply the law. The appellant claimed to have been "caught up in political demonstrations" in Iran and gave an account which the First-tier Tribunal Judge did not believe. At [37], the judge wrote: "Whilst it is perfectly possible that each of these events did occur, the chances of all these events happening in combination are very low."

3. The judge went on to observe that the appellant had, in relation to the same account of past events, given inconsistent evidence regarding his knowledge of the procedures adopted by lawyers in Iran. The events, the combination of which the judge found to be unlikely, concerned his family changing addresses so that documents concerning his criminal conviction would not be served on his family whilst the appellant's brother happened to visit heir former property and learnt about the criminal proceedings and was able to tell the appellant very shortly before his United Kingdom visa was due to expire. Thereafter, "a family friend happened to be travelling to the UK a few days later and was able to deliver the original documents to the appellant." The judge also noted that criminal proceedings which had been pursued against the appellant in around 2011 appears to have been dropped whilst a solicitor in Iran who claimed to have acted for the appellant had done so without his knowledge. The judge also noted that the Iranian authorities had not tried or been able to locate the appellant with a view to taking him into custody to serve the sentence he was given following this conviction even though his family were living only seven miles away from their previous address.

4. The grounds of appeal submit that the judge has applied the wrong standard of proof by her use of the words "very low" in describing the likelihood of the events described above occurring in sequence. This ground of appeal has no merit. The judge was perfectly entitled to express her scepticism regarding the appellant's account of the events in Iran. It was perfectly obvious that the use of the words "very low" did not indicate the adoption of an inappropriate standard of proof, a standard which the judge had succinctly and accurately described at [12]. It was correct for the judge to consider the appellant's entire narrative, including the likelihood of events happening in combination or sequence, rather than merely assessing the likelihood of each event occurring in isolation. It was plainly open to the judge to find that the likelihood of the events described by the appellant happening in combination is very low and that his account cast doubt upon his credibility as a witness.

5. The second ground of appeal states that the judge has given inadequate reasons for preferring the evidence in the COIS Report (September 2013) to the evidence where Mr Rashti expressed the opinion that the

documents adduced by the appellant were likely to be genuine. The COIS Report stated that it was easy to obtain fraudulent documents in Iran. The judge concluded from that evidence [42] that she should review the documents "with some suspicion". I cannot see anything wrong in that finding. The judge was not rejecting Mr Rashti's evidence out of hand; she was simply recording her legitimate view that the evidence should be viewed in the context of other evidence which indicates that fraudulent documents circulated freely within Iran.

6. Miss Pickering, who appeared for the Appellant, concentrated in her oral submissions upon the third ground of appeal. She submitted that the Tribunal had perpetrated a procedural unfairness. The appellant had been unrepresented at the First-tier Tribunal hearing. The appellant had discussed with the judge whether he wished to call his mother to give evidence. In this context, I note that his mother had signed a written statement which is dated 13 August 2015 and that the appellant's First-tier Tribunal bundle had been submitted on 11 August 2015. It appears that the appellant was aware that his mother had provided a witness statement but he did not seek to bring that before the attention of the First-tier Tribunal Judge nor did he call his mother to give evidence. The judge discusses the appellant's conduct at [43]. The judge found that the appellant was aware that witnesses could give evidence on his behalf including his mother and also a Mrs Miri. Indeed, an interpreter had been provided at the hearing so that the mother could give evidence. The judge went on to observe that it was for the appellant to prove his case and found that, "it was easy for the appellant to obtain evidence from either or both of these witnesses and the lack of such evidence affects the assessment of the appellant's credibility." Miss Pickering submitted that, had the appellant, who did not have the assistance of professional advisers, known that not calling his mother or Mrs Miri to give evidence would be detrimental and damaging to his case he would have called the witnesses to give evidence.

7. I examined the judge's Record of Proceedings and read out extracts to the representatives. The judge had recorded her own statement that, "your mother is central to your case" but also the appellant's reply ("*My statement is sufficient*".) It is unclear why the mother's written statement was not put before the First-tier Tribunal and that was clearly not the fault of the judge. I am satisfied that the judge made it clear to the appellant that it was important for him to prove his case to the necessary standard and that his mother was a potentially important witness. The appellant himself is an intelligent and educated individual and I am satisfied that he understood the judge's comments regarding the importance of discharging the burden of proving his case that he freely chose not to call his mother or Mrs Miri because he genuinely believed that his own evidence was "sufficient". I find that it is simply not the case, as the appellant now claims, that he only realised the importance of the witnesses' evidence when he read the judge's decision. It is true that the judge found that the failure of the mother to give evidence "affected the appellant's credibility" but, read in the context of her other comments, I find that this indicated

little more than that the weight attaching to all the appellant's evidence was less than might have been the case had the witnesses testified before the Tribunal. In this particular context, I do not find that the judge believed that the appellant was dishonest or lying because he chose not to call his mother. In all the circumstances, I find that the judge has not erred in law for the reasons asserted in the grounds of appeal or at all. The appellant's appeal to the Upper Tribunal is dismissed.

Notice of Decision

8. This appeal is dismissed.

9. No anonymity direction is made.

Signed Date 1 March 2016

Upper Tribunal Judge Clive Lane

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 1 March 2016

Upper Tribunal Judge Clive Lane