IAC-AH-KEW-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07883/2015

THE IMMIGRATION ACTS

Heard at Bradford	**Determination Reasons Promulgated**
On 30th March 2016	**On 19th April 2016**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

MOM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Schwenk (Counsel)
For the Respondent: Mr M Diwncyz (Senior Home Office Presenting Officer)

DECISION AND DIRECTIONS

1. This is the Appellant's appeal to the Upper Tribunal against a decision of the First-tier Tribunal (hereinafter "the judge") dismissing his appeal, in a determination promulgated on 19th August 2015, against the Respondent's decision of 20th April 2015 refusing to grant him asylum or any other form of international protection.

2. The Appellant was granted anonymity by the judge. Although nothing was said to me about that, since such was granted and since no attempt was made to persuade me not to continue that grant, I have decided to continue it. Accordingly, the Appellant is not named in this determination.

3. By way of background, the Appellant was born on 1st September 1996 and is a national of Iran. The Respondent has accepted his claimed nationality, his Kurdish ethnicity and his claim to be a Sunni Muslim. He entered the UK, in a clandestine manner, on 23rd November 2014 and, it appears, claimed asylum at the first opportunity.

4. In seeking asylum, the Appellant said that he was detained by the Iranian authorities on 21st July 2014 and was, initially, kept in a small cell before being transferred to a different cell which was located in the same detention centre. He says that the reason for his detention was that it was thought, by the authorities, that he was a member of an oppositionist religious group. He further says that he was held in detention for a total of some three and a half months albeit that he was not interrogated nor beaten nor subjected to any other form of significant ill-treatment in addition to the detention. He says there came a time when he was taken from his cell, put into a vehicle with another detainee, driven away from the detention centre and then permitted to run away. During the course of his asylum interview he suggested that the person who had taken him from the cell and driven him away was seeking to help him escape (see his reply to question 123 of the asylum interview). He claims that, thereafter, he fled Iran, exiting illegally, and eventually made his way to the UK. He says that the Iranian authorities have issued an arrest warrant which he thinks might have been issued in consequence of the way in which he departed detention. It has been asserted by him and/or on his behalf that if he is to be returned to Iran he will be persecuted by the authorities for the above reasons and that, in the alternative, even if his account is untrue, he will, nevertheless, be at risk as a returned failed asylum seeker who has exited Iran illegally.

5. The judge did not find the Appellant's account of events in Iran to be credible. In explaining why he said this

> "20. In assessing the credibility of the Appellant's evidence, I find that his account in general terms is not supported by the background materials showing the treatment and modus operandi of state agents when dealing with suspected members of oppositionist groups. These materials show that in many cases suspects are harshly treated, are subject to interrogations, involving the infliction of serious harm and that investigations extend to searching suspects' homes for incriminating material. In the present case none of those matters are features of the Appellant's claim. Whilst I note that as a matter of logic there will be a number of cases in which the modus operandi of state agents does not follow the typical pattern set out in the materials, nevertheless their absence in the present case is a factor which does not support the Appellant's claim; and as such is a matter that I take into account when considering the evidence as a whole.

> 21. Turning next to the detail of the Appellant's account, I find that there are a number of other features of the Appellant's evidence which tend to undermine his account. I find that the Appellant's account in many respects lacks detail and is implausible as explained further below.
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> 22. The Appellant claims that he was detained on suspicion of being a religious activist or an opponent of the state and that he remains of adverse interest to the authorities as demonstrated by their visits to his home since the Appellant has been in the United Kingdom and the issuing of an arrest warrant in his name. However, the Appellant has also given an account of being released, relatively unharmed by the authorities, by being driven away from his place of detention and told to run away. I find it implausible that the Appellant would be of interest to the authorities if his claimed detention ended in the manner described. The ending of the Appellant's detention is not consistent with the authorities having an adverse interest in the Appellant and not consistent with the Appellant's subsequent claim that the authorities have issued an arrest warrant against him. I find that these are matters that tend to undermine the credibility of the Appellant's account.
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> 23. In addition, many aspects of the Appellant's account lack detail. The Appellant has not given a detailed account of what discussions he had with members of his family about what to do following his detention and release; how he came to the decision to flee the country; nor how he was able to walk out of Iran into Turkey and obtain funding for his journey, other than by saying that it was at the direction of his uncle. The Appellant's account of his family being visited by the authorities is vague, with no indication of when such visits took place, who was present on each occasion nor what specifically was said and by whom."

6. So, the judge rejected the Appellant's account, essentially, for three reasons being that, first of all, his account of not being significantly ill-treated in detention was inconsistent with background country material; secondly that his account of having been "released" was inconsistent with his claim that the authorities had any interest in him and thirdly; that his account lacked detail.

7. The judge went on to consider the submission that, even if the account were not true, he would be at risk as a consequence of his illegal exit coupled with his status as a failed asylum seeker but rejected it. Because of the view I have taken with respect to the judge's credibility assessment, it is not necessary for me to say anything further about that aspect of the case.

8. The Appellant, through his representatives, sought permission to appeal to the Upper Tribunal. There were only two grounds. The first was to the effect that the judge had misunderstood or misconstrued the Appellant's evidence as to how he became free from detention his wrongly characterising his account as indicating his having been released rather than having escaped. It was said that that rendered the credibility assessment unsafe. Secondly, it was submitted that the judge had failed

to adequately consider risk on return as a failed asylum seeker who had illegally exited Iran.

9. On 12th October 2015 the Appellant was granted permission to appeal by a Deputy Upper Tribunal Judge who commented as follows;

> "The adverse credibility findings are brief and it is arguable that the judge has failed to give adequate reasons for finding that the Appellant was released rather than that he escaped or to adequately consider the risks to the Appellant as a suspected oppositionist. I find that it is also arguable that the judge failed to give adequate consideration to risk on return as a failed asylum seeker who is a Sunni Kurd. Permission is granted on all grounds."

10. Accordingly, there was a hearing before the Upper Tribunal (before me) so that it could be decided whether the judge had erred in law and, if so, what should flow from that. Representation, at that hearing, was as indicated above and I received submissions from each representative for which I am grateful.

11. I have decided to set aside the judge's determination on the basis that the adverse credibility finding involved legal error of a material nature.

12. In this context, as indicated, the Appellant's account when the asylum interview is read as a whole along with his witness statement of 30th July 2015, is to the effect that he believes a man acting without the approval of the authorities saw to it that he and another prisoner were able to escape. My initial view was that the judge had probably appreciated, fully, what the Appellant was claiming but had simply used the term "release" rather than "escape" as a way of describing the actual physical way in which the Appellant was set free. If it was simply a matter of choice of words, without the judge having misunderstood the substance of that aspect of the Appellant's account, that would not result in legal error. However, the judge did specifically say, at paragraph 22 of the determination, that the Appellant had given an account of his "being released, relatively unharmed by the authorities"(my underlining). That does suggest that the judge probably erroneously thought that the Appellant was saying that a decision had been taken on the part of the Iranian authorities to simply release him. It may be the judge did not intend to give that impression but that is the consequence of the words he used. So, it appears to me likely that the judge did, in that sense, misconstrue what the Appellant was saying about the way in which he regained his liberty. Since the judge had said he regarded the way in which the Appellant says he reacquired his liberty as being inconsistent with the claim that the authorities had an adverse interest in him, then this does remove one of the three bases the judge relied upon in disbelieving the Appellant. Of course, the judge could have disbelieved the account as to how he came to reacquire his liberty and, indeed, could have disbelieved the claim that he had ever been detained at all but, if he was to do that, he had to do it on the basis of a correct understanding of what the Appellant's account amounted to. Once that plank of the judge's reasoning is removed it does not seem to me that the remaining two planks, of themselves, would not

or may not have justified the adverse credibility finding without more. Accordingly, I conclude that the judge's error was a material one and that, in consequence, the decision has to be set aside. In these circumstances I do not, and was not urged to, preserve any of the judge's findings or conclusions.

13. There was then some discussion as to what should follow, Mr Schwenk, in particular, urging me to remit to a new and differently constituted First-tier Tribunal so that the decision could be re-made in that forum. That is the course of action I have decided to follow. That is because, given that I have set the whole of the decision aside, there will need to be further extensive fact-finding, a task which it seems to me is best undertaken by the First-tier Tribunal as an expert fact-finding body. I would also add that Mr Diwncyz did not oppose Mr Schwenk's suggestion in that regard. I have, therefore, issued some directions, set out below, relevant to the future re-making of the decision by the First-tier Tribunal.

14. Before I set out the directions I would just like to make a few additional observations. First of all, I am not saying that the new First-tier Tribunal has to make a positive credibility finding but neither am I saying otherwise. Matters, in that regard, will be entirely at large for the new First-tier Tribunal. It will have to consider the evidence as a whole and reach its own findings and conclusions. Secondly, with respect to the illegal exit aspect of the argument, it does not seem to me that the judge did make any clear finding, one way or the other, as to whether or not the Appellant did exit Iran illegally. The matter does not appear to have been specifically disputed by the Respondent in the reasons for refusal letter but neither does it appear that, unlike other aspects of the claim, the contention that he had left Iran illegally was accepted. So, absent any concession, it may well be that the new First-tier Tribunal will have to specifically address that matter and it may benefit from evidence and submissions about it. Finally, if the new FTT does not accept the Appellant's account it will have to consider the arguments which have been made on behalf of the Appellant to the effect that matters have changed since the decision of the Upper Tribunal in **SB (Risk on Return – Illegal Exit) Iran CG [2009] UKAIT 0053**, was decided. In this context the Appellant currently relies upon the decision in **AB and Others (Internet Activity – State of Evidence) Iran [2015] UKUT 00257 (IAC)**. I express no view one way or the other about the merits of that argument.

15. Directions for the First-tier Tribunal

(1) The appeal is remitted to the First-tier Tribunal to be heard by a Judge of the First-tier Tribunal other than Judge J Atkinson.

(2) The appeal shall, if practicable, be heard at the Bradford Hearing Centre. The services of a Kurdish Sorani speaking interpreter will be required. The time estimate for the hearing shall be three hours.

(3) The Appellant's representatives shall lodge with the Tribunal and send to the other party, a consolidated bundle of documents which shall include all documents to be relied upon at the next hearing even if previously served. That bundle should be indexed and paginated and should contain a schedule of essential reading. It should be lodged and sent in sufficient time for it to be received at least five working days prior to the date which will be fixed for the next hearing.

(4) If the Respondent wishes to serve any further documentation that too should be in the form of an indexed and paginated bundle and should be lodged with the Tribunal, with a copy being sent to the Appellant's representatives, in sufficient time for it to be received at least five working days prior to the date to be fixed for the next hearing.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law. I set the decision aside and remit the case to a differently constituted First-tier Tribunal.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 their 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.

Signed Date

Upper Tribunal Judge Hemingway

TO THE RESPONDENT
FEE AWARD

As no fee is paid or payable there can be no fee award.

Signed Date

Upper Tribunal Judge Hemingway