



IAC-FH-CK-V1

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

Appeal Number: AA109092015

THE IMMIGRATION ACTS

Heard at Field House

On 1 April 2016

**Decision & Reasons
Promulgated
On 25 May 2016**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

**M M
(ANONYMITY DIRECTION MADE)**

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hodson, Elder Rahimi Solicitors

For the Respondent: Mr S Staunton, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iran, born on [] 1980. He is said to have arrived in the UK on 15 January 2015. He made an asylum and human rights claim in the same month. The precise date of his asylum claim is not relevant for present purposes.
2. On 28 July 2015 a decision was made to reject his asylum and human rights claim. His appeal against that decision came before First-tier Tribunal Judge Malins ("the FtJ") on 23 November 2015, following which the appeal was dismissed on all grounds.

3. The appellant's claim, in very brief summary, is that he has converted from Islam to Christianity. His mother and two sisters left Iran and came to the UK, where they claimed asylum in 2002, they also having converted to Christianity. It *appears* that the appellant's mother and sisters have all been granted asylum in the UK. I put the matter in that way because I was not specifically referred to the documentary evidence confirming that fact.
4. After the appellant's mother and sisters left Iran the authorities came to the house looking for them, according to his witness statement, on three occasions. On the first occasion the appellant was not there and the appellant's brother was taken away for questioning and detained for two or three nights. On the other two occasions the appellant was there, was questioned, but was not detained.
5. Through a Christian woman that the appellant met, he started attending meetings of a Christian house church. In December 2014 the meeting was held for the first time at the appellant's house, but the house was raided by Iranian security forces. The appellant managed to escape, and ultimately left the country for the UK.
6. Since leaving Iran he has been told by his brother, who lives in Tehran, that the authorities have come to the house looking for the appellant and questioning his brother as to his whereabouts. His brother was detained in January 2015 and held overnight.
7. Since being in the UK the appellant has continued his involvement in the Christian Church and has been baptised.

The decision of the First-tier Tribunal

8. The FtJ rejected the credibility of the appellant's claim in all its material respects. She gave a number of reasons for her adverse credibility findings. She expressed doubts about the practise of the Christian faith of the appellant's mother and sisters in the UK, or indeed in Iran. She did not accept the appellant's account of the problems he experienced with the authorities in Iran, or those that had been experienced by his brother.
9. It is worth quoting certain paragraphs of the FtJ's decision. At para 11(a) (ii) she said as follows:

"I reject the veracity of the appellant's account of the authorities' coming to the house in Iran looking for his mother and sisters on three occasions post their leaving in 2002 (see the quote above). Why would the authorities '*take away my brother for questioning - he was detained for two or three nights*' (paragraph 12) and indeed, detain his brother '*around 6th January 2015 and held him overnight*' for questioning thirteen years later (paragraph 28)?

Yet, when finding himself, the appellant, at home on two occasions during the same series of events, the authorities contended themselves with asking '*if I knew about the conversion of my mother and my sisters, whether they had been at any church meetings and if so, whom they met. I just told*

them I did not know anything as I was not there at the time'. (Paragraph 12)? This is not credible. The only explanation must be that the account given in these paragraphs of the witness statement, is untrue – the brother's detentions being included to boost the asylum claim and no claim of detention being made for himself, for fear of questions revealing that this did not happen."

10. At para 11(e) the following is stated:

"I reject the implausible account (see above) of the appellant's extraordinary escape when 'security forces' (in the plural) raided his home during the claimed holding of a Christian house group (paragraph 22 of the witness statement). Basic procedure dictates that multiple personnel engaged in such operations, fan out to cover all the premises and possible exits. Furthermore – this matter was not referred to in response to any of the 207 questions at the appellant's interview. Nor were the subsequent claimed visits of the authorities to his old home, referred to at the interview. I reject the appellant's explanation at the hearing – 'I didn't think it important'."

The grounds of appeal and submissions before the Upper Tribunal

11. The grounds raise a number of issues in relation to the decision of the Ftj. I need only refer to two matters in particular as set out in the grounds. It is asserted that the Ftj had been wrong at para 11(a)(ii) to have linked the detention and questioning of the appellant's brother in January 2015 with the appellant's mother and sisters having left Iran thirteen years earlier. The arrest of the appellant's brother, it is asserted in the grounds, was solely due to the raid by the Iranian authorities that had taken place in December 2014 and from which the appellant escaped before coming to the UK. The arrest of the appellant's brother in January 2015 had nothing to do with the events in 2002 when the appellant's mother and sisters left Iran.
12. Furthermore, the Ftj was also wrong at para 11(e) to reject the claim of the raid on the appellant's home by security forces and the appellant's escape on the basis that the appellant did not refer to those matters at any point in the asylum interview.
13. Similarly, it is argued that the Ftj had erred in fact in stating that the subsequent "claimed visits" by the authorities to the appellant's former home were not referred to in his interview.
14. In submissions Mr Hodson relied in general terms on the grounds but focused in particular on the two issues to which I have referred. The other asserted errors, as set out in the grounds, were highlighted.
15. On behalf of the respondent Mr Staunton said that although he could not concede anything on behalf of the respondent, he did accept that it may be the case that the Ftj's conclusions at para 11(e) may have infected the other adverse credibility findings.

My conclusions

16. I do not consider it necessary to deal with each of the appellant's grounds because I am satisfied that with reference to two matters in particular the FtJ erred in fact, amounting to an error of law.
17. I consider that there is merit in the complaint that the FtJ was wrong to find that it was adverse to the appellant's credibility that the authorities questioned his brother 13 years after the appellant's mother and sisters left Iran. As the grounds explain, it was the appellant's case that since leaving Iran the authorities had come to the house looking for the appellant and questioning his brother as to his whereabouts, as explained at para 28 of the appellant's witness statement. At para 11(a)(ii) the FtJ linked the detention and questioning of the appellant's brother referred to at para 12 of the appellant's witness statement with an interval of 13 years since the appellant's mother and sisters left Iran. When one considers the appellant's witness statement as a whole, in particular at paras 12 and 28, that detention and questioning in January 2015 was in relation to the appellant's whereabouts, not in relation to the appellant's mother and sisters.
18. I am satisfied that the FtJ misunderstood this part of the appellant's case. I do observe however, that it is perhaps understandable that the FtJ made that error because the appellant's case in that regard, as set out in his witness statement and asylum interview, is not on initial consideration entirely clear.
19. In addition, and perhaps more fundamentally, I am satisfied that the FtJ erred in fact, such as to amount to an error of law, where at para 11(e) she said that the appellant had not referred anywhere in his interview to the raid on his home when the appellant was amongst others holding a Christian house group meeting, and following which the appellant escaped in December 2014. He gives a full account of this incident at questions 175 - 184 of the asylum interview. The asylum interview is not copied sequentially in relation to all of the appellant's answers on this issue, but his account in this respect is clearly set out. I did at one stage consider whether what the FtJ was saying at para 11(e), in terms of the matter not being referred to in the appellant's asylum interview, related only to his escape from that raid. However, his account includes the fact that he escaped from the back of the house.
20. In addition, there is a further error of fact in the FtJ's conclusions at para 11(e) where she stated that the appellant had not referred to subsequent claimed visits by the authorities to his home, in the interview. At questions 203 - 205, in answer to the question as to whether his brother had had any problems since the appellant came to the UK, he said that "One night they took him after that incident" and that he was asked to report (to the authorities) whenever they saw him, and that the appellant's brother had to provide contact numbers for the appellant's friends.

Although those answers do not expressly state that the authorities came to the appellant's brother's home, such is readily implicit and certainly not amenable to the conclusion that subsequent claimed visits by the authorities were not referred to in the interview.

21. It does appear from para 11(e) of the FtJ's decision that the appellant was asked about this because the FtJ stated in the last sentence of that paragraph that she rejected the appellant's explanation of any lack of reference to those later visits, namely that he did not think that it was important. However, the appellant's oral evidence is not summarised in the FtJ's decision and so it is impossible to see the context in which the appellant gave that answer, or whether he was referred to what he said in interview.
22. As I have already indicated, the FtJ gave various reasons for rejecting the credibility of the appellant's account of the interest in him (or his family) by the authorities, and of his claimed conversion to Christianity. However, the issues I have identified in respect of which the FtJ made mistakes of fact are fundamental to his case. They are evidence, if believed, of direct interest in the appellant and his family by the authorities on account of their and the appellant's religion. Crucially, they are evidence of recent interest by the authorities. It cannot be ruled out that other adverse credibility findings were infected by those errors.
23. In these circumstances, I consider that the decision of the FtJ must be set aside. I canvassed with the parties their views as to whether, if I found that the FtJ had erred in law such as to require the decision to be set aside, it was appropriate for the matter to be re-made in the Upper Tribunal or remitted to the First-tier Tribunal ("FtT"). Both Mr Hodson and Mr Staunton agreed that in those circumstances the appropriate course would be for the matter to be remitted for a fresh hearing before the FtT. I also take that view, having regard to paragraph 7.2 of the Senior President's Practice Statement.
24. Accordingly, the appeal is remitted to the FtT for a hearing *de novo* before a judge other than First-tier Tribunal Judge Malins. No findings of fact are to be preserved.

Decision

25. The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision on all grounds is set aside and the appeal is remitted to the First-tier Tribunal for a hearing *de novo* before a judge other than First-tier Tribunal Judge Malins.

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 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.

Upper Tribunal Judge Kopieczek

25/05/16