Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00379/2015

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
on 8th March 2016	**on 1st April 2016**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

[A J]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr D Katani, of Katani & Co, Solicitors

For the Respondent: Mrs S Saddiq, Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Iran, born on [ ] 1990. He has not asked for an anonymity order. He was encountered by police on 8th April 2015, and claimed to have entered the UK clandestinely on that date. He sought asylum.

2. The appellant does not dispute the summary of his claim, set out in the respondent's refusal letter dated 12th June 2015 as derived from the information he gave at interview. He says that he is a member of the Arabic minority in Iran. Along with two friends, he distributed circulars and CDs in his area to raise awareness of the problems faced by that minority. One of his friends told him that the other had been captured by the authorities, and that it was not safe for him to return home. He arranged to flee the country. The authorities have since searched his home and made enquiries of his parents.

3. The respondent found the appellant's claim vague, and declined to accept it as genuine.

4. The appellant appealed to the First-tier Tribunal. His grounds are only a generalised expression of disagreement, setting out no specific issues for decision.

5. First-tier Tribunal Judge D'Ambrosio dismissed the appellant's appeal by decision promulgated on 9th December 2015.

6. The appellant appeals to the Upper Tribunal on grounds which in summary are as follows:

    1. Error at paragraphs 48 and 50 in expecting the appellant to obtain corroboration from relatives in Iran. Even if the appellant had obtained letters from family members, the First-tier Tribunal would have placed little weight upon them.

    2. Speculation and conjecture:

        (i) At paragraphs 49 and 50, speculation that the appellant would not carry out activities which might implicate his family.

        (ii) Paragraph 50, no evidence to support the finding that it was not plausible that the appellant would not have contacted his family.

        (iii) Paragraphs 52 to 56, no evidence to justify the finding that the appellant's family could not have afforded to pay a people smuggler.

        (iv) Paragraph 61, in finding that the appellant, if he were committed, would have contacted his party in the UK, when there was no evidence that the party had a presence in the UK.

        (v) Paragraph 70 and 71, no evidence that the appellant had access to the internet.

    3. Failure to assess evidence material to the outcome – at paragraph 16, an irrational finding that the appellant would not have carried out such activities knowing that he would be arrested if discovered, it being well-known that many persons carry out risky activities in opposition to governments.

7. In a Rule 24 response to the grant of permission to appeal the respondent says that the conclusions reached by the judge stem from a full consideration of the facts of the case; it was open to the judge to reach an opinion regarding both the actions of the appellant and his family in Iran; and the grounds are mere disagreement.

8. Mr Katani sought at the outset of the hearing to add a further ground of appeal. He referred to paragraphs 54 to 56 of the determination, where the judge analyses the ability of the appellant's family to pay for his travel by reference to evidence of the average income in Iran. The judge finds this evidence in the Home Office's Country of Origin Information Report and in the US State Department Country Report. Mr Katani submitted that the judge erred by carrying out his own research and by referring to sources which were not cited to him.

9. Mr Katani accepted that these are sources well-known in this jurisdiction, that there was nothing to show that the judge was wrong in the conclusions he drew about average income, and that the appellant did not seek to offer any alternative evidence or interpretation of the matter. Nevertheless, he said this was a significant aspect of the judge's assessment, and an error of law which alone was sufficient to justify a remit to the First-tier Tribunal.

10. The further submissions for the appellant sought to amplify the grounds above. It was argued that these disclosed an overall error of the judge relying on his own point of view both of the likely behaviour of someone in the appellant's position and of the behaviour of the Iranian authorities. It was accepted that ground 3 did not disclose a discrete category of error, but was rather another example of error of the type sought aimed at in ground 2.

11. Mrs Saddiq submitted as follows. The proposed new ground of error by relying on a judge's own researches came much too late, and no amendment should be permitted. In any event, an appellant with the benefit of professional representation could not properly complain of being taken by surprise by such sources of information as the respondent's Country of Origin Reports and US State Department Reports. These are basic sources of information in all asylum cases, within the public domain and within judicial knowledge. There was nothing wrong with a judge reasoning part of his findings by reference to average income levels in the country of origin. On ground 1, the judge was entitled to note the absence of evidence from sources which might reasonably have been expected to provide it, namely members of the appellant's family. Grounds 2 and 3 formed only a series of disagreements with findings which were not speculative but evidence-based.

12. I reserved my determination.

13. The proposed new ground of appeal came at the last possible moment. There was no good reason for it being held back until then.

14. The judge's point based on evidence of average income was that there was not before him a reasonable explanation of how the appellant's family could so readily fund the claimed amount of US$10,000 for his journey to the UK. The appellant made no direct attack on that aspect of the reasoning, only on the judge deriving it from the sources he did.

15. I do not think it is an error of law for a judge to refer to such common source documents as the respondent's COIR and the US State Department Report. These are within the knowledge of all representatives in this jurisdiction, in which Mr Katani's firm has many years of experience.

16. Ground 1 discloses no error. A judge is always entitled to note the absence of evidence which ought to have been easily forthcoming. It is wrong to speculate in the grounds that the judge would have rejected such evidence anyway. He would have been bound to evaluate it according to his judicial duty.

17. The particular point at ground 2(v) is not well taken. The judge did not say that the appellant must have found out his information from the internet. He said that the appellant might have known of protests against anti-Arab discrimination from public sources such as television and newspapers. It is hardly speculative but rather common sense to say that the appellant as an Iranian Arab was likely to know about such matters.

18. Ground 3 seeks to elevate another disagreement to the level of irrationality, but the judge at paragraph 60 was entitled to find it implausible that the appellant would run significant risks for party members, when he himself was not a member. The judge did not say that no one ever runs a risk. What he had to decide, and did decide, was whether the appellant had shown to the necessary standard that he chose to do so.

19. As to grounds 2 and 3 generally, it is always easy to attack adverse findings as speculative or conjectural (whereas a favourable finding is always seen as reasonable). This all depends on judging the particular facts. In my view, the judge's findings were open to him and are sensibly explained. Cumulatively, they justified the conclusion that the appellant failed to establish his case.

20. Put another way, I uphold the submission for the respondent that the appellant's grounds resolved into no more than a series of disagreements.

21. The appellant's appeal to the Upper Tribunal is dismissed. The decision of the First-tier Tribunal shall stand.

Hugh Macleman

14 March 2015
Upper Tribunal Judge Macleman