Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00771/2017

THE IMMIGRATION ACTS

At: Manchester Piccadilly	**Decision & Reasons Promulgated**
On: 28th March 2018	**On: 20th April 2018**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

NS
(anonymity direction made)

Appellant

And

The Secretary of State for the Home Department

Respondents

For the Appellant: **Ms C. Warren, Counsel instructed by Bankfield Heath Solicitors**
For the Respondent: **Mr Bates, Senior Home Office Presenting Officer**

DECISION AND REASONS

1. The Appellant is a national of Iran born in 1985. She appeals with permission[1] against the 29th June 2017 decision of the First-tier Tribunal (Judge Malik) to dismiss her protection appeal.

[1] Permission was granted on the 15th October 2017 by Deputy Upper Tribunal Judge Chapman

Anonymity Order

2. This appeal concerns a claim for international protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

> "Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

Background and Matters in Issue

3. The Appellant asserts a well-founded fear of persecution in Iran for reasons of her political opinion. The basis of her claim is that she is an opponent of the regime and that she is now wanted in connection with her political activities. In 2009 she was a supporter of the 'Green Movement' and in March 2011 was detained for approximately 20 days. The Appellant desisted from taking part in any political activities for about two years after this experience, but in 2013 she and a friend started producing and distributing leaflets. In July 2016 her house was raided by the Etelaat, the event that prompted her to go into hiding and then leave Iran and seek international protection. If she is returned to Iran she will be arrested, detained and likely subjected to torture, inhuman and degrading treatment.

4. This claim was rejected in its entirety by the Respondent, who in a letter dated 11th January 2017 refused to grant protection. The Respondent did not think that the Appellant knew enough about the opposition in Iran. The Respondent did not understand how the authorities would have been led to the Appellant's home in July 2016 when by the Appellant's own evidence, she and her friend had conducted their activities in secret and had been careful not to get caught or let anyone know. The Appellant had stated that she had been released in 2011 for lack of evidence, so it cannot have been connected with that. The Appellant had claimed that her husband had been shortly detained in that raid, and that he had been told by the security services that they were after the Appellant; the Respondent did not consider it plausible that the authorities would act in this way, and by releasing him give him a chance to warn his wife.

5. When the matter came before the First-tier Tribunal the only matter in issue was whether the account given by the Appellant was reasonably likely to be true. It was common ground that if it was, the Appellant was entitled to

protection since she would have established that she faces a real risk of harm in Iran today[2]. The Tribunal heard live evidence from the Appellant and her husband and having done so found that she had not discharged the burden of proof. The following reasons are given:

i) There is a material inconsistency in the Appellant's evidence. She had said that she had taken photographs and made videos during the Green Movement protests in 2009-2011 and that she had passed these to foreign media outlets including the BBC. She was in possession of her camera when she was arrested, and yet states that she was released for lack of evidence. It is incredible that the authorities would have released her when they were aware that she had taken these images and sent them to media outlets;

ii) A further inconsistency arose in that when she was interviewed the Appellant had made no mention of having suffered any ill-treatment during her detention in 2011. At the hearing she had said that she had been left in a closed room, sitting on a chair with her handcuffs behind her back for days on end. The Tribunal rejected this part of the account on the grounds that it is incredible that it was not mentioned at the asylum interview, nor in any of the statements subsequently prepared with the assistance of the Appellant's legal representatives.

iii) In the alternative if the Appellant was detained in 2011 it is incredible that she would have resumed political activity in 2013 since on her own evidence she was mentally affected by the detention. The Appellant further claims that she had left incriminating evidence in the form of photographs and videos on her laptop: the Tribunal did not find it credible that she would have done this.

iv) It is incredible that the Appellant and her friend were not caught when they were producing and distributing leaflets.

v) There was a lack of corroborative evidence. The Appellant had not produced any evidence that the films she took on the protests had in fact been shown on outlets like Youtube or the BBC. If they were so used it would have been relatively easy for her to find them and produce them in evidence.

vi) It is, as suggested by the Respondent, not plausible that the Etelaat would have released the Appellant's husband after such a short period of questioning.

[2] I note that the 'reasons for refusal' letter accepts that the Refugee Convention is engaged because the Appellant is a woman and is therefore a member of a particular social group. This is inexplicable given the facts and as I understand it the claim before the Tribunal proceeded on the grounds of political opinion.

vii) The Appellant failed to claim asylum in the first safe country she reached after fleeing Iran (Italy) and this detracts from her claim to have a subjective fear.

And the appeal was thereby dismissed.

6. The Appellant now appeals the decision on the grounds that the determination of the First-tier Tribunal is flawed for the following errors of law: a failure to take material evidence into account, mistake of fact/misunderstanding of the evidence, failure to have regard to the country background evidence, and in its speculation about how the Iranian security services might behave, making findings without evidential foundation contrary to the guidance of the Court of Appeal in HK v Secretary of State for the Home Department [2006] EWCA Civ 1037.

7. The Respondent defends the decision of the First-tier Tribunal submitting that all the findings were open to it on the evidence.

Discussion and Findings

8. It is, in assessing the determination of the First-tier Tribunal, necessary to set the evidence of the Appellant out in greater detail.

9. Her claim is that alongside millions of other Iranians she took part in generally pro-democracy protests in 2009-2011. These protests became known as the 'Green Movement' and were associated with support for the reformist candidate Mousavi, but were not led by any particular political party or faction. The Appellant herself professes no allegiance to any opposition group, but states that she is opposed to the repression of democracy in Iran. During various protests she had taken video clips which she had passed on to a friend P who had been supplying material to foreign media outlets, and she believes, had put some of the clips on Youtube. The Appellant retained copies of at least some of this material on her laptop. When the Appellant was arrested, in possession of a camera, on a demonstration in March 2011, that camera contained images of the protest. She was later released, she was told, because there was no evidence to bring any charges or justify further detention. I interpolate here that the images on the camera showed no more than the fact that she had been attending a protest: the authorities were plainly already in possession of that information since that is where she had been arrested. There was country background material before the First-tier Tribunal which confirmed that approximately 4,000 protestors were arrested in the first half of 2011, and that by mid August 3,700 of them had been released. This was consistent with the Appellant's claim to have been protesting, to have been arrested and released without formal charge.

10. The Appellant had said, in her written evidence, that after her release she found it difficult to cope. She was traumatised by her experience and so had taken some time before resuming her political activity. On the date of the Etelaat raid, on the 1st July 2016, the Appellant and her child had been away attending a family celebration in Karaj. The Appellant's husband attested that the authorities came to the house looking for the Appellant. They seized some of her possessions, including her laptop. He was pushed and threatened. After they left he used his mobile telephone to call his wife and warn her not to come home. The following day at 6am the Etelaat returned and detained him. They held him for approximately six hours during which time he was questioned about his wife's activities. He - quite truthfully - denied any knowledge.

11. The first ground of appeal is concerned with the approach taken by the Tribunal to the evidence about the video clips, the camera, and whether the authorities would have released the Appellant from detention. This part of the Tribunal's reasoning appears at paragraph 31 of the determination:

> "I do not accept, even to the lower standard, that this appellant was arrested and detained as claimed in 2011, because if as she and she (*sic* – I think this should read "if as she said she") took clips/photos of the demonstrations (which P sent to media outlets) and this was known to the authorities as they had taken her camera, I find it incredible that they would merely have detained her for 20 days; nor is there any reasonable explanation as to why she has been unable to produce such material now as despite saying it was on her laptop and this was taken when Etelaat raided her home in July 2016, had it been sent to the BBC or appeared on Youtube as claimed, it would have been obtainable now".

12. Although the grounds of challenge are couched in terms of perversity, I am satisfied that there is a more straightforward criticism of this reasoning: the Tribunal misunderstood the case. When the authorities seized the Appellant's camera in 2011 the images it contained showed no more than the fact that she had been on protests. That the Appellant was released after a relatively short period is consistent with the country background material which shows that the vast majority of those arrested on the demonstrations were quite quickly released without further charge. Contrary to the reasoning of the Tribunal, the authorities were not, and could not, have been aware that some of that material or similar had already been passed to P, who in turn may have passed it on to media outlets. This misunderstanding was central to the Tribunal's finding as to why the claimed arrest was incredible.

13. As to whether there had been a reasonable explanation for the lack of proof that the material had been used by media outlets or appeared on Youtube, the Ms Warren submits that the Tribunal has here impermissibly looked for corroboration contrary to established principles of evidence in asylum cases. Again, I think the more straightforward explanation is that the Tribunal

misunderstood the case. It was not the Appellant's case that *she* had uploaded any material to Youtube, or that she knew as fact that any of her clips had been used by, for instance the BBC and therefore had the means to access them. All she could say was that she had passed some material to P, who intended to use it for that purpose. In the absence of contact with P the Appellant is simply not in a position to locate that material. Even if she spent, for instance, hours trawling through all the videos on Youtube relating to the Green Movement in the hope of recognising her own film, she would have absolutely no means of proving the film was taken by her and it would be of little probative value.

14. The second ground concerns the Tribunal's approach to the allegation of ill-treatment. The grounds point out that at the asylum interview the Appellant had said to the officer that she had suffered mentally following the detention, but that no follow up questions had been asked. The evidence about being handcuffed to a chair had not appeared in her witness statements because they had not been concerned with that detention, which at best formed background to the current claim. The grounds submit that in those circumstances "there is no basis on which the Judge could conclude that the fact that the Appellant said she was ill-treated after it arose in questioning at the hearing was capable of undermining the Appellant's account". I am not satisfied that this was a perverse finding, that is to say one outwith the range of reasonable responses. It cannot be said that there was "no basis" for the negative finding, since the basis is clear: the ill-treatment was not previously mentioned [see §32]. I appreciate that another Tribunal may have taken a different view of the omission in the earlier evidence. It could be said that the Appellant's description of her trauma, read with the background information about conditions in detention, might have been interpreted to reasonably raise an inference that she had been ill-treated. It is true that the Appellant had not, until she was cross-examined, been directly asked about the conditions she faced. It is also true to say that the detention was not at the forefront of her claim and so did not feature in any great detail in the written material. It is not however the case that the adverse inference drawn by Judge Malik was not one rationally open to her.

15. Ground (iii) tackles the question of plausibility. The Tribunal specifically rejects the account given by the Appellant's husband, of how events in July 2016 unfolded, on the grounds that it is implausible that the Iranian security services would behave in the way described. Specifically, it is not believed that they would come to the house and confiscate property, only to return the next day to take the husband in for questioning, and then release him. Ms Warren prays in aid the caution in HK, wherein the Court of Appeal endorse the guidance of Professor Hathaway in the Law of Refugee Status (1991):

> "In assessing the general human rights information, decision-makers must constantly be on guard to avoid implicitly recharacterizing the nature of the risk based on their own perceptions of reasonability"

She submits that the Tribunal has failed to explain why the actions described are inherently implausible; the Tribunal does not give reasons for its findings, nor is reference made to any country background evidence that might illustrate the point. I would have to agree. The chronology advanced by the witness was arguably internally coherent: they came, took away the laptop, found incriminating material, came back to question the husband. As to why they did not detain him for longer, this accords with the Appellant's case that it is her, not her husband, who has the record of political activism. It further accords with the country background material that people are subjected to short periods of detention. In light of that I must agree that the determination does not explain why the events described are inherently implausible.

16. Mr Bates asked me to consider the case globally, and that if I found any of the alleged errors to be made out, I nevertheless dismiss the appeal on the grounds of immateriality. I agree with Mr Bates that this is not an appeal where the grounds address all of the difficulties with the Appellant's case: see my paragraph 5 above. I am unable to accept however that this was a case bound to fail even absent the errors identified. It follows that the decision must be set aside, because it appears that the First-tier Tribunal misunderstood crucial elements of the Appellant's case, and failed to give reasons for its findings in respect of others. The parties and I agreed that if the grounds were made out, or substantially so, this is a case that would require remittal for fresh findings of fact to be made.

Decisions

17. The decision of the First-tier Tribunal contains errors of law such that it must be set aside. The decision will be remade *de novo* in the First-tier Tribunal.

18. There is an order for anonymity.

Upper Tribunal Judge Bruce
19th April 2018