



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

Appeal Number: PA/02671/2019

THE IMMIGRATION ACTS

**Heard at Manchester CJC
On 13 August 2019**

**Decision & Reasons Promulgated
On 21 August 2019**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**RG
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Johnrose, Broudie Jackson & Canter Solicitors

For the Respondent: Mr Bates, Home Office Presenting Officer

DECISION AND REASONS (given ex tempore)

1. I have made an anonymity order because this decision refers to the Appellant's asylum claim.
2. The Appellant has appealed against a decision of First-tier Tribunal ('FtT') Judge Mark Davies sent on 23 May 2019, dismissing her appeal on asylum grounds.

Background

3. The appellant's claim can be summarised as follows. In early October she witnessed a car chase / police altercation outside of her apartment in Iran and over the course of the next three hours filmed various clips as to what took place in the street. She claims that these included a person being shot as well as a 'mopping up' operation. Although she recorded five different video clips, these do not directly reveal the precise nature of what happened over the course of the three hours. Nonetheless, the appellant claims that she shared these video clips with her family via WhatsApp. Shortly after that when she was not at home but her sister was, the family members of a man involved in the police operation visited the home and asked if anything had been seen. The sister told these people about the video and provided the appellant's number. Days later, the Etelaat came to the house looking for the appellant. She was not home at the time as she was staying at her mother's house. Her husband was arrested at his place of work and shortly after this, the appellant decided to leave Iran.
4. That summary of the claim is set out in considerably more detail in the appellant's responses to the asylum interview and in a witness statement dated 15 April 2019. The respondent refused the asylum claim for detailed reasons set out in a letter dated 7 March 2019. The appellant appealed against this decision to the FtT, which heard her appeal on 7 May 2019.

Appeal proceedings

5. The FtT heard evidence from the appellant and made adverse credibility findings. The FtT did not accept that she provided a credible account and dismissed the appeal for those reasons.
6. The appellant applied for permission to appeal to the Upper Tribunal ('UT') relying upon two grounds of appeal. The first ground submits that the FtT failed to take account of footage within the video clips showing that there was a police car within view which supported the appellant's claim. The second ground deals with the credibility findings more directly and makes four discrete points, which I shall deal with in more detail later.
7. Although permission to appeal was refused by the FtT, it was granted by UT Judge Lindsley in a decision dated 9 July 2019. Judge Lindsley said this:

"The grounds of appeal contend in summary as follows. Firstly, that it was not rationally open to the First-tier Tribunal to find at paragraph 62 of the decision that the Etelaat was not involved with the shooting on the appellant's video clips where they contain a police car. Secondly, there is a failure to give clear and adequate reasons the findings at paragraphs 63 and 64 conflict as

to whether it was accepted that the appellant did give this footage to her family. There was a full description as to how this happened in the appellant's statement and there is a failure to engage with this at paragraph 66 of the decision. There is also a failure to give adequate reasons for the conclusion that the Iranian authorities would not feel threatened by the material at paragraph 72 of the decision given what is set out at pages 55 to 60 of the appellant's bundle. There is a failure to identify the alleged inconsistencies in the appellant's evidence at paragraph 74 of the decision. The second ground is arguable. It is arguable that the decision contains insufficient reasoning in light of the evidence before the First-tier Tribunal. The first ground seems less wrong but it may be argued."

8. The respondent has relied upon a Rule 24 notice dated 17 July 2019, which deals in the main with the first ground of appeal. In relation to the second ground of appeal this is said:

"In regards to the alleged inconsistencies as to whether or not the appellant showed the video to her family, the IJ was entitled to note the inconsistency in her claim that she videoed the incident as it was so unusual yet also claimed that these incidents happened all the time in Iran."

Hearing

9. At the hearing before me, Ms Johnrose relied upon her grounds of appeal and at my invitation focused upon submissions relevant to the second ground of appeal. In response, Mr Bates relied upon the Rule 24 notice and took me through the decision to support his submission that it was adequately reasoned.

Error of law discussion

10. I begin by dealing with the second ground of appeal because as noted by Judge Lindsley when granting permission to appeal, this is the stronger ground. It is divided into four parts which I propose to deal with in turn.
11. It is firstly submitted that [63] and [64] of the decision are inconsistent with one another. At [63] the judge said this (my emphasis), "*She may have passed these phone clips to her family or intrinsically they are not particularly interesting.*" The very next line in [64] reads as follows:

"It is not credible that the appellant would have passed these phone clips to her family members via WhatsApp when she stated incidents like this took place all the time and therefore it is surprising that her family would have any interest in such an incident."
12. Mr Bates submitted that there was no real inconsistency between these two paragraphs because [63] was dealing with the inherent

plausibility of passing on the video clips whereas [64] was dealing with credibility. The difficulty with this submission is that the rejection as based on credibility in [64] turns solely on plausibility. The judge did not consider it plausible that the appellant would have passed on the video clips on the basis that they would not have held any real interest to anyone because as claimed by the appellant these sorts of incidents took place regularly in Iran. I therefore conclude that there is an unexplained discrepancy on a core aspect of the appellant's account.

13. I have noted the observations in the Rule 24 notice that incidents involving the authorities targeting civilians adversely in this manner might be well publicised in Iran and might take place regularly. However, that does not necessarily mean that they are witnessed by ordinarily civilians in the public sphere on a regular basis, and the apparent plausibility of the appellant's actions must be viewed in this light.
14. Second, it is contended that where the judge said at [66] that it is unbelievable that the appellant's 14-year-old sister would pass information to the family members of the man that was shot, he failed to take into account the detailed evidence set out in the appellant's witness statement explaining the surrounding circumstances. The appellant's witness statement says this:
 - "17. The following day I went out shopping my sister was home alone because she did not start school until the afternoon. My sister later explained to me that three people had come to the door asking if anyone had seen the events of the previous day. It appears that these people are going door to door looking for anyone who had witnessed the events of the previous day. These people explained that their brother had been shot and no-one knows anything about what happened and when they have been to the police station the police have denied any knowledge about this. They were crying and very upset.
 18. My sister was moved by these people. She wanted to help them. She told them that her sister had witnessed this event and she had filmed the event. My sister agreed to forward the film footage to them she also gave them my phone number.
 19. My sister was 14 years old at the time and she would not have realised the effect that her actions would have on my life.
 20. When I returned from shopping my sister was not home but when she returned from school she told me what had happened. I was upset about this and I asked her why she had done this. I told her that she should have checked with me first. My sister explained that the family were very upset and crying and she wanted to help them. When she told me that she had also given them my phone number I was scared that they would call me and want me to be a witness or ask me to make a report.
 21. I waited for my husband to return from work and explained what had happened. I decided I was going to go and stay with my

mother for a while so I'd be out of the way and could not be drawn any further to this matter."

15. When finding the sister's actions to be implausible, the judge failed to add address or engage with the claimed surrounding circumstances as set out in the witness statement. At [67] the judge asks the two rhetorical questions: how would the family members of the men who were shot be aware that the appellant had taken a video? Why would the sister not contact the appellant, who had her mobile phone with her, before providing any information regarding the incident? The answers to both of these questions are found within the appellant's witness statement itself. The appellant explained in that statement that the family members of the men were not aware that the appellant had taken a video but became aware having gone door to door looking for anyone who had witnessed the events of the day. As to the credibility of the sister providing information without speaking to the appellant, the appellant herself indicated within the statement, that she was surprised at her sister's behaviour and deeply upset about it, but explained that her sister was young, naive and was particularly moved by how upset the family were and that explained her actions. Those explanations have not been engaged with by the judge.

16. The third matter relates to the plausibility of the entire account. At [72] the judge said this:

"I cannot accept that the Iranian authorities are reasonably likely to have an adverse interest in the appellant on the basis she has put forward. There is no reason for them to believe that the appellant had any connection with an opposition group. There is no reason for them to feel in any way threatened by the film clips that the appellant had taken if indeed the Iranian authorities were involved in the incident which the appellant had filmed."

17. The judge failed to consider the plausibility of the appellant's account in the context of the country background evidence relevant to Iran. It is well-known that the Iranian authorities react with a heavy hand to any person who is perceived to have acted in an anti-regime manner and that extends to those who in any way are perceived as supporting anti-regime groups. The appellant explained in her witness statement why the authorities would view her adversely even though the film clip did not show the actual shooting or any actual direct nefarious activities. She said this within her witness statement:

"27. Around two weeks before the incident that I filmed there had been a march by the leaders of the regime to commemorate the Defence Holy Week which is an annual event in Ahwaz connected to the Iran/Iraq war and there had been a terrorist attack which had been blamed on the Monafegin group. The authorities claimed that the man I filmed had been part of the Monafegin group. Following the terrorist attack the authorities have arrested numerous people and many people have been executed.

28. This is how the authorities react in Iran. If there's any kind of attack the regime then will arrest numerous people in order to quash any possible rebellion. The authorities were claiming I was connected with this group and therefore I was wanted. Their news report about events in Ahwaz during this time where women and children were arrested along with intellectuals and activists so I could have been included in these arrests.
 29. My husband was beaten and ill-treated during his detention.
 30. After his release he called me and told me what had happened and he warned me that I needed to leave my mother's address immediately because I was in danger and the authorities would be able to locate me at my mother's."
18. The appellant has explained that her claim was not based merely upon the recording itself but upon her fear that she would be perceived by the authorities to have a connection with the Monafegin group. That aspect of her claim does not appear to have been considered by the judge in any detail. The judge did mention that there is no reason for the authorities to believe that the appellant had any connection with an opposition group. That is not accurate. There was a reason for the authorities to believe that she was connected - she would have been perceived to have helped the family members of a person perceived to be within the opposition group. Although the link was not direct and might be tenuous, in the eyes of the Iranian authorities that can be sufficient. Had the judge taken into account the country background evidence and considered the plausibility of the account in that context, then his reasoning on credibility may have been different.
19. The final point raised in the second ground relates to [74] of the decision, where the judge says that the appellant had not explained the inconsistencies in her evidence but then goes on to describe or summarise implausibilities in that evidence. When I asked Ms Johnrose what inconsistencies there were, she acknowledged that there was an inconsistency relating to the date that the appellant left Iran and that there was an inconsistency raised within the respondent's decision letter regarding the gathering of statements in the aftermath of the event that led to the appellant's departure. The former reason does not appear to have troubled the judge and the latter reason is not referred to at all within the decision even though there were two statements from the interpreter and the immigration caseworker within the appellant's bundle explaining why there was no discrepancy at all regarding the taking of statements. In these circumstances, it difficult to ascertain which inconsistencies the judge was referring to.
20. When these four matters are viewed cumulatively I am satisfied that the reasons provided for making an adverse credibility finding are inadequate and/or unsupported by the witness statement of the appellant and the country background evidence. The second ground

of appeal identifies material errors of law, justifying the setting aside of the FtT's decision. Having reached that conclusion, I need not address ground one.

Disposal

21. The findings of fact need to be remade completely. That is likely to involve a detailed fact-finding exercise, including cross-examination that is best done in the FtT bearing in mind paragraph 7.2 of the Practice Direction.

Decision

22. The FtT's decision contains a material error of law and it is set aside.
23. The appeal is remitted to the FtT where the decision will be remade de novo by a FtT Judge other than Judge Mark Davies.

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: *UTJ Plimmer*
2019
Upper Tribunal Judge Plimmer

Date: 16 August