



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

Appeal Number: PA/08523/2018

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 12th December 2018

**Promulgated
On 09 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

[M M]

(~~ANONYMITY ORDER NOT MADE~~)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Muzira, solicitor, Thompson & Co Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

The Appellant is a citizen of Iran whose appeal (that he required international protection) was dismissed by First-tier Tribunal Judge Boyes in a decision promulgated on 3rd October 2018.

The judge noted that the Appellant was involved in a land/property dispute in Iran and she placed very significant weight on expert evidence provided by Mr Kakhki. As a consequence of that, she did not consider the two documents relied upon by the Appellant in respect of the claimed allegations made by a Mr Yaghoubi to be reliable. The judge went on to find that the claimed

accusations by Mr Yaghoubi against the Appellant were fabricated by the Appellant (paragraph 56) to found a protection claim.

In assessing the risk on return, the judge noted that the Appellant had not shown that allegations of anti-Islamic behaviour and/or activities had been made against him or that he had ever come to the attention of the Iranian authorities for any reasons. It was not suggested that he had ever converted to Christianity. He had never been involved in any political or religious movement, organisation or activities that would be considered to be against the Islamic State of Iran. He stated in live evidence (paragraph 62) that he did not attend the mosque whilst living in Iran and that religious practice was something personal in Iran and nobody notices who practises and who does not. The judge noted that this was consistent with the background country information relied on by the Appellant.

The judge noted that there was no suggestion in this case that the Appellant had ever been or intended to be publicly pro-atheist or anti-Islamic or that he wished to express any such views publicly. Indeed, from his evidence it was apparent that he has no real interest in religious beliefs. The judge went on to refer to **HJ (Iran) [2010] UKSC 31** and **RT (Zimbabwe) [2012] UKSC 38**, which were pleaded in support of his claim. However, the judge noted that this was not a case in which the Appellant would be expected to conceal any belief or characteristic on return. There was nothing he would have to conceal. He had never had to feign religious beliefs previously in Iran. He did not attend a mosque or take any positive steps to seek to demonstrate that he was a practising Shia Muslim. He had not come to the attention of the authorities because of this and from the background information it was clear that there are many other Iranians who are in the same position as him. For those reasons the judge went on to dismiss the appeal on all grounds.

Grounds of application were lodged and it was submitted that the judge had misunderstood the essence of the Appellant's claim that he would be at risk on return because he was agnostic. He had said in paragraph 38 of his statement that it was against his fundamental human rights to require an agnostic like himself to "pretend to be a religious believer" in order for him to avoid persecution at the hands of the authorities. Although the judge had referred to some background evidence at paragraph 63 of the decision that same background evidence did indicate that it was illegal to identify as atheist or non-religious and that Iran was a country where being an atheist was punishable by death. On the facts of this case the Appellant did identify as atheist and being non-religious and therefore arguably fell into the category of those who would be at risk on return. Reference was made to **HJ (Iran)** and **RT (Zimbabwe)**.

Permission to appeal was granted by First-tier Tribunal Judge Povey, who noted that the judge had said that there was nothing he would have to conceal and arguably she had fallen into error in her assessment of the application of the principles of **HJ (Iran)** and **RT (Zimbabwe)** to a person (like the Appellant) who holds no beliefs.

A Rule 24 notice was lodged by the Home Office, saying that the decision was a very well-reasoned one and the judge had accepted the expert evidence concerning the documents. It was said that the judge had dealt in some detail with the **HJ (Iran)** point and it was submitted that the challenge was no more than a disagreement with the valid and reasoned findings of a Judge of the First-tier Tribunal.

Thus, the matter came before me on the above date. Before me, Ms Muzira relied on her grounds. While the judge had found that a part of the Appellant's claim was a fabrication this was in fact a two-limbed approach being taken by the Appellant and the judge had conflated the limbs and made an error in law. As such, it was appropriate to set the decision aside and remit the appeal to the First-tier Tribunal on the narrow issue of risk on return caused by the fact that the Appellant was undoubtedly an agnostic.

For the Home Office, Mr Walker relied on his Rule 24 notice. There was no error in the judge's approach, who had dealt with all matters, and the decision should stand.

I reserved my decision.

Conclusions

The judge noted that the Appellant had provided various documents from civil court proceedings, which he claimed were related to land he owned in Northern Iran. He obtained an expert report from Mr Kakhki, who was asked to comment on the authenticity of the documents. Much of the decision of the judge is concerned with the property dispute and the documents which were provided by the Appellant to support his account that he would be at risk on return because of that. However, as noted above, Mr Kakhki did not accept that all the documents concerned were reliable and the judge concluded that the accusations put forward by the Appellant were fabricated by him (paragraph 56).

There is no challenge to those findings that the Appellant has fabricated a very significant part of his claim.

The judge dealt with the risk on return at paragraphs 60 to 68 inclusive. The judge noted that Iran was one of thirteen countries in the world where being an atheist was punishable by death. Importantly, in paragraph 65 the judge noted that there was no suggestion in the case that the Appellant had ever been, or intended to be, publicly pro-atheist or anti-Islamic or that "he wishes to express any such views publicly. Indeed, from his evidence it is apparent that he has no real interest in religious beliefs." The judge did not accept that allegations had been made against him in court proceedings by Mr Yaghoubi and because of that did not consider that there was a serious possibility that he would come to the attention of the Iranian authorities as an apostate or one who is expressing anti-Islamic beliefs.

It may be that the judge went further than was prudent in concluding that this was not a case in which the Appellant would be expected to conceal any belief or characteristic on return and noting that there was nothing he would have to conceal but, against that, the judge did say that he had never had to feign religious beliefs previously in Iran. He did not attend a mosque or take any positive steps to seek to demonstrate that he was a practising Shia Muslim. He had not come to the attention of the authorities because of this and from the background information it was clear that there are many other Iranians who are in the same position as him.

The essence of the Appellant's account was that he faced persecution because of the land dispute and the accusations made against him by Mr Yaghoubi. However, those accusations were found to be fabricated by the Appellant. I repeat that the core of his claim has been based on the proposition that he faces persecution in Iran because of his land dealings and the accusations by Mr Yaghoubi, which have been proven to be unsound and untrue.

On the second limb of his claim namely that he is an agnostic the judge addressed this issue and found correctly - and contrary to what was said by the Appellant in paragraph 38 of his witness statement mentioned above - that he had not been required to pretend to be a religious believer. In that witness statement the Appellant says (paragraph 10) that his problems in Iran as a result arose of accusations that he was promoting Christianity which the judge found to be a fabrication. His witness statement concentrates on his property dispute and the false allegations taken against him; there is no detail in his witness statement to the effect that he is prevented from expressing an opinion because, as an agnostic, he has a fear of persecution. His evidence, as found by the judge, is that he has no interest in any of these matters.

The judge dealt more than adequately with the risk on return and for clear and coherent reasons concluded that there was no such risk. In so doing the judge took the full profile of the Appellant and his evidence into account and in my view, was entitled to find as she did.

As such, there is no error of law in the judge's decision, which must stand.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

No anonymity order is made.

Signed *JG Macdonald*
2018

Date 19th December

Deputy Upper Tribunal Judge J G Macdonald