Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/02295/2013

THE IMMIGRATION ACTS

Heard at Manchester	**Determination Promulgated**
On 3 July 2014	**On 11 July 2014**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

M J
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss P Solanki of Counsel, instructed by Birnberg Peirce & Partners, Solicitors
For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals with permission against the determination of the First-tier Tribunal (a panel comprising First-tier Tribunal Judge Whalan and Mr P Bompas) promulgated on 1 May 2014 in which they upheld the decision of the respondent that

the appellant is a person to whom Section 32(5) of the UK Borders Act 2007 applies and thus must be deported as a foreign criminal.

2. While no order for anonymity was made by the First-tier Tribunal, I am satisfied that such an order should be made, given the sensitive nature of the issues in the appellant's case.

3. The appellant is a citizen of Iran. In 2010 he was a university student in Tehran and had in June 2009 supported the reformist candidate, Mr Moussavi, in the presidential elections. He did not at that stage take place in the demonstrations against the victory of Mr Ahamadinejad but on 7 December 2010 took part in a Silent Student Day at which he was arrested, taken to Evin Prison where he was detained for five months, and ill-treated. He was released after his father paid a bribe for him to be released on bail for a week, the family house being put up as surety. After his release the appellant's father then arranged for him to be taken out of Iran to the United Kingdom where he arrived on 18 June 2011 using a false identity and passport. He was refused entry clearance and claimed asylum. On 18 July 2011 he was convicted at Lewes Crown Court of possession of and use of a false instrument, namely a passport and was sentenced to twelve months' imprisonment. Since his arrival in the United Kingdom he has been in some contact with his family and has been informed that he is wanted, his mother having hired a lawyer to make inquiries.

4. The respondent's case is set out in the refusal letter dated 9 October 2013. In summary, the respondent did not accept the appellant's account of being detained and arrested or being imprisoned and tortured, although it was accepted he is a national of Iran and a student at Bushehr University, given the number of discrepancies in his claim. She also drew inferences adverse to the appellant from his failure to claim asylum in Italy en route to the United Kingdom and from his production of the legally obtained passport on arrival in the United Kingdom. The respondent considered that the appellant would not be at risk on return to Iran having left illegally and as he was not a refugee, and none of the other exceptions set out in Section 33 of the UK Borders Act 2007 apply to him, he should be deported to Iran.

5. On appeal when the matter came before the Tribunal sitting at Taylor House on 11 April 2014, they heard evidence from the appellant, as well as Ms Guity Sadighi-Keens; they also had before them a report from Anna Enayat of St Anthony's College, Oxford and from Richard Thomas, a barrister at Doughty Street Chambers.

6. The Tribunal found:-

   (i) that the demonstration described by the appellant may have taken place and he may well have been contemporaneously aware of it;

   (ii) that the conclusions set out in the refusal letter arose from errors in the translation process during the interview as described by Mrs Sadighi-Keens [39] and that they would proceed to consider his credibility afresh;

(iii) that the appellant was not credible because:-

(a) his alleged conduct in attending the demonstration was out of character as he was not a man of active political sentiment or commitment and had engaged in no formal activity between June 2009 and December 2012 (sic) and was not an activist of any conviction or involvement [40];

(b) that his core account was undermined by inherent implausibility with regards to his account of how his father was able to obtain bail, committing a very significant part of the family's entire assets and sacrificing the large family home and his evidence was such that they did not believe that the family would have had such resources or would have committed these to securing a week's bail;

(c) that the account was not corroborated by any formal witness or statement or documentary evidence from Iran, not accepting that it would be practically impossible to obtain further evidence from Iran given the risk to the family;

(iv) the appellant was an economic migrant and although he may have left Iran illegally, he would not be at risk on return.

7. The appellant sought leave to appeal on the grounds that:-

(i) that the Tribunal had not made any findings as to whether he had participated in the demonstration on 7 December; or, whether he had been arrested or not (5);

(ii) that the Tribunal had erred in concluding that the appellant's account of release was inherently implausible as in doing so they had failed to take into account the expert evidence of Miss Enayat or, in the alternative, say why they had rejected it;

(iii) that the Tribunal had erred in law in requiring the appellant to provide corroboration;

(iv) failed to take into account the evidence of Richard Thomas in assessing the appellant's conduct with respect to Article 31 of the Refugee Convention.

8. Miss Solanki submitted that the Tribunal's analysis of the appellant's conduct was not rational and that rather than forming the view that this was not credible as a result of analysis had simply applied that as a descriptor to the evidence. Mr Harrison submitted that the Tribunal had given adequate reasons for concluding that the appellant's account of his participation in the demonstration was not credible.

9. The Tribunal held that they did not believe the appellant would have attended the demonstration because that is not the kind of thing he would have done. Properly and sustainably to have reached such a finding, however, requires them to have

reached findings regarding his activities in the past, which they did not do. That conclusion is thus not adequately reasoned.

10. Mr Harrison accepted that the Tribunal had not engaged with the evidence of Miss Enayat which describes in some detail how it is possible through bribery to obtain bail in Iran even in circumstances such as those described by the appellant. There is always a danger in finding that what goes on in a foreign country as "inherently implausible" from the standpoint of the United Kingdom and whilst the Tribunal does refer to Miss Enayat's evidence [29 to 30] and that conditional release can be subject to bail and evidence as to how bail can be obtained, they failed to explain in any way why they rejected this evidence in coming to a conclusion that what is being described was inherently implausible. In so doing, they acted irrationally and unreasonably.

11. Whilst Mr Harrison submitted that it was open to the Tribunal to conclude that the appellant should have provided corroborative evidence. While there are circumstances in which it may be reasonable to expect evidence to be obtained from the country of origin, the conclusion here that it was correct so to do is predicated on the finding that the appellant's account was not credible. Given the errors in that analysis set out above, the adverse inferences from a failure to supply additional evidence are not sustainable.

12. In light of the above, I am satisfied that the Tribunal's findings with respect to the appellant's credibility are flawed and whilst it might have been open to them to draw inferences adverse to the appellant pursuant to Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, to have done so, in that when that can only be done as part of an overall process is not sufficient.

13. Viewed as a whole, the flaws in the analysis of credibility are so fundamental as to make the findings unsustainable. Accordingly, I am satisfied that the decision of the First-tier Tribunal did involve the making of an error of law and is set aside. In the circumstances, none of the findings of fact can be preserved.

14. On that basis, and as there will need to be a further judicial fact-finding exercise to be conducted, I am satisfied that the matter should be remitted to the First-tier Tribunal for a fresh determination on all issues. Both parties were in agreement with this and that the matter should be remitted to Taylor House.

SUMMARY OF CONCLUSIONS

1 The decision of the First-tier Tribunal did involve the making of an error of law and I set it aside.

2 I direct that the appeal be remitted to the First-tier Tribunal at Taylor House

Signed Date

Upper Tribunal Judge Rintoul