IAC-AH-SAR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05312/2014

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 23 July 2015	**On 9 December 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

MOHAMMED REZA ALIPOUR-FETRATI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Schwenk, instructed by Parker Rhodes Hickmotts, Solicitors
For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Mohammed Reza Alipour-Fetrati, was born on 29 January 1969 and is a male citizen of Iran. He appealed to the First-tier Tribunal (Judge N Manuel) against a decision of the respondent dated 16 July 2014 to remove him to Iran having refused his claim for asylum. The First-tier Tribunal dismissed the appellant's appeal on all grounds. The appellant now appeals, with permission, to the Upper Tribunal.

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2. Mr Schwenk, who appeared for the appellant, submitted that there were four issues before the Tribunal. First, as indicated in the First-tier Tribunal decision at [11], at the adjourned hearing of the First-tier Tribunal appeal (the first hearing was on 27 August 2014 and the second on 11 October 2014) the appellant had attended with a witness, a Mr A Evelyn. The Presenting Officer objected to the witness giving evidence on the basis that there had been an opportunity for collusion between the appellant (who had given his evidence at the earlier hearing) and the witness. The judge indicated that she

> "... agreed to hear the evidence of Mr Evelyn and [I] indicated to the parties that I would be cautious about the weight to be given to his oral evidence ... bearing in mind that this evidence was after the appellant's evidence was heard in full and the case adjourned part-heard for submissions only."

The appellant now complains that the question of collusion was never put to the witness or, indeed, to the appellant. In consequence, the judge acted unfairly. I disagree with that submission. The judge gave an indication of the potential concerns which she had regarding the witness's evidence ("... *I indicated to the parties*") and, whilst it would not be right for the judge simply to assume that there must be collusion where such circumstances arise, it was reasonable for her to indicate that she intended to approach the evidence of Mr Evelyn with some caution. If the possibility of collusion had been put to the witness and the appellant and (as would have been likely) denied, it would still have been reasonable for the judge to indicate that she intended to approach the evidence of the witness with some caution; even if she had heard evidence from the appellant and witness and the representative's submissions on the subject it seems very unlikely that the judge would have been in a position to make positive finding either way as to whether a collusion had occurred. I find that the judge did not act unfairly as alleged.

3. Secondly, a number of the credibility matters referred to the judge at [31] are, according to the appellant's grounds, reliant upon findings of inherent plausibility. Having considered the findings in some detail, I do not agree with that submission. I do agree, however, that at [31k] the judge may have erred in finding as follows:

> "At Q95 the appellant claimed the authorities had raided his house and taken documents. However there was no evidence to explain exactly what these documents were and how they would incriminate him as a person who is against the government."

4. The appellant had been asked about the raid on his house at the asylum interview [Q95/96] and, whilst he refers to the "authorities" having taken documents away from his house, the interview had, as Mr Schwenk put it, "moved on" and the appellant was not asked to give details of the documents removed. It is also not clear that the question arose in cross-examination of the appellant at the First-tier Tribunal hearing. It is harsh, in my opinion, for the judge to find that the appellant's credibility had been damaged because there had been "no evidence to explain exactly what these documents were" when, at interview and again at the appeal

hearing, the appellant had never been asked what documents had been removed.

5. Fourthly, the appellant challenges the judge's findings as regards his risk to him upon return. At [54], the judge found that:

> "... being arrested at the airport on return and held for a few days whilst the police established whether or not he has been involved in political activity, does not in my view reach the minimum level of severity required to constitute a breach of Article 3."

6. The appellant refers to the Operational Guidance Note (OGN) of the respondent dated October 2012 which records [3.17.13] that "conditions in prisons and detention facilities are harsh and potentially life threatening in Iran ... they are likely to reach the Article 3 threshold". The judge's finding is, in my opinion, inadequately reasoned; she has not explained exactly why "in my view" detention in prison conditions which evidence before the Tribunal indicated might reach Article 3 ECHR might not "reach the minimum level of severity ..."

7. The judge has provided a generally thorough and careful analysis of the evidence. Many of her findings are sound but I have serious concerns regarding her analysis of the evidence for the reasons I have detailed above. Moreover, in the matter of risk on return, I am concerned that the judge has not given sufficient reasons for finding that a brief detention upon to Iran would not expose this appellant to the real risk of Article 3 ECHR ill-treatment. On balance, I find that the safest course of action is to set aside the decision and to remit the matter to a different Judge of the First-tier Tribunal to remake the decision. Given what I have said regarding the judge's assessment of the evidence, I consider that the only prudent course of action is to direct that none of the findings of fact shall stand. In making that direction, I stress that it still remains for the appellant to prove his case before the next First-tier Tribunal.

Notice of Decision

8. The decision of the First-tier Tribunal which was promulgated 25 November 2014 is set aside. None of the findings of fact shall stand. The appeal is remitted to the First-tier Tribunal (not Judge N Manuel) to remake the decision.

No anonymity direction is made.

Signed Date 1 November 2015

Upper Tribunal Judge Clive Lane