



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/08204/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at North Shields

On 23 November 2017

**Decision & Reasons
Promulgated**

On 5 December 2017

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

F BG

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Brakaj, Iris Law Firm

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Rosemary Bradshaw promulgated on 18 January 2017 dismissing his appeal against the decision of the respondent made on 25 July 2016 to refuse his asylum claim to remove him from the United Kingdom.
2. The appellant's case is that he is at risk from the Etala'at (the Iranian Secret Services) because of his political activities in opposing the government. He states that he became involved in politics around the

presidential elections in 2009 when he supported Mr Mousavi which resulted in his arrest, detention and sentenced to a term of imprisonment of up to six months. On release he had to sign an undertaking not to participate in further political activities.

3. In 2011 he was injured at a demonstration and arrested, interrogated and tortured. He was held for two months by the Etala'at but after six months his father was able to obtain his release.
4. In September 2014 he attended the meeting of six or seven people at a friend's house to plan a protest about the large salt lagoon, Lake Urmia later finding out that his friend had been arrested. On 23 September 2014 he was able to evade arrest by the authorities who encountered him in the street, opened and fired against on him and gave chase. He was then able to escape the country with the assistance of an uncle.
5. The respondent did not accept the appellant's account.
6. The judge concluded that the appellant's credibility was damaged by a number of matters, thus giving his failure to claim asylum in at least two safe countries, his failure to claim earlier and from inconsistencies in his account.
7. The appellant sought permission to appeal on the grounds that the judge had erred in her assessment of his credibility:
 - (i) The judge's conclusions about the appellant not claiming asylum when apprehended at port were not open to her, there being a statement from an officer who noted that the appellant could speak virtually no English and that he claimed asylum only when he had the assistance of interpreter. Thus, he did claim asylum at the first opportunity;
 - (ii) that the judge had erred in concluding that it was unlikely that the appellant was not involved with any group in his activism in relation to Lake Urmia, there being no evidence before the judge that there were groups which were involved or organisations which were involved;
 - (iii) that the judge had erred in concluding the appellant had been inconsistent regarding access to a lawyer and family whilst in prison, a proper reading of questions 25 to 27 in interview record indicating that he had been in one prison for two months and that although not allowed contact, his family sought to have him moved by payment of a bribe; and after that, he did not access family and a lawyer;
 - (iv) the judge erred in connection with the appellant's contact with family in Iran [47], wrongly concluding that it was inconsistent for him to be in contact with family yet still being wary as to having documents sent to him;

- (v) that the appellant had given a significant level of detail about what had occurred in 2011, giving such a level of detail that it is not something he could have researched and is not information which could simply be known due to living in the area and the judge was wrong to reject the submission to this effect in her decision at [49], [50].
8. On 6 June 2017 Upper Tribunal Judge Freeman granted permission on limited grounds.
 9. It appears from the appellant's response at question 27 of his interview that in 2011 he was held by the Etala'at in their offices, then to a prison for two months and from that he was transferred to a central prison where he stayed for six months. He states "my cousin, who is a lawyer tried to get me out and my dad paid prison people to move me to a central prison."
 10. It is also of note that he said in response to question 25 "did your family know you were in prison" that "as they found out after two months. I called my brother when I was moved to prison." Also of note at Q21 the appellant said that he was kept for about two months by the Etala'at and then after two months he went to the Etala'at prison.
 11. At paragraph [7] of the grounds it is stated "paragraph 43 suggests the appellant has been inconsistent regarding his access to a lawyer and family. However when reading question 25 to 27 of the interview record it is clear that the appellant was in one prison for two months. Although he was not allowed contact with anyone during this time his family sought to have him moved by payment of a bribe. Once moved he was able to access his family and a lawyer. However his access did not prevent his family locating him during that two month period and assisting in his move prior to them being able to have contact with him. There is nothing inconsistent about his answer."
 12. Mr Mills accepted that it was difficult to see that there was any inconsistency here, contrary to what the judge had identified in her decision.
 13. It appears that the judge equated access to a lawyer with the lawyer being present at the prison rather than being able to act simply on someone's behalf. It was the judge who assumed that the lawyer would have to have known the prison, again assuming that the appellant was seen by the lawyer rather than family contact and the lawyer to act on their behalf.
 14. Ms Brakaj submitted that in assuming that the Iranian authorities would have been able to monitor the appellant's communications over the internet with his mother are predicated in a number of assumptions as to what methods, encrypted or otherwise, were used and the extent to which the Iranian authorities are able or would expend the resources necessary to decrypt messages.

15. I find merit in this submission. Whilst I accept, as Mr Mills submitted, that the Iranian authorities do maintain a significant degree of surveillance, there is no indication that this appellant had any great profile. It is a matter of public record that many messaging services using the internet have end-to-end encryption which, although breakable, require significant input of resources so to do. Similarly, other forms of communication have less degree of encryption and may well easily be broken. The judge, however, appears to have assumed that any communication could easily be intercepted and/or decrypted. Further, communication over the internet is entirely different from sending documents which would require them physically to be taken to a post office or some other office in which it would be noted where they were being sent. The risks inherent in that are significantly greater. There is this, in reality, no inconsistency.
16. I accept that, as Ms Brakay submitted, the appellant did provide a sufficient degree of detail regarding the events in 2011. It is clear that, as she submitted, he was able accurately to recall these events took place on a Saturday and the degree and that this is later confirmed by other documents. This level of detail is, I consider a relevant matter. Whilst a failure to properly consider that is not, as Mr Mills submitted, in and of itself indicative that the judge's assessment of credibility was flawed the rejection of it is to a significant extent predicated on other findings.
17. Taking these matters into account, I consider that the judge's findings on credibility are flawed for the reasons set out above. These are, I consider, significant and are such that the overall conclusion as to the appellant's credibility with respect at the very least to the core of his claim is unsustainable. I am therefore satisfied that the decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

SUMMARY OF CONCLUSIONS

18. (1) The decision of the First-tier Tribunal involved the making of an error of law and I set it aside. I remake the decision to the First-tier Tribunal to be heard by a judge other than Judge Rosemary Bradshaw, for a fresh decision on all issues.
- (2) For the avoidance of doubt none of the findings of fact made by the First-tier Tribunal are preserved.
- (3) There is no anonymity order.

Signed

Dated: 4 December 2017



Upper Tribunal Judge Rintoul