Upper Tribunal
(Immigration and Asylum Chamber) PA/01649/2019

THE IMMIGRATION ACTS

Heard at Edinburgh
On 16 January and 27 February 2020

Decision & Reasons Promulgated
On 17 March 2020

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

S R E REZAEIAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: *on 16 January, Ms N Loughran, of Loughran & Co, Solicitors,*
and on 27 February Mr T Haddow, Advocate, instructed by Loughran & Co

For the Respondent: *on 16 January, Mr M Clark,*
and on 27 February, Mr A Govan; Senior Home Office Presenting Officers

DETERMINATION

1. This is an appeal against the decision of FtT Judge Doyle, promulgated on 8 August 2019.

2. The appellant's grounds, 1 – 8, are set out in detail in his application dated 22 August 2019.

3. Having heard the submissions of Ms Loughran for the appellant on 16 January 2020, I took the view that none of grounds 1 – 5, or 7, disclosed any material error, for two reasons, confirmed in an error of law decision dated 20 January 2020, as follows.

4. Grounds 1 is failure to consider medical and psychiatric reports, 2 is failure to make findings on past torture, and 3 is failure to assess the credibility of torture claims. These are all at best complaints about absence of more specific findings which were not required. Judge Doyle accepted that the appellant as a convert from Islam to the Bahai faith would be entitled to protection against return to Iran. That is as favourable an outcome as could result from the evidence which was allegedly neglected.

5. Secondly, the crux of the case was whether the appellant is a citizen of India who may return there. There was strong presumptive evidence and a previous judicial determination to that effect. Unless the appellant raised at least a realistic doubt about that issue, his past history in Iran was irrelevant.

6. Ground 4 alleges failure to consider witness evidence about the appellant's nationality, but the thrust of the witness evidence was to establish the appellant's faith not his nationality. The ground founds on one of the nine witnesses saying that he knew the appellant to be Iranian and had seen him in Iran, but that leads nowhere. The respondent accepts that the appellant had Iranian citizenship. This ground discloses no "unresolved contradiction".

7. Ground 5 does not show error in the judge's assessment of the appellant's representations to the Indian consulate. The absence of specific mention of the quotation in the grounds does not detract from the judge's observation that the appellant made strenuous efforts to show that he is Iranian; but the fact that has been (and may remain) a citizen in the eyes of the Iranian authorities is irrelevant, if he has regularly obtained Indian citizenship, in the eyes of the Indian authorities.

8. Ground 7 is based at part (i) on failure to consider evidence of Indian citizenship law, said to suggest that the appellant had not spent the time in India necessary for naturalisation. That was not supported by expert evidence of the law of citizenship in India. Sketchy references to the underlying foreign law do not come close to displacing the presumption arising from production of a passport validly issued by the Indian authorities. Part (ii) is based on the Iranian authorities not recognising dual citizenship, but if the appellant has Indian citizenship, that is another irrelevancy.

9. Ground 6 is "failure to consider key evidence on identity and place of birth", specified as "failing to reconcile the 'genuineness' of the Indian

passport in one name and place of birth with the voluminous Iranian documents issued in another name and place of birth … accepted by the Home Office as genuine", leading to "irreconcilable findings of fact", and culminating in the assertion that the FtT "failed to record accurately and consistently the appellant's evidence".

10. Ground 8 is "failure to follow … *Devaseelan* … when evidence in the second appeal is significantly different from the first appeal". This raises the same issue in another legal category.

11. For reasons explained in my error of law decision, the case was listed again in the UT for further consideration of grounds 6 and 8.

12. The remaining issue was put in this way. The respondent's refusal decision noted at [34], referring back to the respondent's first decision, that the appellant had "numerous passports in different nationalities" (he had been returned to the UK from France on 23 January 2011 after attempting to travel to Canada on a forged Greek passport). Although it was accepted at [73] that an Iranian passport and *shenasnameh* produced by the appellant were genuine, that led the respondent only to accept that he was once an Iranian citizen. His account that his Indian passport was anything but a document genuinely obtained was not accepted, for reasons given at [74] – [92]. (The respondent at [92] gives the documents "little weight to show that you are still an Iranian national"; but as explained above, that appears to be beside the point.) In his grounds at section 3 d of his notice of appeal to the FtT, the appellant maintained that he would be at risk on political and religious grounds on return to Iran, but he raised no specific dispute about return to India. On the evidence and submissions put to the FtT, is its resolution of the matter at [12 j – v] of the FtT's decision legally adequate? – and if not, what follows?

13. In compliance with directions made in the error of law decision, there were filed for the appellant a bundle of relevant materials and additional evidence, and detailed written submissions. In brief, the appellant invites the UT to set aside the decision of the FtT and to remake the decision, finding that the appellant is not an Indian national and is entitled to protection as a refugee from Iran.

14. In a letter dated 26 February 2020 the respondent concedes that grounds 6 and 8 disclose error by making no finding on the appellant's claim that he obtained a genuinely issued Indian passport by fraudulent means, and by failing to recognise the implication of its findings [based on the respondent's concessions] that the appellant's Iranian documents are genuine and that he held the identity now claimed, which was a material shift from the determination in 2010 (which found him to be Reza Sayyed, an Indian national).

15. The respondent goes on to comment that the Indian passport with a different place of birth does not appear to have been before the FtT, so that the judge cannot be criticised for failing to consider it. It is

acknowledged, however, that the evidence went "further than establishing that all the appellant has confirmed since 2010 is that he was born in Iran" (as the FtT had thought).

16. As to remaking the decision, the respondent does not concede that the appellant "does not hold status in India"; refers to the appellant finding himself twice in the UK using an Indian passport, and having been found also using a false Greek passport; observes that he has provided only limited evidence about his history as a refugee in India, has consistently used deception and false documentation, and has a very poor immigration history; and submits that he can be found to have been acting in bad faith, and that "the UT can still dismiss this appeal".

17. So far as the long process of his claim in the UK is concerned, the appellant is the author of his own misfortune. Nothing is certain, other than that he has practised extensive deceit. His excuse that he has been constrained to do so by the need to escape from persecution is highly dubious in relation to his representations to the Indian authorities and his decision to leave that country for the UK. It is of even less force in relation to his attempt to leave the UK for Canada in a false Greek identity. Even if he had good reason to leave Iran, many years ago, his present claim rewards him for unjustifiable deception.

18. The appellant has, however, established a reasonable likelihood that he is a Bahai convert who cannot safely be returned to Iran, his original country of nationality. Protection might only be withheld on the basis that he is genuinely a citizen of India. It is accepted that documentation of his Iranian origins is genuine, to the necessary standard. His Indian documentation is partly but not entirely consistent with his Iranian documentation. The date of birth remains the same, and an appellant may vary his name. However, his place of birth and the name of his mother are different and irreconcilable. It cannot be held that his Indian citizenship, although genuinely issued, was legitimately obtained. It does not form a proper basis for returning him to India.

19. The decision of the FtT is set aside. The appeal, as brought to the FtT, is allowed.

20. I thank representatives on both sides for their assistance in resolving this rather unusual case.

21. No anonymity direction has been requested or made.

20 January 2020
UT Judge Macleman