



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/00785/2013

THE IMMIGRATION ACTS

Heard at Field House
On 26 June 2013

Determination Promulgated
On 2 August 2013

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

MR MIRMEHRDAD SAGHI
(NO ANONYMITY DECISION)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Kash Behbahani, with Oaks Solicitors
For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, an Iranian citizen, appeals with permission against the determination of First-tier Tribunal Judge Oliver, who on 26 February 2013 dismissed his appeal against the respondent's decision to refuse to vary leave to remain on asylum or other international protection grounds. The appellant was born in September 1993 and is 19 years old.

The appellant's account

2. The appellant came to the United Kingdom in March 2011 as a student and claimed asylum in April 2012, claiming that his position in Iran had been compromised and the Iranian authorities were looking for him because his English language teacher, Peyman Pakmehr, who was a friend of his father, had been arrested with a copy of the appellant's Iranian identity card and a caricature depicting the Supreme Leader, the President, and the Speaker of the Majlis Parliament in Iran. The appellant's father was said to have told him about this on 7 April 2012, when he was arrested to discover the appellant's whereabouts.
3. The appellant's English language teacher was also the editor of Tabriz News: the appellant at his request had given Mr Pakmehr a USB disk containing caricatures which he had collected, as well as the appellant's birth certificate and identity card, so that the teacher could send them to Highlight Global Agency who were dealing with his student visa.
4. The appellant now said that his father had telephoned him on 21 January 2012, two days after Mr Pakmehr's arrest, to say that the police had raided the family home, seizing the family's satellite dish, the appellant's computer, and posters of the opposition leader, Mr Mousavi. The appellant and two or three friends had exchanged among themselves caricatures they found on the internet, about 300-400 of them, most of which were political. The same caricatures had been found on his computer and in Mr Pakmehr's office. The appellant did not know whether Mr Pakmehr had been detained or charged after his arrest.
5. The core of the judge's reasoning is at paragraph 17 of the determination. It is challenged by the appellant on the grounds of material mistake of facts and failure to consider material evidence.

First-tier Tribunal determination

6. The Secretary of State accepted that Mr Pakmehr had indeed been arrested, as was evidenced by country evidence produced by the appellant, showing that Mr Pakmehr was bailed for \$220,000 after approximately one week in detention. The First-tier Tribunal Judge disbelieved the appellant's core account, partly for want of corroboration and partly for implausibility.

Grounds of appeal

7. The appellant argued that the evidence about Mr Pakmehr's arrest in the public domain was corroborative of his account; that in any event, corroboration is not required in asylum appeals; and that the First-tier Tribunal Judge failed properly to consider the relevant country guidance decisions (*SZ and JM (Christians - FS confirmed) Iran CG* [2008] UKAIT 00082, *SB (risk on return-illegal exit) Iran CG* [2009] UKAIT 00053 and *BA (Demonstrators in Britain - risk on return) Iran CG* [2011] UKUT 36 (IAC)) and some evidence from Amnesty International dated February 2012,

which post-dated that guidance. He argued that the First-tier Tribunal Judge's determination lacked anxious scrutiny and was unsound.

Permission to appeal

8. Permission to appeal was granted by First-tier Tribunal Judge Cruthers on 15 April 2013, noting that the grounds on which the appellant sought permission did not suggest that the appellant could succeed by reference to Article 8 ECHR, but that there might be some substance in the remainder of the grounds.

Rule 24 Reply

9. The Secretary of State filed a Rule 24 Reply, the material part of which reads as follows:
 - “4. There is no independent corroboration of the appellant's narrative. It was previously accepted that Mr Pakmehr was detained, however this is not relevant to evidencing the appellant's claim.
 5. The judge was entitled to find that on the evidence the appellant appeared to accept that Mr Pakmehr had not been arrested. There was no background evidence to suggest otherwise.
 6. Equally the judge was neither expected nor required to speculate on the appellant's treatment on return as the appellant's account was rejected. The country guidance does not demonstrate real risk to a discredited failed asylum seeker with no political profile. The background evidence referenced does not assist the appellant given the adverse findings.”
10. That was the basis on which the appeal came before me.

Upper Tribunal hearing

11. The reasoning in this determination was plainly inadequate. Although the burden and standard of proof is set out at paragraph 12, in a long excerpt from *MA Eritrea CG* [2007] UKAIT 00059, and at paragraph 14, a statement reflecting the decision in *Chiver* is accurately summarised, without being named, the judge's reasoning at paragraph 17 conflates the findings of fact and the assessment of credibility and indeed may assess credibility at too high a standard.
12. Applying *R (Iran)*, paragraph 90, I am unable to understand the judge's approach to credibility nor indeed what he did or did not take into account amongst the documents which the appellant has raised in his grounds.
13. Having discussed the matter with the parties it is agreed that the level of reasoning is such as to constitute a material error of law and that this appeal will have to be re-heard in the First-tier.

Date:

Signed

Judith Gleeson
Upper Tribunal Judge