Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07711/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Sent**
On 26 November 2013	**On 20 January 2014**

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

AMIR MOHAMMAD ZAREI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. Gayle
For the Respondent: Mr. Deller

DETERMINATION AND REASONS

1. The Appellant is a citizen of Iran born in 1993. He appealed against a decision of the Respondent made on 31 July 2013 to refuse to vary his leave to remain. He was refused asylum.

2. The basis of his claim, in summary, was that his parents were arrested and detained by the authorities in October 2008. His father was accused of taking part in anti government activities. His mother was quickly released but his father was held in detention in Shiraz for nine weeks. Soon after

his mother's release the Appellant decided to cooperate with school friends in preparing anti government leaflets which they placed in the school library. He was caught by the librarian, who called his brother, a policeman named Hassan, who questioned him about his accomplices. He was taken to Hassan's house and there raped by him.

3. A day or two later Hassan appeared at the school and offered to help secure the Appellant's father's release if he agreed to have sex with him. The Appellant felt he had no option but to agree.

4. In December 2008 his father was released. He refused to have sex with Hassan anymore.

5. In January 2009 he prepared a petrol bomb in a can and threw it at a police car. It exploded. People saw him running away. He did not go home. An uncle helped him leave Iran illegally through an agent. He arrived in the UK in May 2009 and claimed asylum. Since arriving in the UK he had heard from his family that he is wanted by the authorities.

6. His application for asylum was refused. However on 7 August 2009 he was granted discretionary leave until 10 December 2009 as an unaccompanied asylum seeking child. He submitted a further application for leave to remain on 2 September 2009. It was that application which resulted in the decision under appeal.

7. The Respondent in refusing the application did not believe the historical account on any material matter.

8. He appealed. Following a hearing at Taylor House on 13 September 2013 before Judge of the First tier Tribunal Andonian he dismissed the appeal on asylum, humanitarian protection and human rights grounds.

9. He found, in summary, that it was not credible that the Appellant had no knowledge about his father's anti regime activities (paragraph [4] of the determination). He also found not credible that he would know the date of this father's release but not why he was arrested or where he was detained, nor why he did not visit his father in prison [4]. Also once his father was released why he did not tell his parents about his sexual abuse by the policeman [5]. Further, although he knew that bribes had been paid to allow his mother to visit his father in prison it was not credible he did not know what bribes were paid or how the officers were bribed [5].

10. In further adverse findings the judge rejected the Appellant's account of the events that led him to becoming politically active. It was not credible that he would be crying at school a day or two after his mother's release when he should have been 'feeling happy' and 'celebrating' his mother's release [7]. Nor that he would have got involved in producing and distributing anti regime leaflets because of the risks involved [7]. Further, that it was not credible that he would have known how to make a 'Molotov

cocktail', nor that he would have attacked a random police car rather than the policeman who had abused him [8].

11. The judge found 'numerous discrepancies in the incredible evidence itself, for example he said he and others began to prepare leaflets secretly in the library and classroom during breaks', yet at interview said a friend had written slogans and therefore there was no need for the Appellant to write slogans [10]. The judge also rejected the Appellant's account of producing some of the leaflets in the school library [12].

12. Finally, (at [13]), the judge found there would have been no need for the Appellant's mother and uncle to bribe officials to visit the Appellant's father in detention stating 'They would have placed their position in danger for bribing and the officers for being bribed and there was no evidence that relatives had (sic) could not visit prison other than by a bribe'.

13. Having dismissed the appeal on asylum grounds and in line, under Articles 2 and 3 of ECHR, in brief consideration of Article 8 he stated (at [15]) 'He has no family life here and all his family are in his country where he can go to resume it, any private life he has here he has had for very short time which he can again resume in his country'.

14. The appellant sought permission to appeal which was granted by a judge on 15 October 2013.

15. At the error of law hearing Mr. Deller agreed with Mr. Gayle that the judge had materially erred. I agreed. His determination, read as a whole, showed a lack of adequate reasoning on material matters. His findings were not sustainable. They were not made within the context of the Appellant being a minor or in the context of what the background material states can occur in Iran.

16. First, given that the Appellant was a child at the time of the claimed detention of his parents the judge failed to consider that it was plausible that he was not privy to the nature of the anti regime activity and that there was no reason for his father to confide in him. Also, that as a child it was plausible that he would know the date of his father's release but not why he was arrested or where he was detained.

17. Second, again as a child in the context of Iran it was plausible that he would not inform his parents or other responsible adults about sexual abuse.

18. Third, for the same reason, the judge failed to explain why the Appellant would be expected to know how the bribes were paid or the amount.

19. Fourth, the judge's finding that it was not credible that on the release of his mother the Appellant would be crying not celebrating and that such made it not plausible that he was radicalized by the detention of his parents failed to take account of the Appellant's first statement

(17.06.09,para 18) that his mother was crying on the day of her release because they all feared that his father would be detained indefinitely.

20. Fifth, the finding that the Appellant would not have engaged in producing and distributing anti regime leaflets because of the risks involved failed to consider that all anti regime activity in Iran is risky yet the background material indicates it does take place. Also the Appellant provided an account of why he began these activities. Further, the background material refers to numerous examples of arbitrary arrest, incommunicado detention and corruption of officials.

21. Sixth, the judge found it was not credible that the Appellant would have known how to make a 'Molotov cocktail'. Yet this is the simplest of all incendiary devices to make. No special knowledge is required. Also, in failing to believe that the Appellant would attack a random police car rather than the policeman who had abused him, the judge failed to consider his explanation which included that as a fifteen year old it would have been difficult to do anything against the policeman personally but that he 'had to do something' and it 'was (his) way of raging against a system that put power in the hands of a monster like Hassan' (statement [2.09.13] para 17).

22. Seventh, the judge found 'numerous discrepancies' in the evidence. He mentions only what he considered to be one, namely, that he said that he and others prepared leaflets secretly in the school during breaks yet at interview said a friend wrote them. There was no discrepancy. The Appellant never stated that he was not required to produce some of the leaflets distributed. The production was an ongoing process.

23. Finally, as indicated, the judge made no reference at all to the background material that was before him. It was an error of law not to consider the Appellant's account in the context of the background material.

24. By consent of both parties the determination was set aside to be heard again.

Decision

The decision of the First tier Tribunal includes the making of an error on a point of law. The decision is set aside. The nature or extent of any judicial fact finding which is necessary in order for the decision to be remade is such that it is appropriate to remit the case to the First tier Tribunal in accordance with Practise Statement paragraph 7.2 to be heard afresh by that Tribunal. No findings stand.

Signed Date

Upper Tribunal Judge Conway