Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/11859/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On Wednesday 23 September 2015	**On Friday 25 September 2015**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

MR S A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Hodson, Counsel
For the Respondent: Mr Jarvis, Senior Home Office Presenting Officer

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
An anonymity direction was made by the First-tier Tribunal. As a protection claim, it is appropriate to continue that direction.

DECISION AND REASONS

Background

1. The Appellant is a national of Iran. He was encountered in the UK on 15 January 2014 and claimed asylum on the same day. His asylum claim was refused by the Respondent on 15 December 2014 and he was given notice of removal as an illegal entrant to Iran. He appealed against the Respondent's decision and his appeal was heard by First-Tier Tribunal Judge Hands and dismissed in a decision promulgated on 26 February

2015 ("the Decision"). Permission to appeal the Decision was granted by First-Tier Tribunal Judge Landes on 13 April 2015. The appeal comes before me to determine whether the Decision contains a material error of law.

2. The basis of the Appellant's asylum claim is as follows. He started to support the Green Movement in 2009 in the aftermath of the Iranian elections in that year. He attended a demonstration against the Iranian regime on 27 December 2009. Before 2009, he had not been politically active although his father had but the Appellant does not assert any risk on this account. The Appellant claims that he was arrested at the demonstration and detained for 15 days during which he was beaten and tortured. He claims to have been hospitalised as a result and has produced a report detailing his injuries which I deal with below. The Appellant was released without charge but claims that he was detained overnight in 2010 and 2011 when he was required to sign with the police. It is his case that these detentions coincided with festivals which gave rise to popular demonstrations and that the reason for his detention was to prevent his attendance at these demonstrations. He does not claim to have been mistreated on those occasions and he was released without charge.

3. The crux of the Appellant's claim of a current risk relates to events in 2013. In early 2013, the Appellant and his friend engaged in the distribution of leaflets and CDs in the run up to the 2013 elections. On 12 December 2013, the Appellant was informed by his friend's wife that his friend had been arrested and that incriminating materials had been found in their home. The Appellant immediately left his home and went into hiding. The Appellant says that his home was subsequently raided and an arrest warrant was shown to his family. He also relies on a summons issued against him and, again, I will refer to this below. It is the Appellant's case that his friend's wife does not know his friend's whereabouts and that his friend is assumed to still be in detention or to have been killed. He also says that his family have continued to be harassed on the phone by officers who continue to search for him.

Submissions

4. The Appellant's grounds run to some 30 paragraphs. The ground which led to the grant of permission is contained in paragraphs 23 to 27. This relates to the treatment of the two overnight detentions in 2010 and 2011 and the failure to make findings whether those occurred. It is submitted that this failure impacts on the Judge's finding at [24] that the Appellant had not shown any political interest between 2009 and 2013 and the finding at [27] that he is therefore not credible in relation to events in 2013, would not be of interest to the authorities on that account and would therefore not be at risk on return. The grant of permission was not however limited. Mr Hodson focussed on that ground and also the ground relating to the Judge's treatment of the documents produced, which ground is set out at [9] to [13] of the

grounds and in particular [12] and [13]. Mr Hodson made clear however that he did not abandon the remaining grounds.

5. Dealing with the first of those grounds, Mr Hodson submitted that the finding that the Appellant was not politically active between 2009 and 2013 was central to the finding of adverse credibility in relation to the events in 2013 and therefore central to the issue of whether the Appellant would be at risk on return. He referred me to [23(r)] where the Judge found that the Appellant had made no reference to events in 2010 and 2011 in relation to risk and [23(s)] where the Judge found that the Appellant had only been detained on one occasion. Those findings were in spite of the Judge noting at [14] that the Appellant said that he had been held overnight on two occasions in 2010 and 2011 to prevent his attendance at demonstrations against the regime. The Judge did not make any finding that the Appellant's claim in this regard was not credible. Mr Hodson submitted that the fact that the Iranian authorities had identified the Appellant as a person who should be required to report on those two occasions to prevent his attendance at the demonstrations indicated a continued adverse interest in the Appellant. The Appellant did not assert that he had been arrested and detained on those two occasions and had in fact corrected his solicitor's assertions that this was so in his witness statement. This showed, Mr Hodson submitted, that the Appellant did not seek to embellish his account and that his claim in relation to these two events was therefore likely to be found credible.

6. In relation to the second ground, Mr Hodson focussed on the Judge's treatment of the summons [p23 Appellant's bundle] and the medical report [p26B Appellant's bundle]. Those were dealt with by the Judge at [23(f)] and [23(g)] respectively. The Judge's findings in that regard were challenged at [12] and [13] of the grounds respectively. Mr Hodson fairly accepted that he was unable to identify a source for the assertion at [12] of the grounds that *"the Country evidence shows that the Iranian authorities often fail to follow their own procedures in judicial matters."* Mr Hodson was not responsible for the drafting of the grounds. He referred me to the US State Department report [A8] but accepted that this was in very general terms and did not in terms state that the authorities did not follow procedures when serving documents. He submitted however that the Judge had failed to follow the guidance in Tanveer Ahmed and had failed to consider the document in the round when reaching a finding whether it could be relied upon. The summons was in form consistent with the description of a summons in the Danish Immigration Service report [A36]. The fact that some particulars were not completed did not render the document unreliable.

7. In relation to the medical document, Mr Hodson pointed out that the document albeit addressed to the Commander of Police was consistent as to the date when the Appellant said that injuries had been sustained whilst he was detained and the original contained a photograph showing those injuries. The Judge appeared to accept that the Appellant had been detained in December 2009 for fifteen days and the injuries

detailed in the document must therefore have been sustained whilst the Appellant was detained at the hands of the authorities. The Judge's findings amounted to impermissible speculation.

8. In response, Mr Jarvis submitted that the only criticism which could be levelled at the Decision was that [23] was a very lengthy paragraph and that the mixture of facts, assessment of objective evidence and findings may have led to some difficulty in identifying the conclusions drawn. He submitted however that when properly considered, the Decision included findings which were open to the Judge that the Appellant had only been detained on one occasion in 2009 and would not be of further interest now. The Judge referred to the country guidance in relation to Iran at [23(l)] and properly directed herself to the issue which was whether the Appellant's profile was such that he would be of individual interest to the authorities on return. Mr Jarvis submitted that the core of the Appellant's claim to be of individual interest now was based on events in 2013 which the Judge had and had been entitled to reject as not credible. Even if the Judge failed to make direct findings whether the Appellant had been required to report in 2010 and 2011 and had been held overnight on those occasions or whether he had been mistreated in detention in 2009 (following a demonstration attended by thousands – [23(h)]), such errors would not be material since she was entitled to find the Appellant not credible in relation to events in 2013 and he would not now therefore be at risk on return. The Judge was entitled to reach that finding for the reasons stated [23(r)] based on the implausibility of the Appellant distributing material for a group which by that date was active only underground (according to the objective evidence).

9. In relation to the documents, the requirement on the Judge was to consider the documents in the round and consider the weight to be attached to those documents. The Judge was not required by Tanveer Ahmed to go so far as to find that a document is a forgery. Mr Jarvis pointed out that the summons did not say when or how it had been served. Neither was it of particular assistance to the Appellant's case in any event since it did not give specifics as to the accusation made. He pointed out that the Judge had given reasons for her finding that the fact that the summons did not contain certain information led to her giving it little weight [23(m)] and [23(n)] although he accepted that [23(n)] related to arrest warrants rather than summonses. In relation to the medical report, Mr Jarvis pointed out that this too did not really say much except that the Appellant had sustained injuries. Even if those were sustained in detention in 2009, the document did not establish that the Appellant would be at risk due to his profile now.

10. For those reasons, Mr Jarvis submitted that even if there were minor errors in the Judge's fact finding exercise, those were not material since they did not impact on the credibility finding in relation to the 2013 events.

Error of Law Decision and reasons

11. Having heard the submissions, I indicated that I reserved my decision on error of law. The representatives agreed that if I found a material error of law, the case should be remitted to the First-Tier Tribunal. Both representatives agreed that if I found a material error of law the Decision should be set aside with no findings preserved as it would be difficult to divorce the findings in relation to the individual components of the claim. Mr Hodson asked that the appeal be remitted to a First-Tier Tribunal in London as the Appellant has moved to the London area and a further hearing in North Shields would be very inconvenient.

12. After considering the grounds of appeal and the submissions and evidence, I am satisfied that there is an error of law in particular in relation to the first of the grounds above. Although the crux of the Appellant's claim is that the immediate risk arises from events in 2013, it is his case that he was known to the authorities before then as an activist from 2009 when he was detained and mistreated. That was evident, he says, from the fact that the authorities required him to report on the eve of two festivals which gave rise to mass demonstrations and that the fact of holding him overnight indicated that he continued to be of interest to the authorities as someone who it was expected would attend those demonstrations if he could do so.

13. At [14] of the Decision, the Judge records the basis of the Appellant's claim which includes reference to his claim to have been detained overnight on those two occasions. However, at [23(s)], the Judge finds as follows:-

> *"The Appellant has only been arrested and detained by the authorities on one occasion which was at a time when thousands were arrested for participating in demonstrations. He was released shortly thereafter and was not detained as those held to be responsible, radical or more involved with the organisation of such events are reported to have been.* ***There is no indication he remains known to the police for this incident."*** [emphasis added]

In fairness to the Judge, I accept that the Appellant did not describe the two events in 2010 and 2011 as detentions and did not say that he had been arrested. However, it was incumbent on the Judge to make a finding in relation to those two events since, as Mr Hodson submitted and I accept, that was material to the issue of whether he remained of interest to the authorities after the 2009 incident.

14. The error is perhaps more apparent when one reaches [27] of the Decision where the Judge firstly indicates that the Appellant said there were no reporting restrictions placed on him on release which, whilst true to some extent, does not note the requirement to report in 2010 and 2011 and reach findings in relation to the relevance of that requirement. Also at [27] and [28] the Judge finds that, even if the Appellant was arrested along with thousands of others at the demonstration in 2009, there is no evidence that this would be known to the authorities thereafter and that his name would be linked to that

demonstration. That ignores the Appellant's case that he was required to report to avoid his attendance at further demonstrations which at least gives rise to a suggestion that his name might be linked by the authorities to participation in an earlier demonstration (if credible).

15. The lack of any finding in relation to these two events also has the potential to undermine or at least explain the finding at [24] that the Appellant had not been involved in politics or shown any interest for the four years between 2009 and 2013. That is directly related to the Judge's finding that the Appellant's claim in relation to the 2013 events was not credible. I accept that further reasons are given for finding that part of the claim not to be credible at [27]. However, I am satisfied that the error in failing to make a finding in relation to the two events in 2010 and 2011 is material. A positive finding in relation to those events might impact on the credibility finding in relation to the 2013 events.

16. If the Appellant's only ground had been the second of the above grounds, I would not, on that basis alone, have found there to be an error of law. The Judge was entitled for the reasons given at [23(m)] to have regard to the objective evidence, particularly the Danish Immigration Service report referred to above in relation to the form of the summons and for those reasons to attach little weight to it. As Mr Jarvis submitted and I accept, the summons does not give detail of the accusation in any event and offers little therefore by way of corroboration except perhaps in relation to date.

17. I also consider it was open to the Judge to find for the reasons given at [23(g)] that the document in relation to the Appellant's injuries did not assist the Appellant's case. Even if that shows that the Appellant suffered injuries whilst in detention following his arrest in 2009, the fact that the document was prepared with a view (it appears) to offering him compensation for those injuries does not suggest that the authorities had inflicted the injuries. If that were the case, one would expect that the police would be prevented from investigating the claim by the regime. I also accept Mr Jarvis' submission that even if the Appellant's account of mistreatment in detention in 2009 is accepted, that does not lead to the conclusion that he would remain of interest to the authorities following his release. However, as I indicate above at [11], I do not preserve any findings in the Decision including in relation to the documents on which the Appellant relies.

18. Mr Hodson did not abandon the remainder of his grounds but in light of my finding at [11] above, I do not need to consider those grounds.

DECISION

The First-tier Tribunal decision did involve the making of an error on a point of law.

I set aside the Decision. I remit the appeal to the First-Tier Tribunal for re-hearing. No findings are preserved.

Signed Date 24 September 2015
Upper Tribunal Judge Smith