Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07328/2017

THE IMMIGRATION ACTS

Heard remotely at Field House	**Decision & Reasons Promulgated**
On 2 September 2020 *via Skype for Business*	**On 23 September 2020**

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

TM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S. Hollywood, Andrew Russell & Co. Solicitors
For the Respondent: Ms A. Everett, Home Office Presenting Officer

DECISION AND REASONS (V)

This has been a remote hearing which has been consented to / not objected to by the parties. The form of remote hearing was V (video). A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing.

The documents that I was referred to are in two appellant's bundles of 212 and 11 pages respectively, the respondent's initial and additional bundles, the contents of which I have recorded.

The order made is described at the end of these reasons.

The parties said this about the process: they were content that the proceedings had been conducted fairly.

1. I maintain the anonymity order previously made in this case, considering the well-founded fear of persecution I have found the appellant to have.

2. This is an appeal against a decision of the respondent dated 25 July 2017 to refuse the appellant's asylum and humanitarian protection claim. The respondent's decision, and the reasons for it, are set out in a reasons for refusal letter of the same date ("the RFRL").

3. The appellant originally appealed to the First-tier Tribunal. In a decision and reasons promulgated on 13 March 2019, following a hearing on 9 August 2018, First-tier Tribunal Judge S T Fox dismissed the appellant's appeal. Sitting at the Royal Courts of Justice in Belfast, I found the decision of Judge Fox to have involved the making of an error of law and set it aside with no findings of fact preserved. I directed that the matter be reheard in the Upper Tribunal, and it was in those circumstances that I heard the appellant's appeal afresh.

4. My error of law decision may be found in the **Annex** to this decision.

The appellant's case and reasons for refusal letter

5. The appellant is a female citizen of Iran born in 1980. She arrived in the United Kingdom as a student on 18 July 2015. She claimed asylum on 2 February 2017, in connection with events which she claims took place during a brief return visit to Iran in December 2015, from which she returned on 4 January 2016.

6. Until 2008, the appellant claims to have had a "good view" of the Iranian government. However, she became disillusioned in May 2008 when her brother was killed in a road accident. The driver responsible did not, in her view, receive justice or an appropriate punishment for having caused her brother's death. He was able to avoid imprisonment for reasons which, in the appellant's view, were corrupt. This led her to doubt the integrity of the Iranian authorities generally. She began to support the Green Movement, an opposition movement which evolved in response to the disputed elections in 2009. Initially, her support for the Green Movement was subtle. She accepted her parents' pleas not to protest openly in the street. Instead, she began to wear green clothes to the school where she worked as a teacher. She explained to the pupils under her care that she thought the government was corrupt and that cheating had taken place during the election.

7. The appellant claimed she was rebuked by the principal of the school, a member of the *Basij*, a volunteer morality police force, for having done so. She was called to the school's security office, the *Heraset*, and was made to sign a declaration that she would not speak in such terms to the students again. She signed it because she was frightened. When the school broke up for the summer, she was informed that she

was to be demoted from her post as a teacher to work as a lab assistant, following her behaviour. She refused. The appellant moved to India to study and would not return to Iran until August 2014. She was again offered a job as a computer lab technician, which this time she accepted. During a discussion with colleagues, she expressed views concerning the hijab, religion, and politics. She was again called to the *Heraset*, or security office, and asked to explain why she had been discussing such matters with other members of staff. She was told that she would need the permission of the authorities if she wanted to travel internationally again. A few days later, in or around May 2015, she was discharged from that post. By this stage, she had already obtained a visa to travel to this country as a student and did not inform the authorities of her departure. She was able to leave unhindered.

8. The appellant returned briefly to Iran in December 2015. During that visit, she claims to have been detained by the *Ettela'at*, physically and verbally mistreated, and prohibited from leaving the country, all on account of the views she previously manifested. She was challenged as to her commitment to Islam, and her true reasons for wearing the hijab. A friend at the airport helped her to board a flight to this country without detection, and she returned to the United Kingdom to resume her studies. The *Ettela'at* are still interested in her, she claims, and have contacted her family during her absence. Her case is that if she returns to Iran, she will either continue to manifest anti-regime political opinion, and will be persecuted, or that she will suppress expression of her political views, out of fear of the authorities. Either way, she claims, she meets the definition of a "refugee".

9. The RFRL considers that it is "unclear" as to why the appellant would seek openly to discuss her support for the Green Movement, and her opposition to the ruling regime, at school in the presence of so many members of the *Basij*. It was unclear why she would discuss matters that would have the potential to land her in trouble. It was not clear why she had been offered an alternative post as a lab assistant in the same institution where she had been reprimanded for speaking out against the authorities. Part of the appellant's case was that when she refused the post of lab assistant, she requested, and obtained, a year's leave, which she used to move to India. If, as she claimed, she had rejected the proposed reassignment, and had left her employment altogether, she would not need the permission of her employer to take a year's leave to India. She provided no documentary evidence concerning the declaration she claims she was forced to sign. Nor would it have been consistent, considers the respondent, for the appellant to return to her same employer upon her eventual return from India, in light of her claimed difficulties prior to her departure. Still less does the respondent accept that, upon resuming employment in those circumstances, the appellant would continue to manifest her views concerning the regime and the green movement.

10. The respondent also notes that the appellant had been able to leave Iran without difficulty from the authorities, despite the warnings from the *Heraset* and *Ettela'at* not to do so. It was "not clear" why the appellant sought to return to Iran in December 2015 without contacting her employers, as on her case they had contacted her family in her absence. The appellant's case was that, upon her return in December 2015, she

was taken for questioning at the airport. The officers released her but said that they would be in touch for further questioning. The appellant did not answer the withheld number calls to her phone in the days that followed; that was not accepted by the respondent, who considered that the appellant would have answered her phone, given she knew the security authorities were seeking to contact her. When, as was the appellant's case, they contacted her father and informed him that they would come to the family home, it was not consistent that the appellant had remained there, given the risk she must have known that doing so would entail.

11. The appellant, noted the respondent, wears the hijab but contends that doing so is part of her cultural identity, and that the practice dates back to Cyrus the Great, and certainly predates Islam. It was not, therefore, clear why the *Eettela'at* had any concerns about the appellant's motivation for wearing the hijab. The respondent considered that it was implausible that the appellant would put herself at risk during her detention at the hands of the *Ettela'at* by maintaining, under questioning, her opposition to the *Basij* system. It was not accepted that the appellant would put herself at further risk by claiming to hate the *Basij*.

12. The appellant's case was that she was released by the *Ettela'at* upon her father proffering some land he owned as security. The appellant had provided no documentary evidence to support that contention.

13. Finally, the respondent was concerned that, were it the case that the appellant was sought by the authorities in the manner claimed, she would not have been able to evade every checkpoint at the airport.

14. The respondent also considered that the appellant's general credibility was harmed by the delay in making a claim for asylum. Although she returned to the United Kingdom on 4 January 2016, it was not until after her visa had expired on 30 January 2017 that she claimed asylum in February of that year. Pursuant to section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, her general credibility was harmed.

Legal framework

15. The burden is on the appellant to establish, applying the lower standard of proof, that she meets the requirements of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 ("the Qualification Regulations"). The appellant must establish to the reasonable likelihood standard that she falls within the definition of "refugee" contained in Article 1(A) of the Geneva Convention as incorporated into domestic law by Regulation 2(1) of the Qualification Regulations.

Documentary evidence

16. The appellant relied on the bundle of evidence she originally prepared for the appeal before Judge Fox, plus a supplementary bundle submitted on 1 September 2020, the day before the hearing. That was a breach of the directions I gave in my error of law decision, which required any additional evidence the appellant sought to rely on to

be submitted 14 days before the resumed hearing. Mr Hollywood explained that the hearing before the tribunal had been listed at short notice, and he had been on leave when the resumed hearing date had been set. Ms Everett was content to me to rely on the additional bundle, which featured a statement from the appellant, a letter from her PhD supervisor, and the latest Amnesty International report concerning Iran. I allowed the appellant to rely on the materials.

17. On 13 March 2020, the respondent submitted an additional bundle, featuring two decisions of First-tier Tribunal in appeals brought against separate decisions of the respondent to dismiss the unconnected asylum claims made by the appellant's mother and brother. Ms Everett did not have a copy of those decisions; indeed, she was not aware that they had even been served on the tribunal. It appears that they had not been served on the appellant.

18. Unfortunately, the respondent's systems had also failed to ensure that Ms Everett was able to access the other papers in the case ahead of the hearing. She did not have access to the original First-tier Tribunal bundle. I am grateful to Mr Hollywood for scanning in the relevant pages of the bundle and emailing them to Ms Everett on the morning of the hearing. I rose to allow Ms Everett to consider the documents that had been emailed to her, which included the appellant's statement prepared for the First-tier Tribunal dated 15 May 2018, and correspondence from the security department at her school, the details of which I shall address below. Ms Everett was content to continue and did not apply for an adjournment. I considered that it would be fair to the respondent to continue, under the circumstances.

The hearing

19. The appellant gave evidence and adopted her statements dated 15 May 2018 and 1 September 2020. She was cross examined briefly. I kept a full record of all oral evidence in my record of proceedings and, of course, the hearing was audio recorded. I will summarise the salient parts of the appellant's written and oral evidence to the extent necessary to give reasons for my findings, below.

Findings of fact

20. I reach the following findings of fact having considered the entirety of the evidence in the case, in the round, to the lower standard.

21. At the outset of the hearing, Ms Everett confirmed that she had very few questions for the appellant. She noted that in the appellant's May 2018 witness statement, she had sought to provide detailed responses to each of the respondent's plausibility-based concerns set out in the RFRL. As such, Ms Everett submitted, there would be little utility in challenging the appellant on those same matters under cross examination, given she had already provided detailed written responses to the concerns of the respondent, and need not be asked again. Instead, Ms Everett put to the appellant a range of questions concerning her current political opinion, and how she would conduct herself upon her return. I will address the appellant's answers to those questions shortly.

22. In Ms Everett's submission, the main issue for my consideration was whether I accepted the respondent's plausibility-based concerns upon which the RFRL was based, or whether I considered, to the lower standard, that the appellant had demonstrated that she suffers a well-founded fear of being persecuted. Ms Everett realistically accepted that if I accepted that the appellant had manifested her views against the Iranian regime previously, or even simply that she would do so in the future, then she would have a well-founded fear of being persecuted. Ms Everett also accepted that if the appellant were to suppress expression of her political opinion on account of her fear of being persecuted in the future upon her return, then that, too, would be sufficient for her to be recognised as a refugee.

23. Although Ms Everett did not seek to rely on them, it is necessary for me to address the two decisions of the First-tier Tribunal in the case of the appellant's brother and mother that had been served by the respondent on the tribunal. As set out in my error of law decision, these had been relied upon before Judge S T Fox, although it does not appear that he ascribed any significance to their contents: see [4] of the Annex.

24. The first decision is of Judge Sangha promulgated on 6 July 2017 concerning the appellant's brother. Judge Sangha rejected the brother's claim that he faced persecution for being critical of the Iranian Judiciary Department, where he claimed to have worked as a senior official. He claimed that in meetings with members of the senior judiciary, he had been critical of the regime and of the increase in hangings. At [38], the judge gave reasons for rejecting that aspect of his case. One of those reasons was the fact that the appellant's brother had, on his own account, been able to continue working for the Department despite having been openly critical of it, for some years. The judge did not consider that the *Ettela'at* would have visited the appellant's brother at home; they would "have made every effort to have detained him" wherever he was. The judge rejected the account given by the brother that he had been demoted because of speaking out against the judiciary. The brother also claimed to have converted to Christianity, but the judge rejected that aspect of his case as there was no evidence from the church he claimed to attend.

25. At [50], Judge Sangha noted that the appellant in these proceedings, and her mother, had also made asylum claims. The judge summarised this appellant's asylum claim in very brief terms, but they are terms which are consistent with the way she has advanced her case before me. The judge then said:

> "I find it significant that the appellant, his sister and indeed his mother have made claims for asylum on dubious grounds and, in my assessment, this appears to be a blatant attempt by this family to achieve settlement in the UK by claiming asylum by whatever means they can."

26. The appellant's mother's appeal against the refusal of her asylum decision was withdrawn at the hearing, as noted by Judge Ghani in a decision promulgated on 22 August 2017. There was no analysis in that decision which pertained to this appellant; Judge Ghani simply quoted from the findings of Judge Sangha.

27. Although Ms Everett did not seek to make submissions based on these decisions, it is clear that there has been a prior judicial finding of fact that this appellant lacks credibility, which I must consider.

28. In AA (Somalia) v Secretary of State for the Home Department [2007] EWCA Civ 1040, the Court of Appeal considered the line of authority established by Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka * [2002] UKIAT 00702. Specifically, the court addressed the position where, as here, an unchallenged decision makes findings of fact concerning an appellant in subsequent, different, proceedings. At [29], Lord Justice Hooper summarised his survey of the authorities in these terms:

> "In cases where the parties are different, the second tribunal should have regard to the factual conclusions of the first tribunal but must evaluate the evidence and submissions as it would in any other case. If, having considered the factual conclusions of the first tribunal, the second tribunal rationally reaches different factual conclusions, then it is those conclusions which it must apply and not those of the first tribunal. In my view Ocampo [[2006] EWCA 1276] and LD [(Algeria) [2004] EWCA Civ 804] do not stand in the way of this simple approach. Both cases make it clear the first decision is not binding and that it is the fundamental obligation of the judge independently to decide the second case on its own individual merits."

29. The difficulty for the respondent in seeking to rely on the findings of Judge Sangha against this appellant concerning her present asylum claim are as follows.

    a. First, the asylum claim advanced by this appellant is not based on the same facts as the claim advanced by her brother. I accept that there are parallels in the way in which each sought to put their case, namely they each claim to have spoken out against the regime in the course of their employment, and each claim to have attracted the adverse attention of the *Ettela'at* as a result. However, there the similarities end. Judge Sangha found that the appellant's brother continued in his employment with the Judiciary Department for some time. By contrast, the appellant in these proceedings claims that she was almost immediately demoted, and then took an extended leave of absence to study overseas. In any event, the appellant does not claim to have worked for the Judiciary Department, nor did she claim to have spoken out against a rise in hangings or other such matters of concern. She claims to have worked in a school, as a teacher, and to have been reprimanded for manifesting her political opinion to the students and her colleagues.

    b. Secondly, although Judge Sangha considered that this appellant had conspired with her brother and mother to advanced spurious asylum claims in order to pursue settlement in this country, Judge Sangha gave no reasons for finding the claim of the appellant in these proceedings to lack credibility.

    c. Thirdly, the documentary and other evidence outlined by Judge Sangha was not the evidence that the appellant in these proceedings now seeks to rely upon. Put simply, the present matter is founded on different facts, supported by different evidence.

d. Fourthly, the appellant had no opportunity to make submissions on her own behalf, and nor did she enjoy the ability to apply for permission to appeal against the adverse findings made in relation to her.

e. Fifthly, it is difficult to see how the findings of Judge Sangha were not entirely gratuitous in relation to the asylum claim of this appellant. By the time Judge Sangha heard the appellant's brother's appeal, on 16 June 2017, the respondent had not issued a refusal decision in this appellant's case. The judge had not heard any evidence about her claim. Judge Sangha did not have the benefit, as I have, of the documentary evidence relied upon by the appellant, nor had he heard the appellant give oral evidence. It was not necessary to purport to adjudicate upon this appellant's asylum claim in the context of dismissing the appeal of her brother which (as the judge noted in the brief summary of the appellant's case at [50]) was founded on different facts, albeit with structural similarities.

f. Sixthly, although Judge Sangha's decision was promulgated on 6 July 2017, some three weeks ahead of this appellant's asylum refusal decision, the respondent did not rely on the adverse findings of Judge Sangha in the RFRL in the present matter.

30. For the above reasons, I find that the decisions of Judge Sangha and Judge Ghani are of neutral relevance to the decision I must reach concerning the credibility of appellant's own asylum claim. To the extent that Judge Sangha made findings concerning the general personal credibility of this appellant in her capacity as a witness in a different appeal, that is a factor I must take into account, in the round, as part of the evidence under consideration in the present matter, in light of my analysis above. It may well be that the appellant exaggerated her evidence to support her brother's case. Even genuine asylum seekers may seek to bolster their own cases by exaggerating the truth, or by being otherwise deceitful. People lie for a variety of reasons. It does not necessarily mean that every word they say will always be untrue, whatever the context. Pursuant to AA (Somalia), my role is to assess the evidence before me, taking all factors into account.

31. One factor that is of relevance from the decision of Judge sangha is the similarity between the case advanced by the appellant's brother, and that she advances before me. There are considerable similarities, as I note above. That is a factor which causes some concern, and perhaps was the root of Judge Sangha's observation that the family had colluded together. However, as I also note above, there are crucial differences between the two accounts. It does not necessarily follow that there is no shred of truth in the account given by this appellant. It may well be that there was an element of collusion, given the overlap in the core elements of the asylum claims advanced by the appellant and her brother; by contrast, the appellant's brother may alternatively have fabricated his account on the basis of what he knew happened to his sister. I readily accept that there is a degree of uncertainty which hovers over this aspect of this appellant's asylum claim. As the Court of Appeal noted in Karanakaran v Secretary of State for the Home Department [2000] 3 All E.R. 449 at 459, the lower standard of proof entails a more positive role for uncertainty, and, at 469, that

matters should only be excluded from consideration where there is no real doubt that they did not take place. The impact of Judge Sangha's decision is that elements of this appellant's case occupy the uncertain, yet potentially positive, territory of the lower standard of proof.

32. I find that the appellant has provided a consistent and detailed account of the difficulties she experienced on seeking to manifest anti-regime beliefs in Iran. She writes in her statement in considerable detail of the events leading up to her detention, and the steps her father had to take to secure her release. There is no challenge by Ms Everett to either the internal consistency of that account, or its consistency with the account the appellant gave, in her substantive asylum interview. Indeed, although the statement is now some two years old, Ms Everett did not seek to cross-examine the appellant against its contents.

33. I turn now to the documentary evidence relied upon by the appellant. I will analyse each document in turn, before ascribing weight to them as part of my overall, global, assessment of the evidence, in the round.

34. In 2009, the appellant claimed she was working as a teacher. She has provided English translations of what appears to be an initial certificate of qualification, dated 9 October 2004, and two certificates of commendation from the Ministry of Education, dated 1 May 2008 and 26 April 2009 respectively. She has also provided a subsequent commendation from a "Teacher Education Centre" dated 2 May 2009. These documents are consistent with the overall narrative advanced by the appellant concerning her qualifications as a teacher at the outset of her career.

35. The next documentation of significance is dated 5 April 2015. It is a detailed HR-style document which is categorised at point 18 as a "change in salary and benefits". It describes the role of the appellant is being "in charge of laboratory". In Mr Hollywood's submission, this document records the appellant's demotion from her role as a teacher to that of a laboratory assistant. That is consistent with the case advanced by the appellant that, following the four years she spent in India, prior to her return in August 2014. At page 2 of her first statement, the appellant writes that she sought a new role at a different school, and that she was offered a job as a lab technician. The next significant event in the appellant's narrative is that she was dismissed from this rule, in May 2015. While there is no documentary evidence which supports the claimed May 2015 dismissal, the documentary evidence I have outlined so far is consistent with the overall account the appellant has provided.

36. The principal incident which the appellant claims demonstrates that she is at risk of being persecuted upon her return took place in December 2015. The appellant gives a detailed account of being taken aside for questioning at the airport and being released with the prospect of follow-up attention from the *Ettela'at*. She has provided what appear to be messages sent by the *Ettela'at* on 27 December 2015 asking her to report to offices of the *Ettela'at*. Those messages are consistent with the case advanced by the appellant.

37. The appellant claims she was later taken in for questioning by the *Ettela'at* and hit repeatedly by a female officer. This account is consistent with the background materials, which demonstrate that the Iranian attitude to any suggestion of dissent or opposition can be extreme, and that the regime is highly sensitive. It is also consistent with the well-documented accounts of mistreatment in Iranian detention.

38. The operative reasons relied upon by the respondent for refusing the appellant's asylum claim were, as Ms Everett noted, plausibility based. It is necessary to recall that decision-makers should be cautious before purporting to step into the shoes of an applicant for asylum, or those of an appellant in an asylum appeal, given the very different cultural contexts and backgrounds involved. In Y v Secretary of State for the Home Department [2006] EWCA Civ 1223, Lord Justice Keene observed at [25] that a judge:

> "… should be cautious before finding an account to be inherently incredible, because there is a considerable risk that he will be over influenced by his own views on what is or is not plausible, and those views will have inevitably been influenced by his own background in this country and by the customs and ways of our own society …"

A decision maker is not required to suspend judgment ([26]), but instead must "look through the spectacles provided by the information he has about conditions in the country in question" ([27]).

39. Many of the reasons given by the respondent for refusing the appellant's asylum claim seek to re-characterise the notion of what is reasonable by reference to the decision maker's experience. The respondent did not seek to rely on background materials to establish the plausibility-based concerns set out in the RFRL. For example, there are no background materials suggesting that those unhappy with the regime in Iran would always suppress their beliefs to the contrary. By contrast, the background materials relied upon by the appellant are replete with examples of those who have manifested their anti-regime beliefs in Iran, and who have been suppressed as a result. The extract from the Amnesty International Iran 2019 report relied upon by Mr Hollywood records a pattern of protesters being crushed by the authorities. Human rights, workers and labour rights, environmental and political activists have all suffered persecution in Iran over the last year. At least 16 people who signed open letters demanding fundamental changes to the country's political system have been imprisoned over the last year. The background materials demonstrate that there is an active, albeit suppressed, climate of political opposition to the Iranian government. There is simply no support for the suggestion that the atmosphere is so oppressive, and the risk to protesters is so great, that no person would ever seek actively to manifest their anti-regime beliefs. The respondent's concerns that this appellant would not seek to do so involves an attempt to re-characterise what is reasonable by reference to the subjective standards of the decision-maker, and goes against well-documented examples of the conduct of protestors in Iran.

40. At page 4 of her statement, the appellant contends that, if this concern of the respondent were valid, "no political protest in unjust or authoritarian societies would ever take place." This objection of the respondent must fall away.

41. In a statement, the appellant writes that, in contrast to the suggestion made by the respondent, the practice of the Iranian authorities would be to offer a demotion to an initially low level activist, in an attempt to exert continuing pressure upon them. That is a coherent explanation in response to the respondent's concern that it was inconsistent for the appellant to be offered a demotion as a laboratory supervisor, rather than being dismissed altogether. At that stage in the chronology of the appellant's case, she had not yet attracted the worst of the adverse attention which she claimed she would later experience upon her return in December 2015.

42. I find that the fact the appellant did not contact her employer upon her return in December 2015 to be nothing to the point. Put simply, it is not clear why would she contact them, especially if she had experienced, on her account, a crescendo of difficulties culminating in her demotion.

43. Similarly, in relation to the respondent's concerns that the appellant did not take "withheld number" calls during the period following her release from questioning at the airport, but prior to her re-detention by the *Ettela'at*, again, it is difficult to see why an individual in this appellant's situation would voluntarily take such calls. Also, it is nothing to the point that she returned to her home address. To suggest the appellant should have done otherwise, before the worst of the treatment she now claims took place had occurred, would be to attempt to re-characterise the appellant's actions by reference to subjective notions of what is reasonable. There is nothing in the background materials to suggest that it is possible to evade the *Ettela'at* in Iran completely, so the fact that the appellant appears to have resigned herself to the possibility of the *Ettela'at* visiting her at home is not inconsistent with the background materials.

44. I also consider that the RFRL has misunderstood the appellant's explanation concerning the questioning she received over the hijab. Her case is not that she was challenged over *not* wearing it, but that she was challenged as to what her *motivations* were for wearing it. Her case is that she wore the hijab for cultural reasons, and that women of Persia had done so for some 2,500 years, predating the provenance, rise and influence of Islam. It appears that the *Ettela'at* were concerned to ensure that the true reason she wore the hijab was as a matter of adherence to its view of the requirements of the Islamic faith upon women. What mattered was not the outward signs of conformity with the requirements of Islam, which is the respondent's erroneous understanding of the appellant's evidence, but whether she did save for genuine reasons of religious observance. This objection of the respondent falls away.

45. The appellant has given a detailed account of how she was able to leave the airport upon her return to the United Kingdom in January 2016. She claims she was instructed by a contact to purchase a business class ticket, which gave her access to one of the airport lounges, evading some of the normal checks.

46. I take into account the fact the Judge Sangha found the appellant to lack credibility, and that there has been a delay in the making of her claim. Had this been an asylum claim made immediately upon her return to the United Kingdom in January 2016, there would be no such concern over her credibility. However, by waiting until further in 2017, doubts do arise over the credibility of the entire account. The explanation given by the appellant is that she only took legal advice towards the end of 2016 as she approached the expiration of her visa. At the time, the appellant had a visa, and had no operative reason to approach the authorities in this jurisdiction. Nevertheless, she should still have done so at the earliest opportunity, and her failure to do so does harm her credibility to an extent.

47. I accept that there is no documentary evidence concerning the declaration she signed in which she undertook not to speak out against the regime in the future, but it was no part of the appellant's case that she was given a copy of the declaration to retain for her own records. Oppressive regimes do not necessarily act in a rational way, or in the same way an authority in a western democracy could reasonably be expected to act. Similarly, the suggestion that her father had to sign over the title to some land to the Iranian state has not been substantiated by documentary evidence, despite detailed letters from the appellant's father featuring in the original bundle provided to the first-tier tribunal. I do not consider that to be a fatal omission as, again, there is no suggestion that the process entailed the creation of documentation which would necessarily be retained by the appellant's father.

48. The documents relied upon by the appellant as analysed earlier in this decision are consistent with the overall case that she advances, and their reliability has not been challenged by the respondent.

49. The account the appellant gave under cross examination of her maintained political opinion in opposition to the Iranian regime, and its approach to women's rights, was entirely consistent with the appellant's account of having become disillusioned with the regime in around 2008. She said she would seek to continue to manifest her anti-regime views "to everyone around me you can understand".

50. Drawing this analysis together, while I accept that there are elements of uncertainty in the appellant's case, those concerns are not sufficient to dispel all real doubt in my mind about the likelihood of the appellant's case being reasonably likely to be true. There are rational explanations for the plausibility-based concerns of the respondent, and it is not necessary to suspend judgment to accept the appellant's account. I find that it is reasonably likely the appellant spoke out against the Iranian regime for the reasons she claimed, and that she was demoted in 2015 as a result. At this stage, her status was that of a low-level irritant to the authorities, who had taken no steps actively to prevent her departure from the country. The credibility concerns and the uncertainty of certain aspects of the appellant's account do not have the effect of depriving it of its overall credibility such that I have no real doubt that it did not take place. Bearing in mind the low standard of proof applicable to these proceedings, I find that it is reasonably likely that the events the appellant claimed to have taken

place in Iran, culminating in the physical mistreatment she experienced in December 2015, did take place.

51. I find that it is reasonably likely that the appellant would seek to manifest her anti-regime views upon her return, and that, as Ms Everett accepted, if she were to do so again, she would be reasonably likely to be persecuted by the regime as a result. Her physical mistreatment at the hands of the *Ettela'at* in December 2015 amounted to persecution on grounds of her pro-Green Party political opinion, and is, therefore, a serious indication of likely future persecution.

52. For the above reasons, I find that the appellant satisfies the definition of "refugee" contained in the Qualification Regulations on account of her anti-Iranian regime political opinion.

53. This appeal is allowed on asylum grounds.

Notice of Decision

This appeal is allowed on asylum grounds.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Stephen H Smith* Date 18 September 2020

Upper Tribunal Judge Stephen Smith

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a whole fee award of £140 for the following reason. The appellant was successful in the appeal.

Signed *Stephen H Smith* Date 3 September 2020

Upper Tribunal Judge Stephen Smith

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07328/2017

THE IMMIGRATION ACTS

Heard at the Royal Courts of Justice, Belfast	**Decision & Reasons Promulgated**
On 13 February 2020	
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Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

TM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S. Hollywood, Andrew Russell & Co. Solicitors
For the Respondent: Mr A. Govan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iran, born in 1980. She appeals against a decision of First-tier Tribunal Judge S T Fox promulgated on 13 March 2019, following a hearing on 9 August 2018, dismissing her appeal against the decision of the respondent dated 25 July 2017 to refuse her asylum and human rights claim.

Factual background

2. The appellant worked at a school in Iran. She wore green clothes to school and spoke openly about the Green Movement, an opposition party. She was overheard

discussing whether women should have to wear the Hijab and whether renouncement of Islam should be possible and was later dismissed. The appellant came to the United Kingdom on a student visa in July 2015, returning briefly to Iran in December 2015. During that brief return visit, she claims to have been detained by the Ettela'at, mistreated, and prohibited from leaving the country, all on account of the views she previously manifested. A friend at the airport helped her to leave, and she returned to the United Kingdom to resume her studies. The Ettela'at are still interested in her, she claims, and have contacted her family during her absence. She claims asylum on the basis of her imputed political opinion.

3. Judge Fox dismissed the appeal on credibility grounds. However, in doing so, he did not consider certain documents in the appellant's bundle. These included notices issued to her upon her by the school where she worked in response to her behaviour, a public notice issued against her by the Department for Education, a letter from her father detailing the attention of the authorities, and a notice from the Haraset (security office overseeing the education sector) compelling her to attend an investigation into her behaviour, issued during her December 2015 return to the country.

4. Judge Fox had been invited by the presenting officer who appeared before him to consider two separate decisions of the First-tier Tribunal in different cases which, it was said, undermined the appellant's credibility. This is what the judge said about those decisions:

> "[43] [The presenting officer] has submitted two (2) immigration decisions [reference numbers given] that he claims wholly undermines [sic] the appellant's credibility. He seeks to rely on these decisions. I resisted the temptation to read these decisions until after I had considered my findings in this appeal. As [the appellant's previous representative] correctly states these are separate appeals. I note the appellant's involvement in the relevant findings. There is no challenge to these findings particularly as they impact upon the appellant. The view on her credibility appears to reflect my own."

Permission to appeal

5. Permission to appeal was granted by First-tier Tribunal Judge Pedro on all grounds. The grounds as originally advanced contended that the judge made an error of fact when, at [31], the judge found that the appellant had been able to return to Iran from the UK without significant difficulty in December 2015; that the judge was wrong to conclude that the appellant was an "economic migrant"; that the judge failed to consider the documents listed at paragraph 3, above; and that the judge failed to have regard to the relevant country guidance.

6. Mr Hollywood was only instructed shortly before the hearing. He sought permission to rely on two additional grounds of appeal. First, the judge's handling of the linked cases at [43] was procedurally unfair and denied the appellant the opportunity to make meaningful representations, or to know what material influenced the outcome of the appeal. Secondly, the delay between the judge hearing the case in promulgating his decision amounted to an error of law.

Discussion

7. It was common ground at the hearing that the judge failed to have regard to certain key documents included in the appellant's bundle. I am grateful to Mr Govan for his realistic concession, which I consider to have been appropriately made.

8. Failure to have regard to material evidence is an error of law. The documents under consideration went to the heart of the appellant's case. The judge simply did not consider them. His entire credibility assessment was flawed on account of his failure to consider these key documents.

9. It is not necessary for me to reach a view on the other grounds of appeal, or to consider Mr Hollywood's application to amend the grounds of appeal, in light of the respondent's concession that the decision of Judge Fox involved the making of an error of law.

10. In conclusion, therefore, I find that the decision of Judge Fox involved the making of an error of law, and is set aside, with no findings preserved.

11. In view of the nature of the appellant's protection claim, I consider that it is appropriate to make a direction for anonymity.

Notice of Decision

The decision of Judge Fox involved the making of an error of law.

I set aside the decision of Judge Fox, with no findings preserved. I direct that the matter be re-heard in the Upper Tribunal, on the first available date.

If the respondent wishes to rely on other decisions of the First-tier Tribunal which she contends are relevant to this case, she must serve copies of those decisions on the appellant within 14 days of being sent this decision.

The appellant may rely on whatever additional evidence she considers to be appropriate, which must be served on the tribunal within 14 days of the matter being reheard.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Stephen H Smith* Date 2 March 2020

Upper Tribunal Judge Stephen Smith