Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11211/2019

THE IMMIGRATION ACTS

Decided On the Papers at Field House	**Decision & Reasons Promulgated**
On 11 November 2020	**On 3 February 2021**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

FARID [D]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant is a national of Iran. He appealed to a Judge of the First-tier Tribunal against the Secretary of State's decision of 13 November 2019 refusing his claim for asylum.

2. The judge dismissed his appeal. Permission to appeal to the Upper Tribunal was refused by a Judge of the First-tier Tribunal, but subsequently permission was granted by an Upper Tribunal Judge.

3. Subsequently directions were made by the Vice President, on 19 August 2020, indicating the provisional view that it would be appropriate to determine without a hearing the questions of whether the making of the

First-tier Tribunal's decision involved the making of an error of law and if so whether that decision should be set aside.

4. In the meantime a Rule 24 response dated 30 July 2020 was received from the respondent and submissions were received from the appellant on 28 August 2020 accepting that the issues of whether or not there was an error of law and whether the decision should be set aside was a matter that could properly be dealt with on the papers.

5. I am satisfied that both sides have had a full opportunity to make submissions on the points raised in the directions and with regard to the merits of the appeal and consequently that it is appropriate to proceed to determine the matter on the papers.

6. The appellant claims to be at risk on return to Iran on account of the fact, which is accepted by the respondent, that he has given up his belief in Islam.

7. The appellant claimed that he came to the adverse attention of the authorities in August or September 2018 when he had an argument with his father, overheard by a high-ranking member of the Ettela'at, with regard to him taking his son to a religious festival, which the appellant did not want him to do. A few months later someone who overheard the conversation, Mr Mohktari, came to the appellant's workplace with two men with walkie talkies and the appellant believed they were coming to arrest him, so he fled. He said he was later told by his father that they had seized his laptop and discovered anti-Islamic material on it and he was also told that an arrest warrant had been issued against him. He and his wife and son fled Iran in the same month and arrived in the United Kingdom on 5 May 2019 and claimed asylum.

8. The appellant said that since he had come to the United Kingdom his brother-in-law had ended his marriage with the appellant's sister on account of the shame he had brought to the family as an apostate. There was an email provided by his sister along with her divorce documents and she said that as a result of her husband's pressures and threats she was compelled to forego her marriage portion in return for him agreeing to stop his threats and not to mention the appellant's apostasy.

9. In his oral evidence the appellant said his father had been asking him why he was not allowing his son to attend the religious event at the mosque that day. He expected him to attend with his son but he never came and it was a religious event that occurred every year. He had not gone in the previous year. He understood that the conversation with his father and Mr Mohktari led Mr Mohktari to say that if the appellant's son was not attending it was probably because he did not believe. His father, he said, had agreed that that was the case. There had been questions in the past with regard to him not attending the mosque and Mr Mohktari would have

been among the crowd and would have heard of those conversations and events.

10. He had subsequent conversations with Mr Mohktari, who contacted him to give him some “fatherly” advice on two occasions, coming to his place of work to offer advice and on the following occasion threatening him.

11. In addition, his wife had been threatened and insulted in the street. These threats, he said, would have been on account of him being an atheist. His father would not have any influence over Mr Mohktari not to take action against him because it was a religious matter. Other people did not attend the mosque, but he was singled out since he came to the attention of the authorities because of Mr Mohktari. He said that if an individual changed his religion the punishment was death.

12. His wife gave evidence and confirmed what she was told had occurred in the telephone conversation between the appellant and his father. She was not sure whether her son had attended that ceremony in the previous year. The threats made against herself by Mr Mohktari were around February 2019 when she was telephoned and told to tell her husband to become a believer, otherwise there would be terrible consequences including her son being forcibly adopted. Windows had been broken after the telephone calls but she could not remember when this had happened.

13. The judge was not persuaded that the appellant or Mr Mohktari would have behaved in the way he claimed. He considered that the appellant’s father’s first instinct would have been to dissimulate or in some other way persuade Mr Mohktari that he had misunderstood what he had heard in the course of the telephone conversation. Leaving the Muslim faith was such a shameful and indeed unlawful act that it was not credible that his father would have openly acknowledged that he had abandoned the religion. He said that in light of the fact that the child had not attended the ceremony in the previous year there was no legitimate expectation on the part of his grandfather that he would be brought to the mosque in early 2019: hence he found the alleged telephone conversation from outside the mosque to be unlikely. He attached little weight to the divorce documents, finding it implausible that mere association with the family would lead to divorce and that the divorce might well have occurred in the ordinary circumstances of marital breakdown, and he was struck by the fact that the appellant’s sister consented to the proceedings. He considered that the appellant’s wife’s evidence was vague and unclear with regard to the central event of the telephone conversation and associated events and he did not find credible her evidence with regard to her claimed lack of contact with her own family. She had said that because she did not know what her mother’s reaction would be and they knew her husband was an apostate and she did not consider herself a Muslim anymore and she was fearful as to how her sisters and mother might react and they might not want to speak to her at all. The judge noted background evidence including reference in the CPIN to the law

prohibiting Muslim citizens from changing or renouncing their religious beliefs and the various sentences specified in the penal code. The judge found the claim to lack credibility and therefore dismissed the appeal.

14. In the Rule 24 response it is argued on behalf of the respondent that there is no contradiction in the findings at paragraph 64 of the decision as no explanation was given as to why the grandfather expected the appellant to bring his 12 year old son to the mosque when he did not attend the ceremony twelve months previously. He had been asked at paragraph 42 about whether the appellant was expected to attend and answered no. Paragraph 64 was to be read alongside all the negative findings made by the judge and even if the judge had misunderstood that part of the evidence it was not material to the outcome of the appeal. In addition, where the evidence of the appellant's wife was read together with the appellant's evidence it made perfect sense. The decision was sound and open to the judge to arrive at.

15. In the written submissions put in on behalf of the appellant, developing the points made in the grounds of appeal, it is argued that the judge engaged in conjecture in not accepting that the appellant's father would acknowledge that his son had left his religion and would have sought to persuade Mr Mohktari that he had misunderstood the content for him to avoid any suspicion of the appellant having left his faith. The point is made that it is the duty of a Muslim believer to encourage a non-believer back to the faith, citing background evidence in this regard, and it is argued that it was fair to infer that the appellant's father would expect his trusted friend to make a similar approach.

16. It is also argued that the appellant's position was that he stated his father did expect him to be at the mosque for a religious event and that there was therefore, contrary to what the judge had found, a legitimate expectation that he would attend, albeit he had not attended the previous year. The previous solicitor's handwritten notes from the hearing were produced in support of this. The judge had misrecorded material evidence. In his witness statement the appellant had explained his non-attendance at the mosque and the reasons for this and the judge's findings contradicted the evidence heard and were therefore materially erroneous.

17. The judge had also at paragraph 65 offered no explanation for his findings that association with a family of apostates would be a serious issue in Iran but simply said that it would not lead to divorce. The findings in this regard were inadequately reasoned. Apostasy was not tolerated in Iran. The judge had not taken into account the evidence from the appellant's sister explaining the circumstances in which the divorce took place.

18. In addition, the judge had not said what parts of the appellant's wife's evidence were lacking in specificity, detail or clarity, pointing out that she had adopted her detailed statement and had given oral evidence which

was coherent. As regards her lack of contact with her own family after the death of her father, it was argued that this had no bearing on the core of the appellant's claim.

19. The judge had failed to consider the appellant's evidence that Mr Mohktari had found anti-Islamic content on his computer. In light of all the other evidence it was irrelevant that he had not expressed his views publicly. The appellant faced a real risk on return and the decision should be set aside and remitted to a different judge in the First-tier Tribunal.

Discussion

20. On balance I consider that the judge did err in law as is contended. His conclusion as to how the appellant's father would have reacted when learning from the appellant over the telephone that his son was not going to attend the ceremony, in the presence of a friend who was a senior Ettela'at official, was essentially conjectural. In addition, I accept that the judge misrecorded the oral evidence with regard to the appellant's father's expectations of his attendance at the mosque for the religious event. There is an absence of reasoning for the non-acceptance of the reasons for the appellant's sister divorce. She had provided evidence in this regard as had the appellant, and the judge simply speculated as to the reasons for this and did not attach appropriate weight to the evidence that was provided on the point. I also consider that the judge did not properly explain why he found the evidence of the appellant's wife to be vague and unclear. Certainly, there were points in her evidence where she was unable to provide clarity, for example with regard to the conversation between her father-in-law and the appellant, but that is hardly surprising since she was absent from that meeting. There is a good deal of detail in her evidence of relevance. I agree that the absence of contact between the appellant's wife and her family after her father's death is essentially immaterial. The point about the failure to refer to the evidence on the computer is by the way, since the judge rejected that as part of the adverse credibility findings. Certainly, it is a matter on which findings in due course will need to be made, but given that the judge did not accept that the conversation claimed to have taken place did occur, then it must follow from that that he did not accept that Mr Mohktari had found anti-Islamic content on the appellant's computer. However, taken as a whole, I consider that the challenge to the judge's credibility findings is made out and as a consequence, the appeal is allowed, and the extent of the necessary re-making is such that it is remitted for a full rehearing in the First-tier Tribunal in Glasgow before a judge other than Judge Gillespie.

Notice of Decision

The appeal is allowed to the extent set out above.

No anonymity direction is made.

Signed Upper Tribunal Judge Allen Date 20 November 2020