



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: DA/00954/2013

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice

On 9 June 2014

Determination

Promulgated

On 16th June 2014

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

and

MR AMIR AMIRANI

Claimant

Representation:

For the Respondent: Mr G Jack, Home Office Presenting Officer

For the Claimant: Mr S Kerr, Karis Solicitors

DETERMINATION AND REASONS

1. The Secretary of State appeals with permission against the determination of the First-tier Tribunal (First-tier Tribunal Judge Abebrese, and Dr P L Ravenscroft) in which they allowed the claimant's appeal against a decision by the Secretary of State that the claimant is a foreign criminal who must be deported from the United Kingdom as he has been convicted

of false imprisonment and inflicting grievous bodily harm to which he was sentenced to a term of imprisonment of six years.

2. The claimant was born on 24 September 1990 and is a citizen of Iran. It is his case that his deportation from the United Kingdom is not in accordance with Immigration Rules and/or contrary to the Human Rights Convention, specifically articles 3 and 8. He has lived in the United Kingdom since the age of 6 and his family have been naturalised as British citizens. He states that he has turned his life around and would not be at risk of reoffending.
3. The Secretary of State's case is set out in detail in the refusal letter of 10 May 2013. In summary she considered that the claimant would not be at risk of persecution on return to Iran either on account of his mother's activities before she left or because he would be forced to do military service; and, she was not satisfied that either would put him at risk on return to Iran, finding no sufficient evidence that he would come to the adverse attention of the Iranian authorities on return. She considered also, having had regard to paragraph 398 of the Immigration Rules, that it would not be unduly harsh for him to return to Iran.
4. On appeal the First-tier Tribunal found that there was nothing on the facts of the case that would put the claimant at risk on return [18] and that he would not be at risk of treatment contrary to Article 3 of the Human Rights Convention if returned to Iran [19].
5. The First-tier Tribunal set out paragraph 398 of the Immigration Rules noting[12], [13] that it would only be in exceptional circumstances that a person's right to family and/or private life would outweigh the public interest in seeing a person deported who had been sentenced to a period of imprisonment for at least four years. The Tribunal found that:-
 - (i) on the evidence, the claimant had satisfied the provisions of paragraph 276ADE because he spent more than half his life in this country and has established a private life under the Rules;
 - (ii) in the alternative that he met the requirements of Article 8 in the test set out in **Razgar** on the basis of proportionality for the same reasons as set out previously.
6. The respondent sought permission to appeal on the grounds that the First-tier Tribunal had erred in law:-
 - (i) by allowing the appeal under paragraph 276ADE of the Immigration Rules which is not applicable in deportation appeals;
 - (ii) in failing to give any consideration to the public interest which, given the severity of the offence committed, was significant and in respect of which the panel's findings were inadequate [4];

(iii) by failing to take into account the public interest and to assess the claimant's ties to Iran which is indicative that the findings with respect to proportionality were fundamentally flawed [6].

7. On 8 May 2014 First-tier Tribunal Judge Hemingway granted permission on all grounds.

Did the decision of the First-tier Tribunal involve the making of a material error of law?

8. Mr Jack submitted that the Tribunal's consideration of paragraph 398 was inadequate and in their finding of proportionality [23] there is insufficient indication that the Tribunal had taken into account the public interest in this case or directed themselves properly as to the facts to be taken into account; nor was there any indication of what they had considered on the facts of this case were exceptional such that the deportation would be disproportionate.

9. Mr Kerr relied on his skeleton argument submitting that the panel had properly set out the law in their determination and that whilst they had not expressly referred to either **Maslovv Austria** [2006] ECHR 546 or **Masih (deportation – public interest – basic principles) Pakistan** [2012] UKUT 00046 (IAC) it was evident from their consideration of these matters that this had been taken into account. He did, however, accept that there is a difficulty in arguing that the Tribunal had given proper weight to the public interest when, as here, they had already found that the claimant fell within the terms of the Immigration Rules.

10. In reply Mr Jack submitted that there had been no real consideration of paragraph 398 of the Immigration Rules. He submitted also that no account had been taken of the claimant's history of offending. He submitted this case could be distinguished from **Maslov** given that the most serious offence had been committed when the claimant was an adult.

11. Paragraph 276ADE(1) provides as follows:-

276 ADE. The requirements to be met by an applicant for leave to remain on the grounds of a private life in the UK are that at the date of application, the applicant

(i) does not fall for refusal under any of the grounds in section S-LTR 1.2 to S-LTR 2.3 and S-LTR 3.1 in Appendix FM; and..

12. S-LTR in turn provides that:-

S-LTR 1.1 the applicant will be refused limited leave to remain on grounds of suitability of if any of paragraphs S-LTR 1.2 to 1.7 apply

S-LTR 1.2 the applicant is at the date of application the subject of a deportation order

S-LTR 1.2 the presences of the applicant in the UK is not conducive to the public good because they have been convicted of an offence for which they have been sentenced to imprisonment for at least 4 years.

13. It is abundantly clear that as the claimant in this case had been sentenced to a term of imprisonment of four years and is the subject of a deportation order that paragraph 276 ADE could not apply. It was a serious error of law on the part of the Tribunal to allow the appeal on that basis.
14. While the Tribunal held that, in the alternative, the requirements of Article 8 would be met in any event, it is not evident that they had had proper regard to the significant and weighty public interest in deporting foreign criminals particularly those sentenced to a term of imprisonment of over four years. Further, it is difficult to see how proper weight to the public interest could have been considered by the Tribunal when, as here, they wrongly considered the claimant was entitled to remain under the Immigration Rules.
15. The fact-finding of the Tribunal is confined to the most part to those findings necessary pursuant to paragraph 276ADE but there is insufficient evidence to show that the panel had considered those matters which would have needed specific findings with regard to paragraph 398.
16. Accordingly, I am satisfied that the errors of law in this case are material. As both parties were agreed, this is a case which requires a further extensive fresh fact-finding exercise and thus it that it is appropriate to remit the appeal to the First-tier Tribunal to be reheard afresh on the issue of deportation.
17. There has been no cross-appeal by the claimant in respect of the finding that his removal would not be in breach of the United Kingdom's obligations with regard to the refugee convention or article 3 of the Human Rights Convention and the errors made by the First-tier Tribunal with respect to deportation do not infect those findings.
18. That said, I am aware that there is pending in the Upper Tribunal a appeal which, when promulgated, is likely to give new guidance on the risks of return to Iran. In the circumstances, it would not therefore be appropriate to restrict the basis on which this appeal is remitted, and thus I direct that none of the findings of fact reached by the First-tier Tribunal shall stand.

Summary of Conclusions

1. The determination of the First-tier Tribunal did involve the making of an error of law and I set it aside.

2. The matter is remitted to the First-tier Tribunal to make a fresh decision on all issues. None of the findings of fact reached by the Tribunal are to stand.
3. The parties should be aware that the Upper Tribunal expects to hand down within the next few months a new country guidance decision regarding risks on return to Iran. It is advisable that that is taken into account when listing the matter for rehearing.

Signed

Date

Upper Tribunal Judge Rintoul