Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/00465/2015

THE IMMIGRATION ACTS

Heard at Bradford	**Decision and Reasons Promulgated**
On 3rd September 2015	**On 14th September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

R M
(ANONYMITY DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr T Hussain, Counsel instructed by Morgan Dias Immigration Consultants
For the Respondent: Mrs R Pettersen, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Iran who was born on the 15th August 1995. He appeals against the decision of Judge Buchanan, published on the 23rd March 2015, to dismiss his appeal against the respondent's decision to remove him from the United Kingdom following refusal of his application for asylum. I extend the anonymity direction that was made in the First-tier Tribunal.

Background to the appeal

2. The appellant's original claim for asylum was based upon his claim that he had come to the adverse attention of the Iranian authorities by using an old newspaper bearing the picture of an Iranian leader in order clean his car. That account was comprehensively disbelieved by both the respondent and Judge Buchanan and those credibility findings are not challenged in the instant appeal.

3. The aspect of Judge Buchanan's appeal that is criticised can be found at paragraph 10 of his decision. He there noted that the Country Information and Guidance report dated November 2014 suggested that any Iranian who left the country illegally without a valid travel document would be sentenced to a period of between 1 and 3 years' imprisonment or a fine. The judge also noted that in some cases, a person might not be issued with a travel document. An example of this is a young man who is liable to serve 18 months' compulsory military service. The judge then quoted from **SB (risk on return – illegal exit) Iran CG** [2009] UKAIT 00053 which is to the effect that illegal exit is not in itself likely to be a significant risk factor on return but, if a person faced other difficulties, it might be a factor that added to the risk. The judge thereafter concluded as follows:

> "I have considered the matters discussed in the case of SB, but the appellant does not fall into any of the categories which discloses any heighted interest in him, despite the fact that the appellant is at the age when it would be expected that he undertake military service."

4. The essence of the grounds of the original application for permission to appeal was that the judge failed to consider whether the appellant would be at risk on return to Iran as "a failed asylum seeker". In refusing permission to appeal on this ground, First-tier Tribunal Grimmett made the following observation:

> "The grounds assert that the Judge failed to reconcile the new country material and clear risk the Appellant was facing as a failed asylum seeker. However, that was not a matter raised in the grounds of appeal or in the skeleton argument and there is nothing to suggest that it was raised at the hearing as an issue for the Judge to decide."

5. The grounds advanced in support of the renewed application for permission to appeal states that the observation of Judge Grimmett "misses the point". It further claims that the appellant had submitted a body new material, post-dating the decision in **SB (risk on return – illegal exit) Iran**, which "showed an arguable risk upon return for *failed asylum seekers*" [emphasis as it appears in the original document].

6. In granting the renewed application for permission to appeal, Upper Tribunal Judge Blum stated as follows:

> "It is arguable that, despite having regard to the Country Information and Guidance document dated November 2014 and *SB (risk on return – illegal*

> *exit) Iran CG* [2009] UKAIT 00053, the Judge failed to engage with the evidence before him relating to risk on return as a failed asylum seeker."

The evidence before the First-tier Tribunal

7. Mr Hussain, who did not appear in the First-tier Tribunal, accepted that there was no reference in either the original grounds of appeal or in Counsel's Skeleton Argument to a claimed risk to the appellant on return to Iran by reason of his status as a failed asylum seeker. He nevertheless claimed that the First-tier Tribunal was provided with a standard bundle of documents containing both background country information reports relating to Iran and a number of grants of permission to appeal to the Court of Appeal that - in whole or in part - were based upon the 'failed asylum seeker' issue (these latter documents are also attached to the renewed application for permission to appeal to the Upper Tribunal). Mr Hussain did not explain how he came to be in a position to assert that this bundle had been provided to Judge Buchanan – rather, he appears to have assumed it - but he did provide me with a copy of that bundle, bearing the name of a different appellant, that he happened to have with him. I placed this bundle of documents on the file upon the strict understanding that there was no evidence to suggest that it had in fact been before Judge Buchanan. If anything, the evidence suggests that it was not before him. I say that because not only is there no reference to it in Counsel's Skeleton Argument that was put before Judge Buchanan, but the only bundle of documents on the file is entirely different from that furnished by Mr Hussain. I therefore endorsed Mr Hussain's bundle of documents with the caution that I had not seen any evidence that it had been placed before Judge Buchanan before putting it on the file. It follows that I have there considered this appeal on the footing that the only documentary evidence that was before Judge Buchanan concerning the position of failed asylum seekers returning to Iran was that contained within a bundle of documents that bears the appellant's name and contains a total of 50 pages.

Analysis

8. Mr Hussain accepted this appeal could only succeed if the risk to the appellant on return as a failed asylum seeker could be described as "obvious" upon the evidence that was before Judge Buchanan. The word "obvious" in this context bears the meaning given to it in the following passage from the judgement of the Court of Appeal in **R v SSHD ex parte Robinson** [1997] 3 WLR 1152

> "39. Because the rules place an onus on the asylum-seeker to state his grounds of appeal, we consider that it would be wrong to say that mere arguability should be the criterion to be applied for the grant of leave in such circumstances. A higher hurdle is required. The appellate authorities should of course focus primarily on the arguments adduced before them, whether these are to be found in the oral argument before the special adjudicator or, so far as the Tribunal is concerned, in the written grounds of appeal on which leave to appeal is sought. They are not required to engage in a search for new points. If there is readily discernible an obvious point of

> Convention law which favours the applicant although he has not taken it, then the special adjudicator should apply it in his favour, but he should feel under no obligation to prolong the hearing by asking the parties for submissions on points which they have not taken but which could be properly categorised as merely "arguable" as opposed to "obvious". Similarly, if when the Tribunal reads the Special Adjudicator's decision there is an obvious point of Convention law favourable to the asylum-seeker which does not appear in the decision, it should grant leave to appeal. If it does not do so, there will be a danger that this country will be in breach of its obligations under the Convention. When we refer to an obvious point we mean a point which has a strong prospect of success if it is argued. Nothing less will do. It follows that leave to apply for judicial review of a refusal by the Tribunal to grant leave to appeal should be granted if the judge is of the opinion that it is properly arguable that a point not raised in the Grounds of Appeal to the Tribunal had a strong prospect of success if leave to appeal were to be granted. [Emphasis added]"

9. I have therefore applied the test of a "strong prospect of success" to the claim that the Tribunal erred in failing to consider that the appellant would be at risk on return to Iran by reason of his status as a 'failed asylum seeker'. In doing so, I have noted that amongst the background country information that was before the Tribunal was a report by the 'Refugee Documentation Centre (Ireland)', entitled 'information on the treatment of returned Asylum Seekers'. Some of the information quoted therein is undoubtedly capable of supporting the argument which the appellant now belatedly seeks to advance. Thus, a report by Amnesty International states that failed asylum seekers risk arrest on return, particularly if forcibly returned, where their asylum application is known to the authorities. On the other hand, a country advice by the 'Australian Government Refugee Tribunal' states:

> "It remains uncertain as to whether either the Iranian authorities or paramilitaries aligned to the regime impute returnees with anti-government or anti-Islamic Republic political views simply for applying for protection abroad. What is certain is that at least some returnees from Australia and elsewhere have been subject to varying degrees of ill-treatment by authorities upon return ranging from monitoring, interrogation, and detention. There are reliable reports that some returnees from Canada have been physically harmed and there is at least one report of a returnee dying following physical harm upon return. However, it is unclear as to whether any of these examples of ill-treatment are attributable to political beliefs imputed by authorise due to asylum claims made while abroad. [See page 50 of the appellant's bundle of documents]"

10. Thus, whilst there was evidence before the Tribunal that was capable of supporting an argument that a returnee risked persecution by reason solely of his status as a failed asylum seeker, it did not support an argument that had "a strong prospect of success". It cannot therefore be said that any such risk was "obvious" in the 'Robinson' sense of that word. It follows from this that the Tribunal did not make an error of law by failing to consider it.

Notice of Decision

11. The First-tier Tribunal did not make any error of law in its determination of the appeal and the appeal to the Upper Tribunal is therefore dismissed.

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 his 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 Date

Judge Kelly
Deputy Judge of the Upper Tribunal