



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/06022/2014

**THE IMMIGRATION ACTS**

Heard at UT (IAC) Birmingham Employment  
Tribunal  
On 8<sup>th</sup> September 2015

Decision & Reasons Promulgated  
On 30<sup>th</sup> September 2015

Before

UPPER TRIBUNAL JUDGE COKER

Between

A M  
(Anonymity order made)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr K Nwaiwu of Jernek solicitors  
For the Respondent: Mr I Richards, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

2. The appellant was granted permission to appeal a decision of the FtT dismissing his appeal against removal on international protection grounds. The appellant relied upon four grounds:
  - (a) That the FtT judge had failed to set out clearly and apply the correct burden and standard of proof
  - (b) The FtT judge had failed to take into account arguments set out in the skeleton argument before him and the background material;
  - (c) The FtT judge had failed to take into account material evidence;
  - (d) The FtT judge had erred in the credibility findings.

#### Background

3. The appellant, an Iranian citizen date of birth 22<sup>nd</sup> November 1991, arrived in the UK clandestinely on 28<sup>th</sup> December 2013 and claimed asylum. The respondent did not accept that the appellant was an Iranian citizen and considered him to be Iraqi. Nevertheless she considered his asylum claim as if he were Iranian and concluded that his account lacked credibility and his removal (either to Iraq or Iran) would not breach the refugee convention.
4. The FtT judge concluded on the balance of probabilities that the appellant was an Iranian citizen. There was no challenge to that finding by the respondent either in the Rule 24 response or before me.

#### Error of law

5. The FtT judge found the appellant's account of how he left Iran not credible. He found that the appellant had 'attended possibly 2 demonstrations of indeterminate size' ([69]; that the 'only evidence produced shows that he may have attended 2 demonstrations and there is no evidence he was prominent either in participation or organisation' ([71]); that 'Since [the FtT judge] do not find the appellant's evidence to be credible, [the FtT judge] also consider the alleged taking away of 2 CD's [sic] from his parents' home to have been recounted with a view to enhancing his alleged fear of persecution' ([74]); that 'It was not argued before [the FtT judge] that these activities (photographic evidence of alleged *sur place* activities) increased his fear of persecution' ([69]).
6. The evidence before the FtT judge included more than photos of attendance at two demonstrations. Also before the FtT judge in the appellant's witness statements was the appellant's evidence of five separate activities whereas it was submitted the judge only referred to the two demonstrations. The skeleton argument before the judge submitted that the appellant's activities in the UK increased the risk of persecution if returned to Iran. The judge has erred in stating that was not a submission made.
7. Mr Richards submitted that although there were some errors made by the judge in terms of the number of the appellant's activities in the UK and the submission as regards *sur place* activities, overall the judge had considered the evidence and reached sustainable conclusions.

8. A significant difficulty with that submission is the judge's finding in [74] as referred to above. The judge has failed to consider the evidence in the round and has made significant findings predicated on earlier findings as to the credibility of the appellant. The determination cannot be read as the judge making findings on consideration of the evidence as a whole but rather he made findings and then specifically because of those findings he reached further adverse findings which are significant to the decision overall.
9. I am therefore satisfied that the FtT judge erred in law in his approach to the evidence before him and reached findings without considering the evidence in its totality.
10. I set aside the decision to be remade.

#### Remaking of the decision

11. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. Where a decision is set aside s.12(2) of the TCEA 2007 requires me to remit the case to the First-tier with directions or remake it myself. Where the facts are disputed or unclear I conclude that the decision should be remitted to the First tier judge to determine the appeal.
12. It was agreed by the parties that none of the findings of FtT Judge Butler are preserved.

#### Conclusions:

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

I set aside the decision

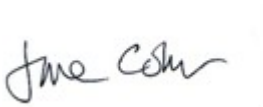
The appeal is remitted to the FtT to be remade; no findings preserved.

#### Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Date 29<sup>th</sup> September 2015



Upper Tribunal Judge Coker