



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

Appeal Number: AA/08406/2014

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 19 May 2015

Promulgated

On 5 June 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR DK
(ANONYMITY DIRECTION MADE)**

Claimant

Representation:

For the Appellant: Mr N Bramble (Senior Home Office Presenting Officer)

For the Claimant: Mr A MacKenzie (Counsel instructed by Wilson Solicitors LLP)

DECISION AND REASONS

1. For the sake of convenience I will refer to the parties as the “Secretary of State” who is the appellant in this matter and to DK as the “Claimant”.
2. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal (Judge Stanford) who in a Decision and Reasons dated 4 March 2015 allowed the Claimant’s appeal against the Secretary of State’s decision to refuse to grant him asylum and to return him to Iran.

3. The Claimant is a citizen of Iran and he applied for asylum under the Refugee Convention. In the reasons for refusal at paragraph 55 the Secretary of State did not accept the claim that he was a member of the Basij, but stated:

“Even if it were accepted that you were a member of the Basij (which it is not), you would be excluded from the protection of the Refugee Convention under Article 1F(b); ‘Under Article 1F(b) the provisions of the Convention shall not apply with respect to whom there are serious reasons for considering that he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee’.

It is considered that the activities of the Basij could constitute serious non political crimes (see COI Report 2013 Iran paragraphs 9.16-9.22). You therefore would not qualify for protection under the Refugee Convention, even if your asylum claim was taken at its highest.”

4. In its determination the First-tier Tribunal (FTT) [65] dealt with Article 1F as follows:

“The respondent’s representative did not pursue at the hearing the possible exclusion of the appellant from protection under Article 1F(b) of the Refugee Convention which had been raised in the Reasons for Refusal Letter. There is no evidence that this exclusion should be applied to the appellant.”

Grounds of Application

5. The Secretary of State applied for permission to appeal on the grounds that :
6. The FTT erred in law by not considering Article 1F(b) as raised in the Reasons for Refusal Letter at paragraph 55, in the event that it was found that the appellant was a member of the Basij and involved in non-political crime. The FTT accepted that the appellant was a member of the Basij [39] for eighteen years [24]. The activities of the Claimant, whilst a member were described in the determination at [38] and in the Reasons for Refusal Letter at paragraph 3.
7. The representative for the Secretary of State did not pursue in submissions exclusion under Article 1F, but the FTT failed to appropriately consider material parts of the respondent’s case and resolve the conflict as to whether or not the appellant should be excluded from reliance on the Refugee Convention.

Permission to Appeal

8. Upper Tribunal Judge Martin granted permission on 30 March 2015 stating:
- “It is clear from the Record of Proceedings that the Home Office Presenting Officer relied on the letter of refusal. Whether the appellant was a member of the Basij was a credibility point, which once the judge found that he had been, ought arguably to have led to a consideration of Article 1F(b)”.

Rule 24 Response

9. The FTT did deal with Article 1F(b) in the decision and reasons [65] albeit briefly noting that the representative had not made any submissions beyond relying on the reasons for refusal and finding that there was no evidence that the Claimant should be excluded. These were adequate in the circumstances. Furthermore the Claimant’s submissions on Article 1F(b) were set out in detail in a skeleton argument which in summary argued that the Secretary of State had not discharged the burden of proof on her to show that there were serious reasons for considering that the appellant committed serious non-political crime prior to his entry in the UK. Thus by stating there was no evidence that the Claimant should be excluded, it was submitted that it was evident that the FTT accepted the submissions on this matter. In any event the Reasons for Refusal Letter addressed the issue of exclusion in two short paragraphs solely by reference contained in the COIS Report.
10. It was further submitted that in the event that it was found the FTT failed to give adequate reasons in support of its conclusion, the error of law was not material for the reasons set out in the skeleton argument.
11. In any event the FTT’s decision to allow the appeal under Article 3 ECHR should stand. It was not challenged by the Secretary of State.

Error of Law Hearing

12. Mr Bramble relied on the grounds of application. The FTT ought to have considered Article 1F(b), irrespective of the two “bald” paragraphs in the Reasons for Refuel Letter. Having found the Claimant to be a member of the Basij it was not sufficient to leave the matter there. The FTT needed to complete its assessment and give reasons in support of the conclusion made.
13. Mr MacKenzie submitted that the appeal was wholly unmeritorious as the FTT clearly considered the issue of exclusion at [65]. The Tribunal’s statement that there was no evidence was correct. The Secretary of State’s reference to Article 1F at paragraph 55 was brief and speculative. There was no evidence to explain what activities amounted to serious non-political crimes or to show how the claimant could be implicated. Reliance was placed on the guideline decision of **JS (Sri Lanka) v SSDH [2010] UKSC 15** in which mere membership of an organisation is insufficient. Where the Secretary of State adduced no evidence and no oral

submissions were relied on the FTT was perfectly entitled to come to a brief conclusion on the matter.

14. At the end of the hearing I decided that there was no material error of law in the Tribunal decision which shall stand. The appeal made by the Secretary of State was dismissed. My brief reasons are as follows.

Discussion and Conclusions

15. The FTT concluded that the Claimant was a refugee on political grounds. This is not challenged. The issue raised was the failure of the FTT to consider Article 1F(b) of the Refugee Convention having found that the Claimant was a member of the Basij. Article 1F provides that “The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: (a) ..., (b) he has committed a serious non political crime outside the country of refuge prior to his admission to that country as a refugee; (c)...”.
16. The leading case is **JS (Sri Lanka) v SSDH [2010] UKSC 15** in which at [30 to 40] Lord Brown sets out the correct approach and interpretation of Article 1F.
17. Having regard to the Secretary of State’s case under Article 1F as put before the FTT, I am satisfied that there was no detailed or specific evidence, and/or consideration of the Claimant’s role or activities in the Basij. The Secretary of State made reference in the reasons for refusal letter to specific paragraphs in the COIR relevant to the Basij. There was no further consideration or analysis of evidence linking the Claimant to any activities that could come within the definition of a serious non political crime. In short the Secretary of State’s reference to Article 1F was limited and generalised and thus itself deficient. Accordingly, I agree entirely with the submissions made on behalf of the Claimant together with the content of the skeleton argument that was before the FTT.
18. The FTT properly considered Article 1F with reference to evidence in the Reasons for Refusal Letter. No further oral submissions were made at the hearing. There was no further action that the FTT was required to do as there was no evidence to show that Article 1F applied. In such circumstances the FTT gave adequate reasons and I conclude that it cannot be argued that the FTT erred in law.

Notice of Decision

There is no material error of law in the decision which shall stand.

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

Unless and until a Tribunal or court directs otherwise, the Claimant 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

Date 3.6.2015

Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT
FEE AWARD

No fee award is applicable.

Signed

Date 3.6.2015

Deputy Upper Tribunal Judge G A Black