



IAC-PE-SW-V1

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

Appeal Number: AA/08423/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 5th October 2015**

**Decision & Reasons Promulgated
On 7th October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**SY
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Smith of Counsel instructed by GMIAU

For the Respondent: Mr McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, SY, is a citizen of Iran. Having considered all the circumstances I consider it appropriate to make an anonymity direction.
2. This is an appeal by the Appellant against the determination of First-tier Tribunal Judge Mulvenna promulgated on 17th March 2015. The judge dismissed the Appellant's appeal against the decision of the Respondent to remove the Appellant from the United Kingdom after refusing the Appellant asylum, humanitarian protection or relief under the ECHR or Immigration Rules.

3. By a decision made on 7th April 2015 leave to appeal to the Upper Tribunal was granted. Thus the matter appeared before me to determine in the first instance whether or not there is a material error of law in the original determination.
4. A major part of the Appellant's claim is that he is a member of Erfan-e-Halgheh, a spiritual religious group much in the tradition of Sufism in Islam. The Grounds of Appeal allege that the findings by the judge with regard to whether or not the Appellant is a member of this movement are unsafe and fail properly to take into account documentary evidence and evidence presented by the Appellant in support of his claims.
5. There were certificates produced on behalf of the Appellant to confirm that he was a member of the group and had connections to the "ring of defensive radiation" within the Erfan spiritual group. There were documents from his religious teacher, who is now in Germany. There are photographs of the appellant's involvement in demonstrations in London in support of the Erfan leader, Mohammed Ali Taheri. He had produced his original membership card for the Erfan Movement.
6. The Respondent had been given an opportunity to counter the evidence from the Appellant's religious teacher and other sources but no evidence to counter or undermine the documents had been presented. No issues have been raised with regard to that evidence.
7. The judge had not raised any challenge to the evidence during the course of the hearing. However in the decision the judge had rejected the evidence but the Appellant and his representative had never been given an opportunity dealing with the grounds raised by the judge rejecting the evidence. Fairness required that the appellant be given an opportunity to deal with the issues.
8. The second Ground of Appeal relates to the fact that the Appellant would be returning to Iran as an undocumented failed asylum seeker, who amongst other things had been active in the United Kingdom in demonstrations.
9. Reliance has been placed upon the most recent country guidance case in respect of such. Certainly the case of BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 makes clear that a returnee, who is undocumented and has no an exit stamp on a passport or other travel document, would be questioned by the authorities in Iran.
10. As the Appellant had been active in demonstrations in the United Kingdom there was an issue as to whether the Appellant's involvement in such would have come to the attention of the authorities. On return through the airport the Appellant would have to explain his absence from and departure from Iran and the circumstances in which he had been in the United Kingdom. Given the Appellant's activities in demonstrations there

was an issue as to whether or not such activities would give rise to a risk to the Appellant.

11. Before me it was conceded by the Respondent's representative that the judge had failed properly to look at the issues with regard to the Appellant being returned as an undocumented failed asylum seeker and the impact of his activities in the United Kingdom. The issue was not whether or not the appellant was genuinely a member of the Erfan Movement but how his activities would be perceived by the authorities in Iran and whether by reason of their perception the Appellant would be at risk of persecution on return. It was accepted that proper consideration had to be made of whether or not the Appellant would be at risk by reason of his perceived membership of Erfan Movement, his activities in demonstrations in support of that group and the profile that that would create with the authorities coupled with his having left Iran illegally.
12. The Respondent's representative also accepted that documentation had been submitted to establish that the Appellant was a member of the Erfan Movement and that no challenges had been made to their documentation during the course of the hearing. The judge had not raise the issue with the Appellant or the representative at the hearing and therefore the Appellant had had no opportunity of dealing with the challenges made by the judge.
13. It was noted within the determination specifically paragraph 38 that those, who follow the Erfan-e-Halgheh movement, faced a real risk on return of being detained and ill-treated on account of their adherence to the movement and at that risk would give rise to a prospect of persecution for an imputed religious belief. In the light of that clearly adherents of Erfan-e-Halgheh would be at risk of persecution on return to Iran if the authorities in Iran believed that the returnee was an adherent of the movement.
14. It was accepted that the judge made findings on the Appellant's alleged arrest and detention and made findings with regard to the plausibility and credibility of those incidents. However with regard to the assessment of whether or not the Appellant was an adherent of the movement, if there were any challenges to be made to the documentary evidence the issues should have been raised during the course of the hearing to give the Appellant and the Appellant's representative an opportunity of dealing with such challenges
15. It was conceded that the judge without properly assessing the evidential value of the documentation made assessment of whether or not the Appellant was a member of the Erfan Movement.
16. It was therefore conceded that the judge had failed to look at the evidence properly and that there were material errors of law within the decision. The consequence of that is that it was accepted that the decision could not stand and that the appeal would have to be reheard and fresh findings of fact made.

17. In the light of that concession by the Respondent's representative I find that there are material errors of law within the original determination and direct that the appeal be heard afresh in the First-tier Tribunal.

Notice of Decision

18. I allow the appeal to the extent that the appeal is returned to the First-tier Tribunal for a full hearing afresh with none of the findings of fact maintained.

Signed

Date

Deputy Upper Tribunal Judge McClure

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

Deputy Upper Tribunal Judge McClure