



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/09991/2014

**THE IMMIGRATION ACTS**

Heard at Bennett House, Stoke-on-Trent  
On 14<sup>th</sup> September 2015

Determination Promulgated  
On 21<sup>st</sup> September 2015

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR F K R A  
(Anonymity Direction Made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr P Draycott (Instructed by Paragon Law)

For the Respondent: Mr A McVeety (Senior Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. This is an appeal to the Upper Tribunal by the Appellant, with permission, against the determination of First-tier Tribunal Judge Frankish promulgated on 27<sup>th</sup> February 2015 by which he dismissed the Appellant's appeal against the Secretary of State's decision to refuse to grant him further leave to remain and to return him to Iran.
2. This was the Appellant's second appeal. He had entered the UK on 28<sup>th</sup> January 2011 and claimed asylum. His application was refused on 1<sup>st</sup> May 2011 but as a minor he

was granted discretionary leave until he was 17½ in accordance with the Secretary of State's policy.

3. He appealed the refusal of asylum and in a determination promulgated on 6th June 2011 Judge McDade dismissed his appeal finding the Appellant's claims to be without credibility.
4. The Appellant applied for further leave to remain, again citing asylum grounds, prior to the expiry of his leave and it was the refusal of that application on 6<sup>th</sup> November 2014 that came before Judge Frankish.
5. Judge Frankish set out the details of the claim and correctly identified that Devaseelan [2003] Imm AR 1 applied and that his starting point was thus the determination of Judge McDade. He noted that in addition to the evidence that was before Judge McDade and the Appellant's evidence he had medical reports and an expert report prepared by Dr KaKhki, who he noted was an expert before the Upper Tribunal in the Country Guidance case of SB (risk on return – illegal exit) Iran [2009] UKAIT 00053 although, as Judge Frankish also noted, he had not concerned himself in SB with the issue of illegal exit. He did in the report before Judge Frankish.
6. Judge Frankish found at paragraph 20 that the country report did not counter the contradictions in the Appellant's own evidence identified by Judge McDade. He found the report did not give reason to overturn the findings of Judge McDade. So far as the claim that he would be at risk as a draft evader (a new claim) the Judge found that he was not taken to any direct evidence that he would be at risk on return for this reason.
7. Mr Draycott's submissions, based on his grounds which were the basis on which permission to appeal was granted, were essentially that the Judge had relied too heavily on the findings of the previous Judge and had not taken adequate notice of the expert's report. This was new evidence and should have been considered and if it was to be rejected, proper reasons given. In particular the Judge was wrong to say that there was no direct evidence about draft evasion as the expert report covered it. Furthermore, the expert also dealt with the situation on the ground in villages, such as the Appellant's, which rendered the previous adverse credibility findings based on implausibility unsafe. The expert also gave a detailed opinion on illegal exit, years after the Country Guidance case and the Judge had not give reasons for rejecting that.
8. Mr McVeety submitted that the Judge had taken the expert report into account so far as it added new material but that the appeal on this occasion was not an opportunity to re-litigate the previous decision which had been upheld.
9. While I have sympathy with Mr McVeety's submission and careful consideration will need to be given to the precise application of Devaseelan in this case and what "new evidence" should be taken into account, that is not a consideration that was undertaken by Judge Frankish. Further I agree that the 80 page expert report should

have been given detailed consideration, particularly with regard to the claims of draft evasion and illegal exit, even if the credibility aspects remain.

10. In failing to do this the First-tier Tribunal Judge erred and as the error of law goes to risk on return I set aside the decision and remit it to the First-tier Tribunal for a full rehearing on all issues.
11. **I direct that the Appellant's representatives must file one composite bundle containing all the evidence relied upon which should be indexed and paginated. It is unacceptable to file numerous separate bundles.**
12. **I suggest that the appeal be heard by a Designated Judge as this will be the third appeal and given the amount of evidence it is likely to take a full day.**
13. The appeal to the Upper Tribunal is allowed to the extent that the decision of the First-tier Tribunal is set aside and the case remitted to the First-tier Tribunal at **Stoke** as set out above.
14. The First-tier Tribunal having made an anonymity direction I see no reason not to continue it.

Signed

Dated 15<sup>th</sup> September 2015

**Upper Tribunal Judge Martin**

**Direction regarding anonymity**

**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 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 15<sup>th</sup> September 2015

**Upper Tribunal Judge Martin**