Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/10511/2014

THE IMMIGRATION ACTS

Heard at North Shields
On 21 October 2015
Prepared on 21 October 2015

Determination Promulgated
On 27 October 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

S. M.
(ANONYMITY DIRECTION)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Cleghorn, Counsel instructed by Halliday Reeves Law Firm
For the Respondent: Mr Mangion, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant entered the United Kingdom illegally, and on 20 August 2013 the Appellant claimed asylum as a citizen of Iran. That application was refused on 18 November 2014, and in consequence a removal decision was made in relation to him.

2. The Appellant appealed to the Tribunal against the removal decision and his appeal was heard on 4 February 2015, and dismissed by decision of Judge MJH Wilson, promulgated on 17 February 2015.

3. The Appellant's application to the First Tier Tribunal for permission to appeal was refused by Judge Astle on 16 March 2015 on the basis it was no more than a disagreement with the Judge's decision. Undaunted the application was renewed to the Upper Tribunal, when it was granted on only one ground by Upper Tribunal Judge Reeds in an undated decision. The sole ground was that it was arguable there had been "a failure to engage with the more recent material relevant to the issue of risk on return as a failed asylum seeker and/or illegal exit". Neither the terms of the grounds, nor those of the grant, allow the identification of the material Upper Tribunal Judge Reeds had in mind.

4. The Respondent filed a Rule 24 Notice of 23 July 2015 in which she noted the Judge had rejected the Appellant's claim to have left Iran illegally, and there was no proper evidential basis for any finding that he would be at risk upon return as a failed asylum seeker.

5. Thus the matter comes before me.

Error of Law?

6. The Judge concluded [21] that the Appellant was an untruthful witness who had manufactured a manifestly false account of his experiences in Iran. He also explicitly rejected the Appellant's account of his journey from Iran to the UK.

7. Against that rather unpromising background the Judge considered the Appellant's claim that he would face a risk of harm upon return as one who would be perceived to be a failed asylum seeker [22]. The Judge noted that he had no political profile, and that he would not be perceived as one who was opposed to, or was an activist against, the present regime. Nor was he one who had been accused of anti-Islamist activities or conduct. The Judge referred himself to SB (risk on return – illegal exit) Iran CG [2009] UKAIT 53, and concluded that those facing enforced return did not in general face a real risk of persecution or ill treatment, and that was the case even if they had left illegally, which the Appellant had not.

8. Since the decision in SB the Upper Tribunal have considered the position of those returning to Iran from the UK by way of country guidance decisions in BA (demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36, and SA (Iranian Arabs – no general risk) Iran CG [2011] UKUT 41. Neither of those decisions suggested that an individual of the Appellant's profile faced a real risk of harm upon return to Iran simply because they might be perceived to be a failed asylum seeker.

9. Most recently the Upper Tribunal considered the position of Iranian citizens who could establish that they had been internet bloggers, in the reported decision AB and others (internet activity – state of evidence) Iran [2015] UKUT 257. That decision was not given the status of country guidance, although the Upper Tribunal had intended and expected that the appeals in question would serve that purpose, because in the event the material placed before the Upper Tribunal had not disclosed a sufficient evidential basis for giving evidence upon the risk faced by those who could establish that they had been internet bloggers. The Upper Tribunal's focus was upon those who had engaged in internet activity, but it was observed that the mere fact that an individual had been in the UK for a prolonged period of time did not lead to persecution [467, 470-471]. Whilst it was observed that this might lead to scrutiny, I am satisfied that there was nothing in the findings of primary fact made by the Judge to suggest that this claimant would be subject to such scrutiny, or that if he were, anything untoward would be discovered.

Conclusion

10. I am satisfied that the Appellant has failed to establish any error of law on the Judge's part in the course of his assessment of the evidence. The approach taken by the Judge to the evidence in his decision does not disclose any error of law that requires that decision to be set aside and remade.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 17 February 2015 contains no error of law in the decision to dismiss the Appellant's appeal which requires that decision to be set aside and remade, and it is accordingly confirmed.

Signed
Deputy Upper Tribunal Judge JM Holmes
Dated 21 October 2015

Direction regarding anonymity – Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed

Deputy Upper Tribunal Judge JM Holmes
Dated 21 October 2015