



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/00159/2015

THE IMMIGRATION ACTS

Heard at Bradford
On 10 March 2016

Decision & Reasons Promulgated
On 31 March 2016

Before

Deputy Upper Tribunal Judge Pickup
Between

MR
[Anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr T Hussain, instructed by Halliday Reeves Law Firm
For the respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, MR, date of birth 18.4.84, is a citizen of Iran.
2. This is his appeal against the decision of First-tier Tribunal Judge Dickson promulgated 6.3.15, dismissing his appeal against the decision of the Secretary of State to refuse his asylum, humanitarian protection and human rights claims and to remove him from the UK. The Judge heard the appeal on 18.2.15.

3. First-tier Tribunal Judge Davidge refused permission to appeal on 31.3.15. However, when the application was renewed to the Upper Tribunal, Deputy Upper Tribunal Judge Chamberlain granted permission to appeal on 3.7.15.
4. Thus the matter came before me on 10.3.16 as an appeal in the Upper Tribunal.

Error of Law

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the decision of Judge Dickson should be set aside.
6. Judge Dickson found that the appellant had not established that he is a genuine convert to Christianity so as to give any risk on return, nor, relying on SB (Iran), any risk on return on the basis of illegal exit.
7. I note that the grounds of appeal raise no challenge to the credibility findings concerning Christian conversion, but challenge only the findings that the appellant would not be at risk on return to Iran as having left illegally and returning as a failed asylum seeker. It is asserted that even if he did not leave Iran illegally, his return as a failed asylum seeker creates sufficient risk. The grounds do not particularise the basis of this challenge, beyond general assertions that people who are detained and perceived to be or actually are anti-government, whether actively involved in politics or not, can be subject to persecution.
8. In granting permission to appeal, Judge Chamberlain considered it arguable there was an error of law in the judge's failure to consider the risk on return as a failed asylum seeker, given the evidence relied on to that effect by the appellant.
9. The Rule 24 reply, dated 14.8.15, submits that the grounds are no more than a mere disagreement with the findings, even though the adverse credibility findings are not challenged, and that the judge was entitled to follow SB (Iran) which held that an applicant would not be at risk solely for being a failed asylum seeker.
10. In his submissions to me, Mr Hussain suggested that the appellant had relied on new country material postdating SB (Iran), which justified departure from that authority. However, as is clear from §36 and §45 of the decision, the judge found as a fact that the appellant did not leave Iran illegally and did not ever come to the adverse attention of the Iranian authorities, although it was accepted that he left Iran and travelled to Greece. The judge concluded, "the appellant would not in my view attract the slightest interest of the authorities in Iran on his return."
11. Given the adverse credibility finding of fact in relation to illegal exit, the only viable issue is whether the judge erred by failing to consider a risk on return as a failed asylum seeker, irrespective of his credibility.
12. SB (Iran) held that Iranians facing enforced return do not in general face a real risk of persecution or ill-treatment. It is clear that this would encompass those returning as a

failed asylum seeker. The Tribunal held, “That remains the case even if they exited Iran illegally. Having exited Iran illegally is not a significant risk factor, although if it is the case that a person would face difficulties with the authorities for other reasons, such a history could be a factor adding to the level of difficulties he or she is likely to face.”

13. I have carefully considered the objective material in the appellant’s bundle submitted to the First-tier Tribunal, particularly in relation to any parts that may bear on a risk to failed asylum seekers.
14. The material relied on by the appellant included evidence from Amnesty International, quoted in the COIS at 31.17, and in turn quoting an unnamed judge to the effect that asylum seekers are interrogated on return, whether or not they have been political activists in Iran or abroad. Returnees are held for a few days until it is clear to the police that they have not been involved in political activity and have not done or said anything that could damage the reputation of the Islamic Republic, then they are released. It is also suggested that failed asylum seekers could be prosecuted for making up accounts of alleged persecution.
15. Even if there was an error of law in the failure of the judge to address the specific risk of return as a failed asylum seeker, I am not satisfied that such an error could be material to the outcome of the appeal on its particular facts.
16. However, I do not accept the submission that the evidence relied on, referenced in the grounds of application for permission to appeal, demonstrates that merely the act of making an asylum claim can be perceived as a political act against the Iranian government. The nature of the asylum claim must be relevant to the concern of the authorities as to damage to the reputation of the Islamic Republic. Mr Hussain did not establish how the nature of this appellant’s failed asylum claim would put him at risk. I accept that in Farshad Kiani Deh Kiani v SSHD [2002] UKAIT 01328, it is not necessary to be a member of a political party or supporter of any political group, to show that persecution is on the basis of political opinion. However, the individual concerned must have views about the government that puts him at risk of persecution for that reason. No such political views are held or expressed by this appellant.
17. This appellant’s claim relied on Christian conversion and did not rely on any an actual or imputed political opinion, and thus has nothing to fear in this regard, the judge having specifically found that he never came to the attention of the Iranian authorities, for any reason, and did not have any interest in Christianity whilst in Iran and no genuine interest after leaving Iran. Much of the grounds and the evidence cited in support make reference to the risks to a failed asylum seeker based on actual or imputed political opinion, which circumstances do not relate to this appellant; to stretch that material to suggest that a false and rejected asylum claim on the grounds of Christian conversion comes into the same category or class is a stretch too far and not supported by the materials submitted to the First-tier Tribunal.

Conclusions:

18. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

24 February 2017

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order. However, given the circumstances, I make an anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable in this case and thus there can be no fee award.

A handwritten signature in black ink, appearing to be 'J. M. Pickup', written in a cursive style.

Signed

Deputy Upper Tribunal Judge Pickup

Dated

24 February 2017