



Upper Tier Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/00530/2015

**THE IMMIGRATION ACTS**

Heard at Manchester  
On 18 December 2015

Decision and Reasons Promulgated  
On 4 January 2016

Before

Deputy Upper Tribunal Judge Pickup

Between

**Bahman Ibrahim**  
[No anonymity direction made]

Appellant

and

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the appellant: Ms K Smith, instructed by Immigration Advice Service

For the respondent: Mr A McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Bahman Ibrahim, date of birth 21.3.96, is a citizen of Iran.
2. He appealed against the decision of First-tier Tribunal Judge Myers promulgated 24.3.15, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 22.11.14, to refuse his international protection and human rights claims.
3. First-tier Tribunal Judge Garratt granted permission to appeal on 16.4.15.

4. Thus the matter came before me on 8.10.15 as an appeal in the Upper Tribunal. The matter was listed for an error of law hearing only, and the request for an interpreter had thus been cancelled.
5. For the reasons set out in my error of law decision, I found such error of law in the making of the decision of the First-tier Tribunal such that the decision of Judge Myers should be set aside and remade in the Upper Tribunal. In brief, I found that the First-tier Tribunal failed to properly or adequately consider the SB Iran risks on return and in particular that being caught smuggling alcohol could be regarded as anti-Islamic conduct and thus amount to a significant risk factor as specified in §53(v) of SB Iran. I also found that the judge failed to give any consideration as to prison conditions in Iran, if the appellant were to be imprisoned for the offence of smuggling alcohol; an issue that was not addressed at all in the decision of the First-tier Tribunal.
6. I thus adjourned the remaking of the decision in the appeal to be heard by myself in the Upper Tribunal at Manchester, giving directions as set out in the error of law decision.
7. In particular, as agreed by the representatives of both parties at the error of law hearing, I preserved the primary facts found by the First-tier Tribunal. In summary, these include that the appellant was not involved in smuggling political material and has no valid imputed political opinion claim. However, he was ambushed by the Iranian authorities which engaged in smuggling alcohol. That he is of Kurdish ethnicity and that he fled Iran illegally are relevant aggravating factors.
8. It was not clear to me that any further oral evidence would be necessary, but I gave leave for further background evidence to be produced on the issue of whether smuggling alcohol would be regarded as anti-Islamic activity and punishable by imprisonment and in relation to likely prison conditions.
9. At the continuation hearing before me, there was no further oral evidence, but Ms Smith relied on the recently served expert opinion report of Dr Kakhki, dated 26.11.15. In summary, this confirms, at some length and with many examples, that smuggling alcohol is indeed regarded as anti-Islamic activity and prosecuted by the criminal law with likely imprisonment. Smuggling alcohol attracts harsher punishment than mere smuggling, because it is also anti-Islamic. Dr Kakhki also recites ample background evidence that there is widespread use of torture by the authorities and the fact that he left Iran illegally and is of Kurdish ethnicity would be aggravating features likely to lead to a harsher sentence.
10. At §60 Dr Kakhki concludes, "In my opinion, if Mr Ibrahim was to be returned to Iran, he would be arrested and interrogated in relation to his smuggling of alcoholic beverages and other items, as well as for his illegal departure from Iran. Any investigation carried out to determine his liability would likely involved harsh methods, with the possible use of torture to extract information."

11. I accept that expert opinion as well-supported, with objective background material and cogent reasoning.
12. For his part Mr McVeety pointed to 3.13 and 3.17 of the relevant OGN, which confirms that smugglers of alcohol are liable to imprisonment and that prison conditions are generally harsh and life-threatening, likely to give rise to a breach of article 3 ECHR.
13. In the circumstances, whilst Mr McVeety did not concede the point, he felt unable to resist the appeal on humanitarian protection or human rights grounds with any real force, which was sensible and realistic.
14. I thus find that whilst dismissing the asylum claim, there is a real risk on return of the appellant being arrested, tortured, imprisoned and mistreated because he was caught smuggling alcohol into Iran, and that he would thereby suffer serious harm, sufficient to meet the lower standard of proof and entitle him to humanitarian protection.
15. In the alternative, I also find that his return would place the UK in breach of the prohibition on torture, or inhuman or degrading treatment or punishment, in breach of rights under article 3 ECHR.

**Decision:**

16. The appeal is dismissed on asylum grounds;
17. The appeal is allowed on humanitarian protection grounds;
18. In the alternative, if it were necessary, I would have allowed the appeal on human rights grounds.



**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Dated**

**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 such an order. Given the circumstances, I make no 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 (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

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.



**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Dated**