



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

Appeal Number: AA/02607/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 6th January 2016**

**Decision & Reasons Promulgated
On 21st January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

M J

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Lewis, Counsel; Duncan Lewis Solicitors

For the Respondent: Mr D Clarke, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Page dismissing the Appellant's appeal against the Respondent's decision refusing to grant him asylum. The judge however allowed the Appellant's appeal under Article 8 ECHR.
2. The Appellant appealed against that decision and was granted permission to appeal by Upper Tribunal Judge McWilliam. The ground upon which permission was granted may be summarised as follows:

- (i) It is arguable that the judge erred in not determining the risk on return to the Appellant on religious grounds.
- 3. I was provided with a Skeleton Argument from Ms Lewis which parties had the opportunity to consider before making their submissions.

Preliminary Issue: Permission to cross-appeal out-of-time

- 4. The Respondent had originally sought to cross-appeal against the decision of Judge Page allowing the Appellant's appeal under Article 8 ECHR. The Appellant's and Respondent's applications for permission to appeal were considered simultaneously by First-tier Tribunal Judge Frankish and both were refused on 16 June 2015. Whilst the Appellant sought to renew his application via Form IAUT-1 to the Upper Tribunal, the Respondent did not.
- 5. Mr Clarke made an application for permission to appeal against Judge Frankish's decision at the start of the hearing. Mr Clarke submitted that the Appellant's status was precarious, the result of which was that the Appellant could not benefit from rule 399B. The judge should have been aware of *AM (S.117B) Malawi* [2015] UKUT 260 (IAC) and that a grant of Discretionary Leave did not lead to settlement. Mr Clarke accepted that the application was not timely renewed and could not give any reason given why this was not done nor any accounting for the delay in bringing the application before me today.
- 6. In reply, Ms Lewis relied on her Skeleton Argument and submitted that the *AM Malawi* point was not explicitly mentioned in paragraph 3 of the grounds to Judge Frankish and it is not a *Robinson* obvious point either. She highlighted that the ratio of *Robinson* is to assist self-represented appellants and its ratio shows that the Tribunal is under a duty to consider points not raised by the asylum seeker at the Tribunal below. In that light, Article 8 grounds cannot be raised now via *Robinson* and particularly where the Respondent, has not applied for permission and no notice of appeal has been given at all.
- 7. I indicated to the parties that I refused the application. My reasons are as follows. The Respondent and Appellant are both bound by the terms and strictures of The Tribunal (Upper Tribunal) Procedure Rules 2008 and its time limits stipulated for bringing an appeal. There is a wealth of authority that makes clear that reasons must be given for every moment of delay that passes (see *BO and Others (Extension of time for appealing) Nigeria* [2006] UKAIT 00035 and *Samir (FtT Permission to appeal: time)* [2013] UKUT 00003(IAC)). There are no reasons given here whatsoever, and moreover, the delay from June 2015 to December 2015 is a matter of several months and is excessively late in any view. I am given to understand that there may have been an internal lapse within the Presenting Officers' Unit which resulted in the failure to renew the appeal; however such a matter does not excuse the need for due process and observation of the procedure rules. Furthermore, the ground is itself without merit. It is trite that the doctrine of *Robinson* obvious issues are

not normally to be employed in favour of the state failing to take an issue in an appeal (see *Miftari v Secretary of State for the Home Department* [2005] EWCA Civ 481), however there is nothing *Robinson* obvious in my view either way that would assist the Respondent. I accept Ms Lewis's submission that the precarious issue cannot now be raised without complying with the due process of filing a notice of appeal in a timely manner and particularly where there are no reasons given for failing to do so, nor any accounting for the delay in making the application for permission to appeal only on the morning of the hearing, which would not be occurring had it not been for the Appellant's own timely renewal, of course. Consequently, I refused to extend time to allow the Respondent to bring her appeal.

Error of Law

8. At the close of submissions, I indicated that I would reserve my decision, which I shall now give. I find that there was an error of law in the decision such that it should be set aside. My reasons for so finding are as follows.
9. The Skeleton Argument of the Appellant's solicitor, placed before the First-tier Tribunal Judge, is clear in its submission at paragraphs 11-17 that the Appellant was pursuing a claim on the grounds of religion. Those paragraphs are sub-headed with that the term 'Religion' also. Those paragraphs state that the Appellant is an apostate and that he would be questioned on return to Iran in relation to his religion and cannot be expected to lie and tell the Iranian authorities that he is a Muslim. The solicitor bizarrely associated this risk with political opinion, however the fact of apostasy more closely falls under the convention reason for well-founded fear of persecution owing to religion rather than a political view.
10. Nonetheless, it is clear from reading the determination that the judge has not considered this matter at all. Whether this ground was pressed orally in submissions or not, it remains a convention reason and clearly a matter that requires adjudication, otherwise it would place the Appellant at risk of arbitrary *refoulement* without just satisfaction of his asylum claim.
11. Therefore, the determination not being subject to particular criticism other than an omission to consider apostasy shall stand, including the findings of fact and credibility assessment made, *as far as they go*.
12. In the light of the above findings, the appeal shall be remitted to the First-tier Tribunal so that the discrete issue of risk emanating from the Appellant's apostasy may be considered.

Decision

13. The appeal to the Upper Tribunal is allowed.
14. The decision of the First-tier Tribunal shall stand and the appeal is remitted to the First-tier Tribunal. Albeit the error does not infect any

findings made by Judge Page, I direct that the remainder of the appeal be heard by a differently constituted bench.

~~15. I do not make any anonymity direction for now. That shall remain a matter for the First tier Tribunal to consider upon consideration of the discrete issue before it.~~

Signed

Date

Deputy Upper Tribunal Judge Saini