



**Upper Tribunal  
(Immigration and Asylum Chamber)  
AA/03040/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Birmingham**

**Decision & Reasons  
Promulgated  
On 26 April 2016**

**On 3 March 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY**

**Between**

**A M  
(ANONYMITY DIRECTION MADE)**

Appellant

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mrs O.E Dury, Jemek Solicitors

For the Respondent: Mr Mills, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is an Iranian national. His asylum claim was rejected by the Respondent on 8 December 2014 and on 31 December 2014 a decision was made to refuse him leave to enter the United Kingdom. The Appellant appealed to the First-tier Tribunal and First-tier Tribunal Judge Ghani dismissed his appeal in a decision promulgated on 16 July 2015. The Appellant sought permission to appeal and permission was granted by First-tier Tribunal Judge AK Simpson on 9 September 2015.

2. Permission was granted on the basis that it was arguable that the Judge had not given sufficient reasons for finding that a Zoroastrian in Iran would not openly display a silver necklace in public given that Avatar Meher Baba was a Zoroastrian although it is said that the other credibility findings were adequately reasoned. It is also said that it is arguable that the decision merely repeats the arguments made in the recent refusal letter and that it is also arguable that there is little analysis of the relevant case law. It is further said that whilst the Judge did not accept the Appellant's religious views, it was arguable that he ought to have considered whether he would be perceived as an apostate in Iran.

### **The Grounds**

3. The grounds assert that the First-tier Tribunal failed to address the points made in the skeleton argument. It is said that it was the Appellant's case that it would be unfair to expect him to lie about his asylum claim (as a follower of Avatar Meher Baba) in the UK when removal is enforced and he is detained at the airport. It is said that the First-tier Tribunal did not appreciate or address this argument properly. It is argued that the risk on return is not diminished by the fact that the First-tier Tribunal did not accept that the Appellant is a follower of Avatar Meher Baba. The question is said to be whether a religious opinion would be imputed to the Appellant on return and whether the authorities would view his asylum claim as an act which damaged the reputation of the Islamic Republic. This means, it is submitted, that the First-tier Tribunal's assessment and finding at [31] that **BA (Demonstrators in Britain - risk on return) Iran CG** [2011] UKUT 36 (IAC) and **RT and others (Zimbabwe) v SSHD** [2012] UKSC 38 are not relevant in the appeal and that **HJ & HT (Cameroon) v SSHD** [2010] UKSC 31 does not take the matter any further all amount to an error of law.
4. The second ground asserts that the First-tier Tribunal failed to resolve the point raised in the skeleton argument that the Upper Tribunal in the country guidance cases of **BA (Demonstrators in Britain - risk on return) Iran CG** [2011] UKUT 36 and **SB Iran CG (Risk on return - illegal exit)** 2009 UKAIT 00053 did not have the benefit of the Amnesty International report of February 2012 which clearly showed the risk on return in respect of a failed asylum seeker.

### **The Rule 24 Response**

5. The Respondent argues that the First-tier Tribunal made various adverse credibility findings that were detailed, reasoned and sustainable. The Appellant and his family left on their own passport and the Judge found that they travelled as a group and given the finding that the Appellant left Iran with no problems, it was the Respondent's position that it was not incumbent on the Tribunal following those findings (and the other credibility findings) for the Judge to then further elaborate on **SB (Iran CG (Risk on return - illegal exit)** 2009 UKAIT 00053 than he had already done at [31]. It is submitted that the grounds have no merit, merely disagree with the adverse outcome of the appeal without identifying any arguably material error of law.

## The Hearing

6. Mrs Dury submitted that there was an error of law in the decision. She submitted that the Appellant was credible and his evidence was not properly considered and First-tier Tribunal did not take into account the principles in **SB**. The skeleton argument that was submitted had made the point that even if he was not credible he could not be expected to lie. If he had to state that he was born a Shia Muslim the risk involved was not considered. At the point of return he would be questioned and that would mean he would have to say he was an apostate. He would pay with his life. The Judge did not look at current the country guidance and the principles raised. His appeal should be allowed. He illegally exited as the passport was not his passport but had his face on it. He claimed asylum on the day of arrival. She relied on the grounds and asked for the matter be remitted or be allowed. He was born Muslim and had converted. He exhibited enough knowledge for him to be at risk on return and for him to be believed to be credible.
7. Mr Mills said that he was confused by the grant of permission. The First-Tier Judge granting permission said in paragraph 3 that he was troubled by the Judge's finding in relation to wearing a necklace in public. Mr Mills submitted that it was not clear what the problem was with the findings at paragraph 23. Other than that, Judge Simpson did not see any problems with other credibility findings. Ms Dury said that the fact that he was disbelieved did not mean he was not risk. The findings that the Judge made were that he was not credible and that meant he would not be at risk. The Judge rejected his evidence and so he would not be recognised as an apostate. It was unclear what there was to consider in the alternative. The other aspect was risk on return. The grounds argued that **BA** needed to be considered. The Judge expressly made the finding that there had been no sur place activity so **BA** was not applicable. The principle that a claimant could not be expected to lie did not apply to a rejected asylum seeker who was said to advance the basis of his rejected asylum appeal. The other point argued by the Appellant was that the Judge should have departed from country guidance. There was nothing in the evidence to justify that departure.
8. In reply Mrs Dury submitted that there was no further evidence or questioning about the sitting arrangement in the taxi. The Tribunal had made an assumption and looking at the case law that was reached in error.

## Discussion and Findings

9. The grounds of appeal do not seek to impugn the First-tier Tribunal's credibility findings. The First-tier Tribunal made a number of adverse credibility findings which I find were fully and adequately reasoned from paragraphs 23 to 30 of the decision. He found that there were a large number of inconsistencies in the Appellant's evidence. He found that the Appellant displayed a complete lack of knowledge about his newly found faith and that he was not a convert as he claimed to be. He found that the evidence he had given that he had met a man who spoke to him about Meher Baba in a taxi was not credible and that the described meeting did

not occur. He found the Appellant's evidence about the raid on the meetings and escape not to be credible. He found that the Appellant travelled on his own national passport [24] and that he was able to leave Iran because the authorities had no adverse interest in him. He found that he was not a follower of Avatar Meher Baba.

10. He therefore rejected the basis of the Appellant's claim in its entirety. He then considered the case of **SB (Iran) CG (risk on return - illegal exit) 2009 UKAIT 00053** and concluded that the Appellant had not been involved in sur place activities and that he did not have a well-founded fear of persecution as claimed.
11. The grounds do not argue that the First-tier Tribunal's credibility findings are perverse or inadequately reasoned. It is therefore perhaps strange that this is an issue that is raised in the grant of permission. In any event, since the matter has been raised, I find that the credibility finding raised in the grant of permission was adequately reasoned. He found at [23] that it was highly implausible that a person would openly display a silver necklace with a picture of Avatar Meher Baba in the society of Iran which is highly intolerant of other beliefs. The objective evidence from the COI Report at page 15 of the Appellant's bundle shows that the constitution recognises Zoroastrians and they are generally allowed to worship without interference. However, the grounds on which the First-tier Tribunal found that the account was not credible was that a conversation about this religion which included the exchange of telephone numbers could not plausibly have taken place in front of the taxi-driver. This finding is, I find, unimpeachable in the light of the objective evidence at page 15 of the Appellant's bundle that conversion by Muslims to non-Muslim religion is punishable by death. Further, the implausibility of the conversation was not the sole basis for his rejection of the account. He identified inconsistencies in the Appellant's evidence at [26].
12. The first point in the grounds is that the Appellant could not be expected to lie about his asylum claim, as follower of Avatar Meher Baba in the UK, when removal was enforced at the airport. It is said that this point was made in the skeleton argument (which it was) and that the First-tier Tribunal did not appreciate this argument and address it properly. In advancing this argument the Appellant relies on the cases of **HJ(Iran) & HT (Cameroon) v SSSHD [2010] UKSC 31, RT and others (Zimbabwe) v SSHD [2012] UKSC 38, BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC) and SB (risk on return -illegal exit) Iran CG [2009] UKAIT 00053.**
13. The First-Tier Tribunal found that the Appellant was not a follower of Avatar Meher Baba and that he had exited legally. In **BA** the Upper Tribunal found that there is not a real risk of persecution for those who have exited Iran illegally or are merely returning from Britain and followed and endorsed the conclusions of the Tribunal in the country guidance case of **SB**. Having found therefore that the Appellant had exited legally the First-tier Tribunal cannot have been said to have erred, on the basis of the country guidance, in finding that the Appellant was not at risk of persecution. Further, as he

had rejected the entire factual basis for the Appellant's claim, there were no grounds on which he should have considered whether the Appellant would be perceived as an apostate in Iran.

14. The grounds and skeleton argument misunderstand the cases of **HJ (Iran)** and **RT**. The Supreme Court in **HJ** held that if an applicant will not act in a way which invites persecution, but avoids persecution by concealing fundamental parts of his identity and personality, then he is entitled to asylum. In **RT** the Supreme Court held that the **HJ (Iran)** principle applied to applicants who claimed asylum on the grounds of a well-founded fear of persecution for reasons of lack of political belief. The Convention reasons reflect characteristics which either the individual is unable change or cannot be expected to change because they are so closely linked to his identity or are an expression of fundamental rights. The **HJ (Iran)** principle applies to a person who has political beliefs and has to conceal them in order to avoid the persecution that he would suffer if he were to disclose them.
15. The principle in the above cases does not extend to a situation where the Appellant has made a false asylum claim and is questioned on return. Clearly having made a false asylum claim cannot be said to be related to an expression of fundamental rights or a characteristic linked to identity. The Refugee Convention does not protect applicants who are questioned about a false asylum claim. The First-tier Tribunal therefore did not err in its assessment of risk or fail to apprehend a relevant argument.
16. The grounds also argue that the Upper Tier Tribunal did not have the benefit of current country evidence. The Amnesty International Report of 2012 is referred to in the grounds but was not referred to in the skeleton argument before the First-tier Tribunal. It is said in the grounds that the question is, in the light of the report, whether a religious opinion would be imputed to the Appellant and whether the authorities would view his asylum claim as an act which damaged the reputation of the Islamic Republic.
17. The Amnesty International Report 2012 was not before the First-tier Tribunal. References to it were made in an extract from the Respondent's COIR dated September 2013 at p14 of the Appellant's bundle. That extract stated that failed asylum seekers risked arrest if they returned to Iran, particularly if forcibly returned, where their asylum application was known to the authorities. A Swiss refugee agency is referred to which quoted an unnamed judge who stated that asylum seekers were interrogated on return, whether or not they had been political activists in Iran or abroad. Police would investigate whether they had done or said anything which could damage the reputation of the Islamic Republic. Returnees were held for a few days until it was clear to the police that they had not been involved in political activity.
18. The First-tier Tribunal found that the Appellant's account was simply untrue in its entirety. The background evidence does not demonstrate that failed asylum seekers are at risk per se. In the circumstances there was clearly no requirement for him to have regard to the contents of the Amnesty International Report as it cannot be said that the Appellant could

have been at risk according to that evidence on the basis of the findings made. There was therefore no basis on which the First-tier Tribunal could arguably have departed from the country guidance and therefore no error of law.

**Conclusions:**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her 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

Deputy Upper Tribunal Judge L J Murray