IAC-PE-SW-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/03623/2015

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 19th January 2016	**On 27th January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

M S
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Medley-Daley of Broudie Jackson and Canter
For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, MS, date of birth 3rd March 1971 is a citizen of Iran.

2. Having considered all the circumstances I [~~do not~~] consider it necessary to make an anonymity direction.

3. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Hillis promulgated on 19th May 2015. The judge dismissed the Appellant's appeal against the decision of the Respondent to refuse to recognise him as a refugee. That decision was made on 6th February 2015. Thereafter a decision was taken to remove the Appellant from the

United Kingdom under Section 10 of the 1999 Act. The Appellant appealed against the immigration decision. The appeal was heard by Judge Hillis and dismissed.

4. The Appellant now seeks to appeal against that decision on the basis that the decision contained material errors of law.

5. The Appellant's representative commenced his submissions by referring to the fact that there are a number of cases before the Court of Appeal relating to whether leaving Iran illegally and without a passport would expose an individual on return to a risk of being persecuted or having imputed to an individual a political opinion adverse to the government, which in turn would expose an individual to a risk of persecution. The current country guidance seems to indicate to the contrary [see **MA v Switzerland (Application number 52589/13)]**. At paragraph 57 refers to the fact that whilst there are serious human rights violations in Iran the Court did not feel that such would give rise to a violation of the Convention if an applicant were returned to the country. In **GN (Iran) v SSHD [2008] EWCA Civ 112** the Court of Appeal agreed that the evidence did not show that an illegal departure or being a failed asylum seeker would by themselves give rise to a risk of mistreatment engaging Article 3. **SB (risk on return–illegal exit) Iran CG [2009] UKAIT 00053** also makes the point that those facing enforced return do not generally face a risk of persecution by reason of that alone. It also found that even if a person had exited Iran illegally that continued to be the situation.

6. Whilst further consideration may have to be given to background information the country guidance cases seem to be clear.

7. I turn next to the issue with regard to Christianity. The judge in paragraph 34 seems to indicate that the Lord's Prayer would be recited at all Christian services. With respect it is unclear what experience the judge has of Christian services in Iran and specifically Iranian house churches. Certainly some denominations in the United Kingdom do not at their meetings regularly recite the Lord's Prayer. The representative for the Home Office accepted that it was not possible to state what form of service would take place in an Iranian house church whether that be the Chaldean, Assyrian or one of the western Christian churches. It is not clear whether the Appellant appreciated the difference at that stage or whether the difference was established during the course of the hearing. The judge seems to make it a very significant point in his conclusions with regard to the Appellant's conversion.

8. That approach with regard to certain aspects of religious observers seems to colour the judge's conclusion with regard to whether the Appellant had attended services in Iran and whether or not he had converted to a form of Christian religion in Iran.

9. It was accepted by the Home Office that the approach by the judge disclosed a material error of law.

10. In light of that error of law both parties agreed that the appeal would have to be heard afresh in the First-tier Tribunal.

11. The basis of the Appellant's case stems from his alleged attendance and active participation in house church services in Iran. The approach of the judge with regard to the facts indicates a presumption on the part of the judge which is not justified; which is not supported by an evidential basis; and which is not borne out by background evidence. In the light of that there is a material error of law within the decision of the judge. The appropriate course is for the matter to be heard afresh with none of the findings of fact preserved.

Notice of Decision

12. There is a material error of law in the original decision. I therefore set the decision aside and direct that the matter be heard afresh in the First-tier Tribunal without any of the findings of fact to stand.

Signed Date

Deputy Upper Tribunal Judge McClure

No fee is paid or payable and therefore there can be no fee award.

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 him or any member of his 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 McClure