



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/05251/2015

THE IMMIGRATION ACTS

Heard at Birmingham
On 15 March 2016

Decision and Reasons Promulgated
On 8 April 2016

Before

Deputy Upper Tribunal Judge Pickup
Between

Secretary of State for the Home Department

and

AH
[Anonymity direction made]

Appellant

Claimant

Representation:

For the claimant: Ms S Khan, Switalski's Solicitors
For the appellant: Mr J Parkinson, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appeal of the Secretary of State against the decision of First-tier Tribunal Judge Shimmin promulgated 7.8.15, allowing on asylum and human rights grounds the claimant's appeal against the decision of the Secretary of State to refuse his asylum, humanitarian protection and human rights claims. The Judge heard the appeal on 29.7.15.
2. First-tier Tribunal Judge Nicholson granted permission to appeal on 1.9.15.

3. Thus the matter came before me on 15.3.16 as an appeal in the Upper Tribunal.

Error of Law

4. For the reasons set out below, I found such error of law in the making of the decision of the First-tier Tribunal as to require the decision of Judge Shimmin to be set aside and remade.
5. Judge Shimmin rejected the claimant's claim to be a Christian convert as not credible. In fact, at §62 the judge rejected all of the claimant's factual case, with the exception of his Iranian nationality and that he left Iran illegally.
6. The point at issue in the appeal is a simple one. In assessing the risk on return, applying SB (risk on return - illegal exit) Iran CG [2009] UKAIT 00053, Judge Shimmin took account of the fact that the claimant has a crucifix tattooed on his chest and proceeded on the basis that this was a permanent mark. The judge found that because of his illegal exit on return the claimant would likely be questioned, detained and searched, in which search the judge considered it reasonably likely that the tattoo would be seen. At §67 the judge stated, "even if the appellant passes through the airport safely he will have to live his life in Iran with a cross on his chest and it is reasonably likely that it will be discovered at some time. This will bring him to the adverse attention of the authorities. Having such a symbol will identify him as someone who has involved himself in anti-Islamic conduct, namely his conversion to Christianity, and I find that this constitutes a significant risk factor. Effectively, the appellant has, by having himself tattooed with a cross, undertaken a *sur place* activity that puts him at risk of ill-treatment."
7. The Secretary of State's grounds of appeal complain that the judge has not adequately considered whether it would be reasonably possible for the claimant to discretely cover the tattoo by temporary, semi-permanent, or permanent means, and that the judge has not considered whether it would be reasonably possible for the tattoo to be altered or removed, such that it would not expose the claimant to adverse interest on return. "Given the (claimant) has not been found to genuinely hold any Christian belief, it is submitted that it will not breach the (claimant's) rights to expect him to cover, conceal, alter or remove the tattoo prior to return. The judge's failure to adequately consider whether reasonable adjustments could be made by the (claimant) allowing him to return safely amounts to material misdirection as to risk."
8. In granting permission to appeal, Judge Nicholson considered that "Since the judge effectively found that the tattoo was not a sign of any genuinely held belief, it is arguable that the (claimant) could reasonably be expected to have it changed or at least that the judge should have considered whether the (claimant) would in practice have it changed before return or whether it was reasonably likely the (claimant) would refuse to do so and actually put himself at risk for something he did not believe in."
9. I reject Ms Khan's argument that this is merely a disagreement with the findings of the judge, or that the Secretary of State should be prevented from making such an

argument because it was not specifically canvassed at the First-tier Tribunal appeal hearing. The points made by the Secretary of State are simple and obvious.

10. There has been no cross-appeal against the finding that the claimant is not a genuine Christian convert and that part of the decision must stand. In that light, the cynical obtaining of a crucifix tattoo must be regarded as an entirely self-serving action to bolster a false asylum claim and cannot represent any genuinely-held belief.
11. I also reject Ms Khan's submission that it would be unreasonable to expect the claimant to change or remove the tattoo because either (a) it is an expression of personal opinion and he has made a person choice to have the tattoo displayed on his body; or (b) that removal would be painful. In respect of the first I am satisfied that it must follow from the findings of the First-tier Tribunal as to his claimed Christian conversion that it is not genuine self-expression, but rather a device to bolster a false claim. In respect of the alleged pain in removal, I note it is common knowledge that tattoos can be altered and inked over so as to obscure the original tattoo. Further, it is not necessary to have a permanent solution such as removal or amendment of tattoo, as temporary or semi-permanent obscuring without pain is also possible. I am not satisfied that removing, altering or obscuring, or disguising this tattoo, obtained by the claimant in the circumstances of the finding of the First-tier Tribunal Judge as to his claimed Christian conversion can properly be described as an infringement of his freedom of expression or physical integrity.
12. There is therefore no reason why, if he genuinely fears adverse treatment for this reason on return, the claimant should not be expected to have the tattoo removed, altered so as to disguise it, or discretely obscured in some other alternative way, either permanently or temporarily, so as to neutralise any risk on return that would otherwise arise in respect of a person bearing such a mark. I am satisfied that the judge failed to address such considerations and in simply considering the tattoo permanent and discoverable thereby fell into error.
13. There was no other basis for allowing the claimant's appeal and given that there has been no cross-appeal against the finding rejecting every other part of his claim other than his nationality and illegal departure, there is nothing else in the facts of this case that would render this claimant at risk on return, applying SB (Iran), and BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC). There is no real risk of persecution for those who have exited Iran illegally or are merely returning from Britain.
14. Ms Khan submitted that if the decision of the First-tier Tribunal were to be set aside the claimant would wish to adduce further evidence as to the impact on him of removing the tattoo and further evidence of his Christian conversion, including that he has continued to attend church and would be able to produce witnesses to that effect. However, as pointed out, there was no cross appeal on that issue and that part of the decision must stand. If there is genuinely further information or evidence that the claimant would wish to rely on that may be a matter for him to consider by

making a fresh claim. I do not see that it is necessary or appropriate to reopen the issues already settled in this appeal.

15. Ms Khan also referred to a pending country guidance case on the issue of illegal departure from Iran, but the duty of the Tribunal is to apply the case law as it stands including country guidance.
16. In the circumstances, I see no purpose in any further hearing and on the basis the appeal must fail on all grounds.

Conclusions:

17. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I re-make the decision in the appeal by dismissing it.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

10 March 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 made an order.

Given the circumstances, I continue 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 and thus there can be no fee award.

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

Signed

Deputy Upper Tribunal Judge Pickup

Dated

10 March 2017