



**The Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/00810/2015**

**Appeal number:**

**THE IMMIGRATION ACTS**

**Heard at Stoke  
On May 5, 2016**

**Decision &  
Promulgated  
On 18 May, 2016**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**MR ARDALAN AZIZ MAJIDI  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

Representation:

For the Appellant: Mr Schwenk, Counsel, instructed by Halliday  
Reeves

Law Firm

For the Respondent: Mr Mills (Home Office Presenting Officer)

**DECISION AND REASONS**

1. The Appellant is a citizen of Iran. The appellant left Iran illegally on May 10, 2015 and arrived in the United Kingdom on May 18, 2015 and claimed asylum.
2. The respondent refused his claim on August 9, 2015 under paragraphs 336 and 339M HC 395.
3. The appellant appealed that decision under section 82(1) of the Nationality, Immigration and Asylum Act 2002 on August 24, 2015.
4. The appeal came before Judge of the First-tier Tribunal Pacey (hereinafter referred to as the Judge) on January 20, 2016 and in a decision promulgated on January 27, 2016 the Judge refused the appellant's appeal.
5. The appellant lodged grounds of appeal on February 12, 2016 submitting the Judge had erred by failing to consider the objective evidence that post-dated the country guidance decision of SB (risk on return-illegal exit) Iran CG [2009] UKAIT 00053.
6. Permission to appeal was initially refused by Designated Judge of the First-tier Tribunal Zucker on February 22, 2016 because he was not satisfied it had been shown to the lower standard of proof that the appellant had left illegally. Permission to appeal was renewed to the Upper Tribunal and Upper Tribunal Judge Blum found on March 7, 2016 there was an arguable error of law. She found it was arguable the Judge had erred by failing to engage with the material that showed people who left Iran illegally faced a sentence of between one and three years' imprisonment or could receive a fine.
7. The respondent served a Rule 24 response dated March 23, 2016 opposing the error in law.
8. The matter came before me on the above date and I heard submissions from both representatives.
9. The First-tier Tribunal did not make an anonymity direction and I see no reason to make one now.

## **SUBMISSIONS**

10. Mr Schwenk did not challenge the Judge's credibility findings but as the respondent had accepted the appellant had left illegally it was incumbent on the Judge to consider the evidence advanced as to what happened to people who left illegally. This evidence showed there was a real risk of serious harm for the appellant and although the Judge considered the jurisprudence of such cases Mr Schwenk

submitted that did not involve consideration of material that had been placed before the Judge.

11. Mr Mills submitted that at a paragraph [26] the Judge had considered not only the decision of SB but also the more recent Iranian decisions of BA (demonstrators in Britain-risk on return) Iran CG [2011] UKUT 36 (IAC) and AB and Others (Internet activity-state of evidence) Iran [2015] 0257 (IAC). He submitted the Judge's assessment had regard to the evidence and there was no error in law.
12. Having heard the representatives' submissions, I reserved my decision.

### **FINDINGS ON ERROR IN LAW**

13. The issue to be considered was narrow namely would a person who had left illegally and whose account had been found to lack any credibility be at risk of treatment that would breach article 3 ECHR.
14. Contrary to the finding of Designated Judge of the First-tier Tribunal Zucker it was not disputed the appellant had left Iran illegally and the respondent had conceded that issue in her refusal letter.
15. It was also not disputed that the Tribunal in SB made clear that a person who left Iran illegally and was a failed asylum seeker but had no profile would not be at risk.
16. The issue raised by Mr Schwenk was whether the Judge erred by failing to make findings on the evidence contained in the appellant's bundle at pages four to seven. This evidence was contained in written submissions advanced on the appellant's behalf. The letter referred to the country of origin reports from 2011, 2012 and 2013.
17. In considering risk on return the Judge considered this at paragraph [25] of her decision. She reminded herself of the decision of SB and then at paragraph [26] she wrote-

"The weight of jurisprudence seems to suggest that returning asylum seekers will only be at risk on arrival back in Iran where there were other factors which would make them stand out. For example, a political profile. There is nothing to indicate the appellant has such a profile and he would not, then, in my judgement be in a risk category...."
18. Mr Schwenk argues that as SB was decided in 2009 it was incumbent on the Judge to consider additional and more recent evidence. This, he submitted, the Judge had failed to do.

19. Mr Mills argues that the more recent decisions of BA and AB did, to a degree, have regard to what has happened since 2009 and they did not state SB was no longer good law.
20. The decision in AB dealt with risks facing “bloggers” and did not review the findings in SB. It is arguable that the Tribunal considered the position as set out in SB namely those with no profile were not at risk and then considered the effect “internet activity” might have on return. To that extent it is arguable the jurisprudence supported the Judge’s finding that those who left illegally with no profile were not at risk.
21. Mr Schwenk pointed me to the articles from 2011 to 2013. At page [4] of the bundle there is a reference to an extract from the 2013 country of origin report. The article referred to a nineteen-year-old student activist namely a person who had a profile. The same article also referred to a person who had been arrested for demonstrating against the authorities. Again this person could be classed as having a profile. At page [5] of the bundle there is reference to a nineteen-year-old Kurd who was forcibly returned in September 2013 from Norway and he was *reportedly* arrested and was *believed* to still be detained. There is also a Swiss report that referred to quotes from an *unnamed* Judge.
22. I do not find that any of the matters contained on those pages would have altered the approach of the Judge in this case. The examples are either of people with profiles or unsubstantiated reports.
23. On Page [6] of the bundle there is a reference in the 2012 Country of Origin Report to article 34 of the Penal Code. This was something considered by the Tribunal in SB and the Tribunal rejected the claim that this in itself would place a person at risk or persecution or serious harm.
24. Mr Schwenk’s submission was to the effect that AB did not consider changed circumstances and it would therefore be difficult to now argue that AB changed the position for persons who left illegally. Pages [8] to [10] do not add anything to the argument presented.
25. The Tribunal in BA did consider risk on return and endorsed the approach in SB.
26. I am therefore satisfied that the Judge did consider the relevant evidence and there is nothing adduced in this appeal that would suggest there is an error in law.
27. I am aware that there is a pending country guidance decision on illegal exit from Iran but based on the evidence adduced in this appeal to the Judge I am satisfied there was no error in law.

**DECISION**

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

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

**FEE AWARD**

I maintain the original fee award decision.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis