



**Upper Tribunal  
(Immigration and Asylum Chamber)  
AA/08305/2013**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Columbus House,  
Newport  
On 3 April 2017**

**Decision & Reasons  
Promulgated  
On 9 May 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE L MURRAY**

**Between**

**R A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms J Evans, instructed by Broudie Jackson Canter Solicitors  
For the Respondent: Mr K Hibbs, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Iran. He arrived in the United Kingdom on 18 July 2013 and claimed asylum on 19 July 2013. His application for asylum was refused by the Respondent on 13 August 2013 and his appeal to the First-tier Tribunal against that decision was dismissed by First-tier Tribunal Judge Lloyd Smith on 1 October 2013. Permission to appeal to the Upper Tribunal was refused by First-tier Tribunal Judge Osborne on 1 November

2013. The Appellant's application for permission to appeal to the Upper Tribunal was not admitted on 5 December 2013 as the Upper Tribunal concluded that an extension of time was not justified. On 30 December 2013 the Appellant lodged a judicial review claim in the Administrative Court. On 31 January 2014 Mr Justice Baker considered the application on the papers and refused permission. The Appellant applied for permission to appeal to the Court of Appeal. Lord Justice Beatson granted permission on the papers. On 19 May 2015 the Court of Appeal ordered by consent that the appeal be allowed and the decision of the Upper Tribunal dated 25 November 2013 refusing to admit the application for permission to appeal be quashed and the appeal remitted to the Upper Tribunal for a new decision on the application for permission to appeal. On 18 June 2015 CMG Ockelton, Vice President of the Upper Tribunal granted permission to appeal in the light of the decision of the Court of Appeal.

### The Grounds

2. The grounds for permission to appeal contend that the Appellant would be questioned on return to Iran and that such questioning would lead to a real risk of persecution. The Appellant cites background evidence in support of this contention. The Appellant argues that the country guidance decisions in **SB (risk on return - illegal exit) Iran CG [2009] UKIAT 00053** and **BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC)** do not prevent the Appellant's appeal being allowed as new country evidence is available and the Respondent's policy has changed.

### The Hearing

3. Mr Hibbs produced the case of **SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308**. Ms Evans confirmed that she was relying on the renewed grounds to the Upper Tribunal seeking permission to appeal but conceded that the Appellant was in difficulties in arguing his case on the basis of the most recent country guidance. She conceded that as the Appellant's arguments were based on being a failed asylum seeker and having exited illegally, in view of the conclusions of the Upper Tribunal in **SSH** she could not argue that he would face a real risk of persecution/breach of his Article 3 rights on return to Iran.
4. Mr Hibbs submitted that in the light of the country guidance case law there was no error of law in the decision of the First-tier Tribunal.

### Discussion

5. The matter was remitted to the Upper Tribunal for reconsideration by the Court of Appeal by consent on the grounds that the Upper Tribunal in refusing permission to appeal made an arguable error of law in failing to engage with new objective material showing a risk to failed asylum seekers on return to Iran and by failing to consider whether it was appropriate to depart from Country Guidance given in **SB**. In the case of **SSH** promulgated on 10 May 2016 the Upper Tribunal considered the risk to an Iranian male in respect of whom no adverse interest had previously been manifested by the

Iranian State and concluded that there was no real risk of persecution/breach of his Article 3 rights on account of illegal exit or being a failed asylum seeker. Ms Evans did not advance any other ground for challenging the First-tier Tribunal's decision.

6. In the circumstances in view of the decision in **SB** I find that the First-tier Tribunal did not err in law in finding that Appellant would not be at risk due to illegal exit and being a failed asylum-seeker.

### **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.

### **Anonymity**

The First-tier Tribunal made an order and I continue that order (pursuant to 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

Dated 3 MAY 2017

Deputy Upper Tribunal Judge L J Murray