



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/13094/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 26 April 2017**

**Decision & Reasons Promulgated
On 5 May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**[H B]
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Capel (Counsel instructed by Hammersmith & Fulham Community Law Centre)

For the Respondent: Mr P Armstrong, Home Office Presenting Officer

DECISION AND REASONS

1. This is an error of law hearing. I shall refer to the parties as “the appellant” and “the Secretary of State” who is the respondent. The appellant has been granted permission to argue grounds of appeal in respect of a Decision and Reasons by First -tier Tribunal (Judge Barker) (“FTT”) promulgated on 20 July 2016 in which he dismissed the appeal on asylum and human rights grounds.

Background

2. The appellant, whose date of birth is [] 1994, is a citizen of Iran. He is Muslim and he is Azeri by ethnicity. The basis of his claim was that he had distributed anti-Government leaflets with friends for fun. The police were called but he managed to evade capture and he subsequently left Iran. He had no knowledge of the content of the leaflets. He has no political profile and has no particular anti-Government stance.

First-tier Decision and Reasons

3. In a full and well-reasoned Decision and Reasons the FTT dealt with the main aspect of the appellant's claim at [30 to 44]. The FTT found that the appellant was not at real risk of persecution for political opinion or imputed political opinion. The FTT found that his claim of distribution of leaflets was not credible. It was accepted that he had given a consistent account [36] but for reasons which are not challenged, the FTT found the appellant to be lacking in credibility as to the core of his claim. None of those findings and/or conclusions are the subject of challenge in this error of law hearing.
4. The FTT went on to consider risk on return with reference to the country guidance decision of **SB (Iran) [2009] UKAIT 00053**. The appellant relied on an expert report from Dr Kakhki. The FTT considered risk on return and having regard to the appellant's ethnicity and military service. It found that the expert report which dealt with those issues did not displace the country guidance in **SB**, albeit that the country guidance is now somewhat out of date.
5. In dealing with those issues at [45] the FTT concluded that :-

"The appellant left Iran at the age of 16 and is currently 21 years of age. This puts him within the normal range for military service in Iran. I accept that the appellant may face difficulties from the authorities because of his absence during these years and that these could add to problems on return to Iran."

Grounds of Appeal

6. In grounds of appeal the appellant contended that the FTT made a material error of law by failing to make a clear findings of fact in terms of what was meant by "*could face punishment*", "*problems of return*" or "*may face difficulties from the authorities*". These are significant issues relevant to the appellant's claim that he faces a risk on return. The FTT ought to have made clear findings in respect of those matters. It was unclear how the FTT dealt with those aspects of his claim.
7. The second ground of appeal was that the FTT failed to place weight on or have regard to the relevant country expert opinion relied on by the appellant.

8. Permission to appeal was granted by Deputy Upper Tribunal Judge Chapman on 10 March 2017. Judge Chapman stated:-

“ ...

2. The grounds in support of the application for permission to appeal which was made in time, assert that the judge materially erred in law:
 - (i) in failing to reach a clear finding of fact as to whether in accepting at [45] that the appellant ‘may face difficulties from the authorities’ due to his failure to undertake military service to date because of his absence from Iran and that these would ‘add to problems on return’ that this would or could amount to persecution; and
 - (ii) in failing to have regard to relevant evidence *viz* the expert opinion of Mr Kakhki in five material respects as to why he considered the appellant was reasonably likely to be imprisoned and his Azeri ethnicity was likely to exacerbate the risk of ill-treatment.
3. I find that there are arguable errors of law in the decision and reasons of First-tier Tribunal Judge Barker for the reasons set out in the grounds of appeal.
4. Permission to appeal is granted.”

Rule 24 Response

9. The Secretary of State in a response dated 24 March 2017 stated as follows:-

“The respondent does not oppose the appellant’s application for permission to appeal on the basis that paragraph 45 of the FtT judgment is vague and does not seem to engage with the argument or evidence in respect of what would actually happen to the appellant on return (although this is not a concession that there would be a breach of the UK’s protection responsibilities). The Secretary of State does not oppose the Upper Tribunal considering the question itself by way of a substantive hearing limited to that issue.”

Error of law hearing

10. The matter was listed before me for substantive hearing on the issue of risk on return. Miss Capel had not received a copy of the Rule 24 notice and was prepared to argue a full error of law application. Mr Armstrong in essence accepted that there were issues material to risk on return that needed to be given further focus and acknowledged that the First-tier Tribunal had been vague.
11. Miss Capel submitted that there needed to be clear findings of fact made in order to assess risk on return and that the appropriate venue would be for the matter to be remitted for hearing at the First-tier Tribunal on that specific issue.

Discussion and Decision

12. At the end of the hearing I found material errors of law in that the FTT failed to make proper findings of fact as to the risks on return having concluded that the appellant “may face difficulties from the authorities” and that these would “add to his problems on return” and that it failed to place sufficient weight on the expert report. These were material matters going to the issue of risk on return and in respect of which the FTT ought to have made clear findings of fact and given reasons together with an explanation for the statements made at paragraph [45] quoted above. The FTT otherwise determined the appeal fully and clearly in dismissing the appellant’s claim linked to political opinion. However, insofar as risk on return is affected by military service, the appellant’s Azeri ethnicity and illegal exit, the FTT failed to make proper findings of fact and to assess the risk on return to Iran.

Notice of Decision

13. I find a material error of law and the determination shall be set aside insofar as that part of it deals with risk on return. The findings and conclusions reached by the First-tier Tribunal from [1 to 42] are upheld and preserved.
14. The matter is to be remitted for hearing in the First-tier Tribunal at Hatton Cross (excluding Judge Barker).
15. The hearing shall focus only on the limited issue of risk on return including military service, ethnicity and illegal exit.
16. The parties may refer to the country guidance case **SB (Iran)** insofar as it deals with relevant issues relating to military service, ethnicity and illegal exit.
17. The matter is listed for hearing accordingly.

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
GA Black

Date 2.5.2017

Deputy Upper Tribunal Judge G A Black