



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

Appeal Number: PA/08563/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 October 2017**

**Decision Promulgated  
On 02 November 2017**

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**A N**

Appellant

**and**

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

Respondent

**(ANONYMITY DIRECTION MADE)**

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. 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.

**Representation:**

For the appellant: Mr A. Chakmakjian, Counsel instructed by Fadiga & Co.

For the respondent: Mr E. Tufan, Senior Home Office Presenting Officer

### **DECISION AND REASONS**

1. The appellant appealed against the respondent's decision to refuse a protection and human rights claim.
2. First-tier Tribunal Judge Grice ("the judge") dismissed the appeal in a decision promulgated on 31 March 2017. The appellant appeals against the First-tier Tribunal decision on the following grounds:
  - (i) The credibility findings were flawed because the judge:
    - (a) failed to consider the circumstances of the screening interview adequately;
    - (b) failed to take into account the appellant's explanation and/or placed undue weight on an alleged discrepancy in his evidence relating to problems arising from a "clergyman"/"Imam";
    - (c) failed to give adequate reasons for placing weight on the appellant's failure to mention the arrest of his secretary in interview. He mentioned the incident in the SEF statement, but was not asked about it in interview;
    - (d) failed to give adequate weight to documents relating to the appellant's business, which were supportive of his account.
  - (ii) The judge made several negative credibility findings in relation to matters that were not raised by the respondent without giving the appellant a fair opportunity to respond to the points at the hearing.
  - (iii) The judge failed to consider the evidence given by two additional witnesses adequately.
  - (iv) In assessing risk on return resulting from political activities carried out in the UK the judge failed to consider relevant country guidance relating to the additional interest that the authorities might have in political activities carried out by Iranian Arabs: see *SA (Iranian Arabs - no general risk) Iran CG [2011] UKUT 41*.

### **Decision and reasons**

3. I have considered the First-tier Tribunal decision in detail. I have taken into account the grounds of appeal and the oral submissions made by both parties at the hearing. This is a finely balanced decision, but in my

assessment the cumulative effect of the issues raised in the grounds of appeal render the First-tier Tribunal decision unsustainable.

4. Although many of the credibility points made by the judge were unarguably open to her to make, as a whole, the decision fails to take into account or give weight to evidence that supported the appellant's account. The judge assessed the plausibility of a number aspects of the claim in light of what she "would have expected" rather than assessing the credibility of the claim in the context of the background evidence relating to the nature of the Iranian regime and the other evidence produced in support of the claim. The Tribunal should be cautious not to place undue weight on plausibility in coming to adverse credibility findings: see *HK v SSHD* [2006] EWCA Civ 1037 and *Y v SSHD* [2006] EWCA Civ 1223.
5. The Tribunal gave reasons for rejecting some aspects of the evidence given by the supporting witnesses but not others. Despite stating that the evidence of the witnesses had been considered as part of a holistic assessment the judge rejected the credibility of the evidence given by Ms Khatib because she had already found the appellant's account incredible rather than assessing whether Ms Khatib's evidence was reliable and therefore capable of supporting his account. The judge rejected Mr Nejadfazel's evidence because of apparent concerns about his political affiliations, but failed to make findings on the core aspects of his evidence whereby he outlined what he knew of the appellant's problems in Iran from the appellant and other members of his family.
6. Although the judge asked a number of 'clarifying questions' during the course of the evidence, the appellant has identified several points where the judge made negative findings on matters that were not raised in the reasons for refusal letter and did not appear to be put to the appellant to answer at the hearing.
7. Taken alone, the above concerns might not be sufficient to render the decision unsustainable. What has tipped me to conclude that the First-tier Tribunal decision involved the making of an error of law is the final point relating to the assessment of risk on return. The judge referred to the relevant country guidance decision in *BA (Demonstrators in Britain - risk on return) Iran* [2011] UKUT 36, but failed to assess the risk on return in the particular circumstances of this case, which included the additional element of the appellant's ethnicity. The headnote to *SA (Iran)* makes clear that ethnicity might enhance other risk factors even if an Iranian Arab is not likely to be at risk solely for reasons of his ethnicity:

"The Iranian state is suspicious of those Iranian citizens who are also Arabs and regards London as a centre of separatist activity. Being an Iranian Arab returned from the United Kingdom enhances other risk factors but an Iranian Arab does not risk persecution or other ill treatment solely by reason of ethnicity."

8. I am conscious of the need for anxious scrutiny of protection claims and the potentially serious consequences of return to a country such as Iran. In

light of the concerns about some aspects of the judge's credibility assessment, and her failure to consider a matter that was relevant to a proper assessment of risk on return, I conclude that the decision involved the making of an error of law and must be set aside. Both parties agreed that the appropriate course of action is to remit the matter to the First-tier Tribunal for a fresh hearing.

## **DECISION**

The First-tier Tribunal decision involved the making of an error of law

The decision is set aside

The appeal is remitted to the First-tier Tribunal for a fresh hearing

Signed  Date 01 November 2017  
Upper Tribunal Judge Canavan