



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

Appeal Number: PA/13129/2016

THE IMMIGRATION ACTS

Heard at Newport (Columbus House)

**Decision & Reasons
Promulgated**

On 29th August 2017

On 28th September 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

**MM
(ANONYMITY DIRECTION)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Frazyk instructed by Migrant Legal Project (Cardiff)

For the Respondent: Mr Harrison, Home Office Presenting Officer

DECISION AND REASONS

**Order Regarding Anonymity - Rule 14 of the Tribunal Procedure
(Upper Tribunal) Rules 2008**

1. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This order applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

2. The Appellant is an Iranian national born in 1987. He arrived in the United Kingdom as an illegal entrant on 13th May 2016 and claimed asylum when he was stopped on arrival. On 11th November 2016, his international protection claim was refused. He appealed that decision and his appeal was heard before the First-tier Tribunal (Judge Trevaskis) and was dismissed in the determination promulgated on 10th February 2017. Permission to appeal to the Upper Tribunal was granted on the basis that the judge had failed to make a clear and unambiguous finding as to the Appellant's credibility.
3. At the hearing before me the representatives were in agreement that when Judge Trevaskis set out under a heading "Findings" at paragraphs 24, 25 and 26 of his decision he recites the Appellant's claim as he understood it, both in the context of his historical account of political activity in Iran and the assertion that those activities had resulted in an arrest warrant being issued. The judge does not expressly make a finding as to whether or not the Appellant had established his claimed political activities or that an arrest warrant had been issued. The judge goes on in paragraph 26 to comment that he had been provided with no evidence from Iran to verify the Appellant's claim of his activities in Iran. The judge also sets out the Appellant's sur place claim and again refers to the lack of corroboration. However, the judge does not make any finding as to whether or not the Appellant in fact engaged in the political activity whether in Iran or in the United Kingdom. The judge does not make any finding as to whether or not the Appellant has established that a warrant has been issued in Iran or whether his factual findings as to sur place activity would result in the Appellant having otherwise come to the attention of the Iranian authorities.
4. The absence of expressed findings on those points render the judge's commencement of paragraph 27 with the words:

"taken at its highest, the Appellant's claimed activity both in Iran and in the United Kingdom is at the very lowest level, and I am not satisfied to the required standard that his activities will have attracted the attention of the authorities in Iran, either based upon what he claimed to have done there, or what he has done since coming to the United Kingdom"

incomprehensible because the Appellant's claim "at its highest" is that an arrest warrant has been issued.

5. Mr Harrison for the Respondent acknowledged if the judge was indeed taking the Appellant's claim "at its highest" in the context of the existence of an outstanding warrant for his arrest his claim would have been bound to succeed. Mr Harrison conceded Mr Frazyk's point that whilst one can infer from the outcome that the judge rejected the Appellant's factual account including the existence of the warrant the judge was required to make findings to resolve the factual disputes between the parties and had singularly failed to do so. Mr Harrison agreed with Mr Frazyk's submission that it was a material error of law and it was agreed by all parties that the

judge's decision was unsustainable and I was invited to set it aside to be remade in its entirety.

Decision

6. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal, to be dealt with afresh, with no findings preserved, pursuant to Section 12(2)(b)(i) of the Tribunal's Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Trevaskis.

Signed

Date

Deputy Upper Tribunal Judge Davidge