



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02476/2017

THE IMMIGRATION ACTS

Heard at Manchester CJC
On 13th June 2018

Decision & Reasons Promulgated
On 26th June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR MAHRAN JALALY
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Greer, Counsel
For the Respondent: Mr C Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iran born on 18th October 1989. The Appellant arrived in the UK on 27th September 2016 and claimed asylum two days later. The claim for asylum was based on the basis of his political opinion. His application was refused by Notice of Refusal dated 23rd February 2017.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Holt sitting at Manchester on 7th April 2017. In a decision and reasons promulgated on 21st April 2017 the Appellant's appeal was dismissed.
3. The Grounds of Appeal were lodged to the Upper Tribunal on 21st April 2017. On 1st September 2017 First-tier Tribunal Judge Gillespie refused permission to appeal.
4. Renewed Grounds of Appeal were lodged on 27th September 2017 and at paragraphs 26 to 29 of those renewed grounds the refusals to grant permission by Judge Gillespie was addressed.
5. On 10th October 2017 Upper Tribunal Judge Canavan granted permission to appeal noting that it was at least arguable that the judge failed to come to any clear findings on the Appellant's nationality or to make any clear findings regarding the credibility of particular aspects of his claim or risk on return to Iran. Although the Respondent disputed the Appellant's nationality the refusal letter made clear that she intends to remove him to Iran and that the grounds generally merited more detailed consideration at a hearing.
6. On 31st October 2017 the Secretary of State responded to the Grounds of Appeal under Rule 24. The Rule 24 response contended that the grounds did little more than disagree with the conclusions and findings of the First-tier Tribunal Judge which were open to her on the evidence.
7. It is on that basis that the appeal first came before me to determine whether or not there was a material error of law in the decision of the First-tier Tribunal Judge. The Appellant attended by his instructed Counsel Miss Patel. Miss Patel was extremely familiar with this matter. She attended before the First-tier Tribunal and she is the author of the Grounds of Appeal. The Secretary of State appears by her Home Office Presenting Officer Mr Diwnycz.
8. It was on that basis that the appeal first came before me to determine whether or not there was a material error of law in the decision of the First-tier Tribunal Judge. I made thereafter the following findings:
 - (1) That the decision of the First-tier Tribunal Judge contained no material error of law so far as it related to the assessment of the Appellant's nationality and findings of credibility.
 - (2) That I recorded that at the date of the decision it remained the intention of the Secretary of State to return the Appellant to Iran, albeit that the First-tier Tribunal Judge had concluded that he was not from there. I gave a direction that the Secretary of State was to advise as to whether it remains his intention to return the Appellant to Iran despite this finding.

There is now produced to me a memorandum, undated, pursuant to that direction that the Secretary of State's case has always been that the claimant had failed to show, to the lower standard of proof, that he was a national of Iran but that the Home Office

could not sufficiently evidence that he was a national of another country. It was consequently an “unknown” nationality case and not a “disputed” nationality case and, as such, the Secretary of State for the Home Department makes no assertions regarding nationality. It concludes by stating that the Home Office does still intend to return the Appellant to Iran providing it continues to be found that he is not at risk of persecution or serious harm there.

9. As a result, the remainder of my directions applied, specifically that the decision of the First-tier Tribunal contained a material error of law solely so far as it related to the failure to address the position that the Appellant would place himself in upon return to Iran. I gave directions reserving the matter to myself and retaining it within the Upper Tribunal jurisdiction and granted leave to either party to file and/serve such objective evidence upon which they sought to rely. The matter was to be dealt with by way of submission only and it is on that basis that the appeal comes back before me. This time the Appellant appears by his instructed Counsel, Mr Greer. The Secretary of State appears by her Home Office Presenting Officer, Mr Bates.

Current Case Law

10. Relevant case law in this matter is to be found in the authority of *SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC)*. The head note to that authority states:

“(a) *An Iranian male whom it is sought to return to Iran, who does not possess a passport, will be returnable on a laissez passer, which he can obtain from the Iranian Embassy on proof of identity and nationality.*

(b) *An Iranian male in respect of whom no adverse interest has previously been manifested by the Iranian State does not face a real risk of persecution/breach of his Article 3 rights on return to Iran on account of having left Iran illegally and/or being a failed asylum seeker. No such risk exists at the time of questioning on return to Iran nor after the facts (i.e. of illegal exit and being a failed asylum seeker) have been established. In particular, there is not a real risk of prosecution leading to imprisonment”.*

Submissions/Discussions

11. Mr Greer submits that this case turns on whether or not the Appellant falls within the provisions of the country guidance authority and whether at the point of arrival he would be subject to intense interrogation. He submits that he would. He points out that there is little information available as to what the authorities would do and submits that it would not be possible for the Appellant to return to Kurdistan in the current circumstances. He points out that *SSH* is authority for stating that there must be some form of documentation and that if, as would be his submission following the preserved findings of the First-tier Tribunal Judge, his ID were to be false then he would be subjected to intense interrogation. He submits it would not be possible to return the Appellant with a laissez-passer and that he would be returned under substantial suspicion and consequently may have an enhanced risk of interrogation.

Alternatively, it would be open to the Iranian authorities to send him straight back to the UK.

12. He refers to paragraph 276ADE(vi) of the Immigration Rules and submits that the Appellant would face insurmountable obstacles in integrating into Iran. He reminds that the First-tier Tribunal Judge found that the Appellant was not an Iranian and consequently the Appellant would not be able to get an ID card. He points out the Appellant does not speak the majority language and that as a member of a minority ethnic group he would be treated with suspicion and would not in his view be in a position to return.
13. Mr Bates and Mr Greer both remind me that to a certain extent the issue that I am hearing today is purely theoretical, firstly because the Secretary of State at present is not making enforced returns to Iran, and secondly because it would not be possible for the Appellant to return without authentic documentation. Mr Bates points out that even if the Appellant reaches the airport the Iranians must still consent to receive him. However, he points out that the burden of proof is on the Appellant to show he would suffer mistreatment on return and that the Secretary of State in principle is returning the Appellant to where the Secretary of State says he is from.
14. Thereafter, making the assertion that the Appellant has been permitted to enter the airport it would be for the authorities either to deny entry and return him to the UK which he acknowledges that if the preserved findings of the First-tier Tribunal Judge were taken would mean that the Appellant was not allowed to enter in the first place.
15. Mr Bates raises the rhetorical question as to whether or not there is any evidence if the Appellant were to arrive at Tehran he would face mistreatment. He submits that there is not and that the Appellant has failed to discharge the burden of proof. Thereafter, he goes on to look at the scenarios that could as an alternative develop, including a grant of temporary admission, and if that were to have been granted the Appellant would have entered legally as he consented to enter.
16. He submits that paragraph 276ADE(vi) only applies if the Secretary of State says that the Appellant has to live in Iran permanently and it would be up to the Appellant to say where he is from, and that there is no reason why the Appellant cannot go to his own country.
17. In brief response, Mr Greer submits that there is some evidence to be found within *SSH* to suggest that those arriving under false documents are at risk and if so, the Appellant would be returned, and bearing in mind how long he has been in the UK there would be effects upon his private life.

Findings

18. There is much with regard to this matter that is based on a number of submissions which are of a theoretical nature. The case is not helped by the contradictory submissions of the parties as to the nationality of the Appellant. However, I do accept and agree that as a matter of law it is for the Appellant to show to a lower standard of

proof his nationality and there is much within the comments made at paragraphs 18 and 21 of the First-tier Tribunal Judge supporting the contention the claimant has failed to show he is an Iranian national but no assertion is made by the Home Office regarding nationality. Be that as it may, the critical issue upon which this matter turns is whether or not the Appellant has shown any basis to show that he would be at risk on return. I find he has failed to discharge that burden. There is no evidence produced before me to show that he would be mistreated and I do not consider that this particular Appellant's case is assisted by any findings made within the current country guidance authority. This is an Appellant who states he is not an Iranian. In such circumstances the following factors may arise:-

- (i) he would be refused entry on return;
- (ii) that he could be granted temporary admission to make onward travel to his home country;
- (iii) he will not, as he does not have appropriate documentation, be allowed into the country in the first place.

19. To a certain extent, bearing in mind there are no forced returns to Iran at present, the whole exercise is, as has been agreed by the legal representatives, academic. However, this re-hearing turns solely on the fact that the First-tier Tribunal Judge failed to address the position the Appellant would place himself in upon return to Iran. My findings for all the above reasons are that he would not be at risk on return. To a certain extent, bearing in mind the continuing vagueness of the Appellant's position and the various options that could arise, it is perhaps hardly surprising that the judge at first instance failed to make more findings than she did. In all the above circumstances I am not satisfied that even to the lower standard of proof the Appellant has discharged the relevant burden. The other findings of the First-tier Tribunal Judge were preserved and stand, and for all the above reasons the Appellant's appeal is now dismissed.

Notice of Decision

The Appellant's appeal is dismissed on all grounds.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date 25 June 2018

Deputy Upper Tribunal Judge D N Harris