



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/05622/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Bradford
On 6th February 2018**

**Decision & Reasons
Promulgated
On 5th March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**AQ
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Javed, Solicitor, Reiss Solicitors
For the Respondent: Ms R Pettersen, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Jones made following a hearing at Bradford on 9th January 2017.
2. The appellant is a citizen of Iran born on 18th August 1990. He claimed asylum on 16th December 2015 following arrest. He was refused on 20th May 2016.
3. The appellant claimed that he would be at risk on return to Iran on the basis that he had committed adultery. At the hearing before Judge Jones

he confirmed that the earlier adultery claim is a falsehood but said that he would be at risk because he was a homosexual.

4. The judge wrote as follows:

“In the absence of consent from the Secretary of State to allow new grounds of appeal to be heard I am unable to hear them. I am satisfied that the appellant has confirmed his original claim was false, it is unfortunate he has maintained it through the asylum interview – when there would have been no one there to overhear him he might fear and put forward then the basis of claim he mentions now. I can understand why any suggestion he be allowed to withdraw his appeal would be opposed.

It is clear the appellant has had the opportunity to pursue the original claim or resile from it. He has said on two occasions the original claim is false and there is no basis of claim now. I made it clear that I could not give him advice as I had to remain independent. He was clear the original claim was a falsehood.

I find there would be no breach of the UK’s obligations under the 1951 and 1950 Conventions as claimed (Articles 2 and 3) or Article 8 (on the claim as put to the respondent) if the appellant were returned to his home country at this time. If the appellant wishes to pursue his claim concerning homosexuality, his relationship with a man in the UK and risk on return to Iran relevant to the 1951 and 1950 Conventions, this will be a matter for him to pursue this as a new claim for consideration by the Secretary of State”.

5. On that basis he dismissed the appeal.
6. The appellant sought permission to appeal on the grounds that he was not advised properly by solicitors and his asylum claim had never even been considered by the First-tier Tribunal. He needs a new Tribunal hearing so he can present factual information and grounds which have not been considered.
7. Permission to appeal was initially refused but granted by Upper Tribunal Judge Plimmer who said that it was arguable that the appellant, who was unrepresented, maintained the appeal against the refusal of his protection claim, and this required determination.
8. The respondent set out a Rule 24 reply citing Section 85(5) and (6) of the Nationality, Immigration and Asylum Act 2002 as amended. She argued that no consent had been sought by the Secretary of State to consider a new matter and therefore the judge had no jurisdiction to determine the matter as advanced at the date of the hearing. However, at the hearing Mrs Pettersen did not resist the remittal of this appeal to the First-tier Tribunal.

Findings and Conclusions

9. Section 85 of the 2002 Act states:

“(v) But the Tribunal must not consider a new matter unless the Secretary of State has given the Tribunal consent to do so.

(vi) A matter is a new matter if –

(a) it constitutes a ground of appeal of a kind listed in Section 84, and

(b) the Secretary of State has not previously considered the matter in the context of –

(i) the decision mentioned in Section 82(1), or

(ii) a statement made by the appellant under Section 120”.

10. In this case the appellant continued to rely on the same Ground of Appeal, namely that he sought protection from the UK on asylum grounds, albeit that he now wished to rely on different content in relation to that claim. Accordingly the matter before the judge was not a new matter but a continuation of the claim which he had originally advanced, namely that he would be at risk of persecution on a return to Iran.

11. The judge’s decision is set aside.

12. It is remitted to be heard by a judge other than Judge Jones at the Tribunal in Bradford.

13. An anonymity direction is made.

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.

Deborah Taylor

Signed

Date 24 February 2018

Deputy Upper Tribunal Judge Taylor

