



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

Appeal Number: PA/06466/2017

THE IMMIGRATION ACTS

Heard at Manchester

On 13 March 2018

**Decision & Reasons
Promulgated
On 21 March 2018**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**S R
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Brown, instructed by Elder Rahimi Solicitors

For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, S R, was born in 1985 and is a female citizen of Iran. She arrived in the United Kingdom in January 2017 and applied for asylum. Her application was refused by decision of the respondent dated 22 June 2017. The appellant appealed to the First-tier Tribunal (Judge T R Smith), which, in a determination promulgated on 21 August 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. There are four grounds of appeal. In addition to the grounds as pleaded, Mr Brown, who appeared for the appellant before the Upper Tribunal, indicated that there was a "*Robinson*" point arising in the appeal which had not been addressed before the First-tier Tribunal but which was of significant relevance. It was unclear from the papers in this appeal whether the appellant's son (born May 2011) and who is with the appellant in the United Kingdom had been considered as a dependant in her appeal or otherwise. Further, the appellant claimed that she had left Iran illegally having divorced from the father of her child. Mr Brown submitted that it would have been necessary for the appellant to have obtained the consent of the father of the child in order to leave Iran and that, upon her return, her illegal exit, coupled with her failure to obtain consent, might possibly expose her to a real risk. Mrs Aboni, who appeared for the Secretary of State, acknowledged that the Tribunal should have dealt with this issue notwithstanding the fact that it appears not to have been raised in the grounds of appeal to the First-tier Tribunal. It was, she submitted, an issue which now needed to be addressed.
3. Mr Brown submitted that his client's strongest ground was Ground Four. Before the First-tier Tribunal, the appellant relied upon the evidence of a Mr [S]. The judge acknowledged that [18-19], Mr [S] had provided a written statement and also gave oral evidence before the Tribunal. Beyond that, there is no discussion of his evidence in the determination of the First-tier Tribunal. Mr Brown submitted that this omission constituted an error of law. If the judge attached no weight or limited weight to the evidence of Mr [S], he should have given reasons for doing so. Mrs Aboni submitted that Mr [S]'s evidence was of limited value in any event. The appellant claimed to fear persecution in Iran on account of her Baha'i faith. Mr [S], although he had given evidence to the effect that the appellant had been taken to Baha'i meetings by car, he was not himself an adherent of the Baha'i faith.
4. In the light of Mrs Aboni's position on the "*Robinson*" point referred to above, I find that the decision of the First-tier Tribunal should be set aside. I agree with both advocates that the issue of risk on return went beyond the credibility findings in respect of the appellant's claimed religion; having found that the appellant's account of her religious conversion was not credible, the judge should, in any event, have gone on to consider whether she was at real risk on return to Iran. Further, I find that the judge has erred in law by not making any findings in respect of the evidence of Mr [S]. Mr Brown acknowledged that Mr [S] might not be in a position to give any evidence regarding the authenticity of the appellant's conversion to the Baha'i faith, but his evidence regarding taking the appellant to Baha'i meetings should have been assessed. I have considered whether to preserve any of the findings of fact of the First-tier Tribunal and have decided that it would be better not to do so. In the circumstances there will need to be a new fact-finding exercise which is better conducted in the First-tier Tribunal to which this case is now returned to remake the decision.

Notice of Decision

5. The decision of the First-tier Tribunal which was promulgated on 21 August 2017 is set aside. None of the findings of fact shall stand. The case is returned to the First-tier Tribunal (not Judge T R Smith) for that Tribunal to remake the decision.

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 their 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

Date 19 March 2018

Upper Tribunal Judge Lane

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 19 March 2018

Upper Tribunal Judge Lane