



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/06877/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 17<sup>th</sup> May 2018

Decision & Reasons Promulgated  
On 9<sup>th</sup> July 2018

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

SAN  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr B Bundock of Counsel, instructed by Seddons Solicitors

For the Respondent: Mr S Walker, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant appeals against the decision of First-tier Tribunal Judge Siddall promulgated on 30 January 2018, in which the Appellant's appeal against the decision to refuse his protection and human rights claims dated 7 July 2017 was dismissed.
2. The Appellant is a national of Iran, born on 15 September 1983, who claims to have arrived in the United Kingdom in September 2007, further to the grant of entry clearance as a student, with leave to remain being granted for a number of times on the same basis up to 18 April 2014. The Appellant then applied for leave to remain as

a Tier 1 Highly Skilled Entrepreneur migrant which was refused on 8 May 2014. The Appellant first indicated that he wished claimed asylum on 20 December 2016 and a formal claim was made on 6 January 2017.

3. The Appellant's protection claim was based on his religion as a Sunni Muslim and expression of political views against the current regime whilst in the United Kingdom. He claimed that the Iranian authorities visited his family home in December 2016 and he was required to return to Iran report to the Investigation Department of the Public Court and a summons was issued for him. A further visit was made to the Appellant's family home in Iran on 12 January 2017, items were confiscated, and his brother was detained and questioned. For these reasons he fears persecution on return to Iran from the authorities there.
4. The Respondent refused the application on 7 July 2017 for the following reasons. First, the Appellant's claim to be a Sunni Muslim was not accepted the basis that certain information given by him could not be verified (in relation to, for example, mosques in Iran) and he only had a broad knowledge of Islam. In relation to political views, the Respondent considered that it was unclear how active the Appellant had been apart from some social debate, but there was a lack of detail and an implausible account given as to how the Appellant was identified in the United Kingdom. His claim was considered to be inconsistent with background evidence and it was noted that he had left Iran legally. The Respondent also applied section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, finding the Appellant's credibility to have been damaged by the significant delay in his claim. Overall the Respondent did not consider that the Appellant faced any real risk of persecution on return to Iran, nor did he qualify for humanitarian protection.
5. The Appellant's family and private life was also considered under the Immigration Rules and on the basis of Article 8 of the European Convention on Human Rights. The Respondent did not find that the Appellant met any of the requirements for the Immigration Rules, nor were there any exceptional circumstances to justify grant of leave to remain outside of them. The Appellant did not pursue his appeal on Article 8 grounds.
6. Judge Siddall dismissed the appeal in a decision promulgated on 30 January 2018 on all grounds. The First-tier Tribunal did not find the Appellant's credibility to be damaged by section 8 of the Asylum and correct to Immigration (Treatment of Claimants etc) Act 2004. First, it was accepted that the Appellant was a Sunni Muslim but not that he would have a well-founded fear of persecution on return to Iran as such. The evidence relied upon by the Appellant made it clear that Sunni Muslims may face discrimination in employment, education and in running for political office but not persecution.
7. Secondly, in relation to the Appellant's claim to be at risk on return due to his political opinion and criticism of the regime in the United Kingdom, the First-tier Tribunal found that the Appellant had not involved himself in opposition activities in the United Kingdom and had not posted his views on social media. His claim about

coming to the attention of the authorities from a private conversation in a shisha bar being overheard by a security guard who works for the Iranian embassy was not considered to be plausible, nor in any event linked to the claimed raid on the Appellant's family home in Iran. In these circumstances, the email summons was rejected alongside the Appellant's evidence as a whole. In conclusion the First-tier Tribunal found that the Appellant had not discharged the burden of proving that he had a well-founded fear of persecution in Iran because of his political opinions.

### **The appeal**

8. The Appellant appeals on the following grounds. The first ground, that the First-tier Tribunal erred in its approach to the country evidence in this appeal, has three distinct parts. In particular, that the First-tier Tribunal found that there was nothing in the country evidence to suggest any risk to expatriates other than those who are engaged in 'high-profile expression' of political or religious views or 'high-profile activities', when there were three news articles in the Appellant's bundle before the First-tier Tribunal detailing the arrest of Iranian nationals on return who had not been accused of any high-profile activity.
9. Further, that the First-tier Tribunal's finding that "*None of the background evidence supports the possibility that the appellant's account is true*" is perverse and irrational given the background evidence showed that the Iranian regime is extreme in its repression of criticism by subjects and evidence that the authorities harass and arrest family members of those it wishes silence.
10. In the alternative, the First-tier Tribunal is said to have erred in adopting the wrong approach to country evidence if what was meant was that there were no documentary cases of the same sort as claimed by the Appellant as this would impermissibly apply the higher standard of proof.
11. The second ground, that the First-tier Tribunal's conduct of the appeal was procedurally unfair and/or contained a number of irregularities has four distinct parts. First, that it was held against the Appellant that the original summons had not been provided despite an adjournment having been requested to allow time for original documents to be bought from Iran in person. This issue was not raised by the Respondent, nor by the First-tier Tribunal during the course of the hearing and the Appellant was not given a reasonable opportunity to respond or make submissions on this point.
12. Second, the period of time between the date of the raid and the email sending the summons to the Appellant was not put to the Appellant during the course of the appeal and should not therefore have been held against him without any opportunity to explain or respond. In any event, the document was provided prior to the Appellant's substantive asylum interview and should not therefore have been counted against the Appellant's credibility.

13. Third, the Appellant is criticised for not being able to find out the full name of the person who he thought had informed upon him, but he was never asked for his full name, nor was he asked whether he had tried to discover his full name.
14. Fourth, the plausibility of the Iranian authorities being able to identify the Appellant and his family address in Iran from the details provided by an informer in the United Kingdom, was not an issue raised by the Respondent, nor raised by the First-tier Tribunal at the hearing and therefore no opportunity given to the Appellant to respond or address the concern.
15. The third ground of appeal is that the First-tier Tribunal failed to take into account material considerations, including those which positively supported the Appellant's credibility, including the Respondent's acceptance that he had made a genuine effort to substantiate his claim: that the Appellant had been highly consistent specific in his interview and oral evidence; that the Appellant had not sought to embellish his account; and the country evidence was consistent with his account.
16. Permission to appeal was granted by Judge Kelly on 28 March 2018 on limited grounds, with permission being granted on the remaining grounds by Upper Tribunal Judge Coker on 8 May 2018.
17. At the oral hearing, Mr Bundock submitted on behalf of the Appellant that the sole issue in this case was credibility and if it was accepted that the Appellant was credible in his claim, the Respondent accepted that he would be at risk on return to Iran. He relied on the written grounds of appeal and made further oral submissions on them. Ultimately it was submitted that the First-tier Tribunal had failed to apply anxious scrutiny in the appeal without adequate credibility findings and with adverse points taken against the Appellant without him being given any opportunity to respond and then being relied upon to reject documentary evidence.
18. On behalf of the Respondent, Mr Walker accepted that there was evidence in the Appellant's bundle of arrests in Iran of people who had no or no high-level political opinion and accepted that there was perhaps a failure to expressly deal with this evidence in the decision of the First-tier Tribunal.
19. As to the procedural fairness points, it was submitted that it was difficult to see how the First-tier Tribunal could have come to any other conclusion in relation in particular in relation to the original summons as there has never been any suggestion that the original was going to be produced. It was submitted there was no material error in how this evidence was dealt with. Overall it was submitted that the Judge's approach to the evidence disclose no material error of law despite the brevity with which all of the evidence was referred to.

### **Findings and reasons**

20. As to the first ground of appeal, the Respondent accepts that the First-tier Tribunal has failed to expressly deal with evidence relating to the arrest of individuals on return to Iran with no history, or at least no history of a high-profile nature of criticising the

Iranian regime. Although the evidence relied upon by the Appellant is relatively limited and amounts only to three news articles about three separate individuals, its existence is contrary to the statement in paragraph 36 which refers only to high-profile expression of political and religious views, when it is stated *“Likewise, evidence about the arrest of expatriates upon return suggest that the appellant could be at risk if you come to the attention of the authorities for high – profile expression of his political religious views particularly where these involve criticism of the government and religious leaders.”*

21. The First-tier Tribunal erred in failing to consider or give reasons for attaching little or no weight to the evidence about the arrest of individuals without high profile expression of adverse views to the regime. Given that one of the reasons for adverse credibility findings in this case is lack of consistency or support for the Appellant’s account with the background country information and the reiteration of the beginning of paragraph 39 about the absence of evidence that the Appellant has taken part in any high-profile activities, I find the error to be a material one as it is capable of affecting the outcome of the appeal. As such, it is necessary to set aside the decision of the First-tier Tribunal.
22. As to the second ground of appeal in relation to procedural fairness, I accept that the four specified reasons relied upon by the First-tier Tribunal in the grounds of appeal which were adverse to the Appellant, were matters which had not been relied upon by the Respondent and/or were not matters which were put to the Appellant to respond to at the hearing.
23. Counsel for the Appellant stated that he had not been aware of the request prior to sight of the decision of the First-tier Tribunal such that he could not address it at the appeal hearing, although the adjournment request was made by his Instructing Solicitors who were of course therefore aware of it even if they had not given instructions on it specifically. In any event, there seems to be some confusion by Judge Siddall as to the adjournment sought. The request for an adjournment was specifically to obtain documents from the Appellant’s mosque in Iran as to its existence and that the Appellant is a member of the minority Sunni Muslim denomination. There was never any suggestion in the adjournment request that the documents be relied upon went any wider than this, nor included anything to do with the summons. As such it could have had no relevance to the production otherwise of the original summons and the reliance on the application for an adjournment in paragraph 41 is therefore at best misplaced. The absence of any suggestion by the Appellant that the original summons was going to be produced does not necessarily lead to the conclusion that there was no material error in dealing with this. To the contrary, the First-tier Tribunal should have gone on to consider the explanation as to why the original had not been produced and assessed the weight to be attached to the document in the round.
24. Although individually, each of the points taken against the Appellant which had not been put to him in the course of his appeal hearing may not have been capable of materially affecting the outcome of the appeal, I find the fact that there were numerous such instances to be relevant and it cannot be discounted that cumulatively these could materially affect the outcome of the appeal, which was determined primarily on

credibility grounds. In any event, for the reasons already given, there is a material error of law which requires the decision to be set aside such that the errors identified in the second ground of appeal would, even if not material, adds further weight to the reasons already given for the decision to be set aside.

25. I would also not necessarily have found that the third ground of appeal identified any material error of law in the First-tier Tribunal's decision when considered in isolation, but when considered cumulatively in the context of the decision as a whole and the other grounds of appeal, the failure to take into account any positive factors in the Appellant's favour in terms of credibility does have some merit in supporting the general submission that there was a lack of anxious scrutiny and balance in the decision overall. Given the reasons already set out above as to why the First-tier Tribunal decision has to be set aside it is not necessary to consider this ground of appeal in any further detail.
26. The errors of law in the First-tier Tribunal go to the heart of the issue of the Appellant's credibility and relate to procedural irregularities where the Appellant has not been given an appropriate opportunity to respond to points taken against him. In these circumstances and given the extent of the further fact-finding likely to be needed to address these points, I remit the appeal to be heard de novo before the First-tier Tribunal rather than retain it for remaking in the Upper Tribunal.
27. The unchallenged finding of fact that the Appellant is a Sunni Muslim is preserved.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal and remit it to the First-tier Tribunal (Hatton Cross hearing centre) for a de novo hearing before any Judge except Judge Siddall.

### **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 5<sup>th</sup> July 2018

Upper Tribunal Judge Jackson