



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/10077/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 16 January 2018

**Decision & Reasons
Promulgated**

On 14 February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

A A

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Kiai, Counsel, instructed by Elder Rahimi Solicitors

For the Respondent: Mr Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iran who appears to have entered the UK illegally as a child. A grant of discretionary leave to remain as a child was made to him initially, and that was varied and extended. An application for asylum was made as a child, which was refused on 24 April 2007, and an appeal against that refusal dismissed on 18 January 2012.
2. A further application for asylum was made as an adult. That protection application was refused on 14 April 2016 and the Appellant's appeal against that decision came before Judge Gillespie at Hatton Cross on 29

September 2017 with the result that it was dismissed in a decision promulgated on 9 October 2017. The Appellant sought permission to appeal from the First-tier Tribunal which was granted by Judge Ransley on 23 November 2017. The author of the grounds for the application for permission to appeal was also the Appellant's representative before Judge Gillespie. He is employed by the solicitors who instruct Ms Kiai today. The author is not present to represent the Appellant today, and Ms Kiai who is instructed in his place has now spent the best part of the day in attempting to contact him through his employer, having been forced to make a number of applications for short adjournments in order to facilitate this. She informs me now that she has had no success in seeking to speak to him, although he has been contacted by e-mail, and has responded to that contact, and has spoken to his employer. I am satisfied that he knows that he has been required to telephone her to address her concerns about her instructions, and I am not satisfied that any good reason has been offered for his failure to do so. All of that however falls away in the light of what has transpired this afternoon.

3. I note that contained within the grounds is the assertion that the Appellant did not pursue his appeal on the basis of a Christian conversion, and that the Judge had misunderstood the nature of the case advanced, which was that the Appellant faced a risk of harm in Iran as a homosexual. The difficulty with that assertion is that it appears to be unfounded. The Appellant had advanced a claim that he faced a risk of harm as an apostate in the event of return to Iran, and had placed before the Judge documentary evidence from a church supporting his claim to have converted to the Christian faith. There appears to have been no formal withdrawal of this aspect of the claim before the Judge. In those circumstances there was no possible error on the part of the Judge in dealing with that limb of the protection claim.
4. The grounds also assert that the Respondent had conceded before the Judge that the Appellant was a homosexual and complain that the Judge was thus in error in treating that issue as one that was in dispute before him, and requiring his decision upon it. I have considerable sympathy with the Judge and his approach to the evidence. Indeed my own approach to the refusal letter would have been exactly the same as his evidently was, namely that it contains no clear concession of the nature asserted, and that the author intended to place the Appellant's sexuality in dispute.
5. Judge Gillespie offered a number of reasons, apparently perfectly well-grounded in the evidence, to identify why the Appellant and his witnesses had given inconsistent evidence, and why the Appellant's oral evidence was inconsistent with the contents of various documents in front of him, so that the Judge assessed the Appellant as an individual upon whose word little weight could be placed. The Judge then inevitably concluded that the Appellant had not told the truth about his sexuality in the light of the six reasons that he gave at paragraph 20 of the decision, all of which as I say appear to be well-founded in the evidence before him, and went on as a result to conclude that the Appellant faced no possible risk of harm upon

the return to Iran in the light of his sexuality because he was in truth a heterosexual man.

6. I note also that the record of proceedings suggests no concession upon the issue of sexuality was made to the Judge at the hearing. However, I have been informed this afternoon by Mr Tarlow on behalf of the Respondent, that his reading of the refusal letter suggests that the Respondent did intend to concede that the Appellant was a homosexual man. His view, (which does not appear to be backed by any contemporary note of the hearing) is that there was no dispute over the Appellant's homosexuality for Judge Gillespie to resolve. Even if there was confusion at the hearing with the parties having failed to make their respective positions clear to the Judge, then it is his view on behalf of the Respondent, that this is not an issue that the Respondent would seek now (or in the future) to place in dispute. It follows, as he now accepts, that he must therefore concede that the Judge fell into material error, even if without any fault on his part. It also follows that the Judge's adverse credibility findings in relation to the Appellant's sexuality cannot be severed from his approach to the Appellant's evidence upon the risk of harm that the Appellant claimed he would face upon return to Iran.
7. Given Mr Tarlow's late concession, the Judge's decision must regretfully be set aside and, as both parties also agree, the appeal must be reheard de novo. In circumstances where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the Appellant of the opportunity for his case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 13 November 2014. Moreover the extent of the judicial fact finding exercise is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 13 November 2014. To that end I must remit the appeal for a fresh hearing by a judge other than Judge Gillespie at the Hatton Cross Hearing Centre where no doubt a Farsi interpreter will be required.

Notice of decision

8. The decision promulgated on 9 October 2017 did involve the making of an error of law sufficient to require the decision to be set aside and reheard. Accordingly the appeal is remitted to the First Tier Tribunal for rehearing de novo with the directions set out above.

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 16 January 2018

Deputy Upper Tribunal Judge J M Holmes

Fee award

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

Signed

Date 16 January 2018

Deputy Upper Tribunal Judge J M Holmes