



IAC-FH-AR-V1

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

Appeal Number: AA/09329/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 3 August 2015**

**Decision & Reasons Promulgated
On 21 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MAR
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Reza, Simman Solicitors

For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is an Iranian national born on 5 March 1996 and he appealed against the decision of the respondent made on 23 October 2014 to remove him by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006 and to refuse to grant him asylum, humanitarian protection and protection under the European Convention.
2. The reasons for refusal letter set out the considerations including those in relation to Article 8 and in particular with reference to paragraph 276ADE.

It was noted that the appellant at that time was 18 years old but under the age of 25 but had not spent at least half his life residing in the UK. His asylum claims were refused but he was given discretionary leave to remain. The documentation showed that he had previously studied at South Thames College on an ESOL Entry 1 course and that he had submitted undated supporting letters from one Mr K and Mrs H.

3. The Secretary of State did not accept that he had demonstrated any particular ties in the United Kingdom or that he was unable to build ties in his own country of nationality on return. Further it was considered he could use the education he had attained in the UK for a job in Iran. Any private life he had developed was whilst in the UK with a precarious immigration status and that removing him would not be contrary to the UK's obligations under the ECHR. He was no longer eligible for discretionary leave under the UASC policy and his removal would not breach Article 8.
4. First-tier Tribunal Judge Colvin considered the appellant's appeal and dismissed his appeal on asylum, humanitarian protection and human rights grounds.
5. An application for permission to appeal was made on the basis that the judge erred in law by refusing to hold that the decision of the respondent not to grant further leave to the appellant at a time she was not able to remove him to Iran would leave him destitute and interfere with the appellant's rights under Article 8. The judge decided it was a matter for the High Court to examine the policies of the respondent but the judge should have determined the matter in relation to the Human Rights Act. This was a government policy which made people within the jurisdiction destitute and could not be said to be a proper policy. At the very least the judge should have remitted the matter to the respondent for further consideration.
6. The issue was whether the conditions of failed asylum seekers who cannot be removed from the UK and who are not allowed to work and could not access benefits services would thus be destitute amounted to a breach of their private life under Article 8.
7. The skeleton argument was submitted and this made reference to the position of the respondent who could not return the appellant owing to the lack of diplomatic facilities between the UK and Iran. It was argued that the appellant, as a result of the respondent's refusal to grant him further leave, would definitely become destitute in the UK.
8. First-tier Tribunal Judge Robertson granted permission to appeal in one matter, that of whether the Judge should have considered the circumstances of the appellant (including the support available to him as a failed asylum seeker) in considering the appeal under Article 8. Mr Reza submitted at the hearing before me that the respondent had a duty to act fairly. The appellant was not asking for settlement but in not granting any

kind of leave the appellant could not for example access the National Health System. The appellant had previously had leave and had attended college and worked.

9. Mr Avery pointed out that the whole argument was based on a misconception. There were consular facilities and these were outlined in the refusal letter, [28]. The appellant had gone through the asylum process. Mr Avery referred to **Marghia (procedural fairness) [2014] UKUT 00366 (IAC)** there is no common law duty for substantive fairness only procedural fairness. That was the case here.

Conclusions

10. **R v Secretary of State ex parte Limbuela [2005] UKHL 66** does not have application on this basis because it is with relevance to those asylum seekers who still had an existing claim. That is not the case in relation to this appellant who has had his substantive appeal examined and dismissed.
11. As stated in **Patel [2013] UKSC 72**, Article 8 is not a general dispensing power and it is not the situation, as indicated by the judge in paragraph 29, that the appellant is in "limbo". The Secretary of State had set out in the reasons for refusal letter at paragraph 28 that although the Home Office was unable to obtain travel documents to facilitate the return of Iranian nationals with no legal basis to stay in the UK, but Iranian nationals were themselves able to access consular services and request travel documents through the Sultanate of Oman, Iranian Interests Section in London or through competent Iranian authorities outside the UK. The judge recorded this at paragraph 27 of the decision.
12. It was also possible for the Iranian nationals to apply through an Iranian Embassy, for example, in Paris, Dublin or in Tehran. This could be undertaken by the Iranian nationals themselves or their relatives. The appellant's asylum claim was assessed and dismissed. There was no evidence that he had made any attempt to avail himself of the procedures set out in the refusal letter or the judge's decision.
13. As the judge recorded there may be challenges with regards government policies for those in limbo (although it would appear that the appellant's appeal in fact related to complaint of his removal and his possible treatment abroad rather than in the United Kingdom) but, from the decision, it could be seen that the appellant is not in limbo and it is open to him to take steps to remove himself. This aspect of his claim which is the one aspect of the challenge to the Secretary of State's decision does not either engage or enhance his Article 8 rights and I find there is no material error of law.

Notice of Decision

The First-tier Tribunal made no error of law the decision shall stand.

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

Deputy Upper Tribunal Judge Rimington