



IAC-AH-DP-V2

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

Appeal Number: AA/06274/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 26th February 2016**

**Decision & Reasons
Promulgated
On 19th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR A N
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Mallick, Counsel

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

DECISION AND REASONS

1. The Appellant is a national of Iran born on [] 1966. On 12th June 2001 the Appellant was granted indefinite leave to remain with a grant of status (asylum).

2. On 28th May 2014 the Secretary of State notified the Appellant of their intention to withdraw his refugee status on the grounds that they believed that he had voluntarily re-availed himself of the protection of Iran. Thereafter the Appellant's previously instructed solicitors submitted representations on 13th January 2015 and 11th February 2015. On 25th March 2015 following careful consideration of those representations the Secretary of State decided that compelling reasons had not been provided as to why the Home Office should not cease the Appellant's status and the cessation of refugee status letter was issued.
3. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Morron sitting at Taylor House on 24th September 2015. In a decision promulgated on 9th October 2015 the Appellant's appeal was allowed and the Appellant was granted anonymity. On 27th October 2015 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. On 9th November 2015 First-tier Tribunal Judge Davidge refused the application for permission to appeal. On 25th November 2015 renewed Grounds of Appeal were lodged. Those renewed grounds were identical to the original.
4. On 9th December 2015 Upper Tribunal Judge Kekic granted permission to appeal. Judge Kekic noted that the Respondent's case was that having found the Appellant had a fear of criminal gangs and not the authorities i.e. a non-Convention reason the judge erred in finding that the Appellant remained a refugee. It was argued that the judge also erred in failing to consider whether the Appellant would be able to seek the protection of the authorities against those gangs and whether relocation would be an option. She considered the grounds to be arguable and granted permission.
5. No Rule 24 response appears to have been served on behalf of the Appellant. Whilst noting that this is an appeal by the Secretary of State for the purpose of continuity throughout the appeal process Mr AN is referred to herein as the Appellant and the Secretary of State as the Respondent. The Appellant appears by his instructed Counsel Ms Mallick. Ms Mallick has served a skeleton argument dated 25th February 2015 in support of the appeal which I have given due consideration to. The Secretary of State appears by her Home Office Presenting Officer Mr Staunton.
6. The Appellant personally did not attend. Correspondence has been produced showing that the Appellant has a heart condition and that he is unable to attend. A prior application had been made seeking an adjournment but this had been refused on the basis that the Appellant did not need to be present at this hearing. I further note that there is a change of solicitors on behalf of the Appellant, his present solicitors going on the court record on 17th February. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge.

Submissions/Discussion

7. It is the contention of the Secretary of State that the Immigration Judge misdirected himself by finding the Appellant to be a refugee despite his fear of return to Iran being for a non-Convention reason. Mr Staunton considers the nub of the appeal to be in paragraphs 26 and 27 of the Immigration Judge's decision. He points out it is noted by the Immigration Judge at paragraph 27 that the Appellant sought Facilitated Early Release in October 2009 and wished to return to Iran to assist his brothers who had been arrested. The Secretary of State therefore contends that at that point in time the Appellant did not express a fear of returning to Iran for any reason and therefore was not outside his country of nationality due to a well-founded fear of persecution. The judge accepts that the Appellant changed his mind after speaking to his mother and the risk he faced on return. He submits that the judge goes on to state that "I further find that the reason for his change of mind is more likely to have been his fear of the Iranian mafia than of the Iranian authorities". He consequently submits that the judge had found that the Appellant was a refugee for a reason not covered by the Refugee Convention but for fear of criminal gangs and as a result the Appellant should not be classed as a refugee if their fear is for a reason not covered by the Refugee Convention. He further submits that the judge has failed to consider what protection the Appellant could get from the State and his ability to relocate away from those that might wish to harm him. He emphasises that the sole thrust of the Secretary of State's appeal is that there is no Convention reason now outstanding preventing the Appellant's return to Iran. He asked me to find a material error of law and to remit the matter to the First-tier for re-hearing.
8. Ms Mallick takes me to her skeleton argument. This is a very detailed document which I have considered and it is inappropriate to recite the content therein in detail. She starts by reminding me that at the hearing before the First-tier Tribunal Judge both parties were represented and that this is a question of whether refugee status can continue or whether it can be taken away. She points out that this is not an asylum appeal. She takes me to the decision of the First-tier Tribunal Judge and reminds me the legal issue is set out therein at paragraph 3. That is: Article 1C(1) of the Convention and Protocol relating to the Status of Refugees which states as follows:

"This Convention shall cease to apply to any person falling under the terms of Section A if ...

(1) he has voluntarily re-availed himself of the country of his nationality."

The burden of proof lies with the Appellant to prove, on the balance of probabilities, that Article 1C(1) does not apply him.

9. She points out that Article 1C(1) requires an affirmative action from the Appellant and that it would be necessary for the Appellant to re-avail himself of his nationality and that this did not happen. She submits that

the judge rightly focused on what the Appellant actually did pointing out that that shows clearly that the Appellant was not re-availing himself of his country of nationality.

10. She submits that that is why the Secretary of State wrote in the terms that he did but that it was found that the Appellant did not have an Iranian passport. She submits that there was no evidence for the Secretary of State allowing him to conclude that the Appellant would re-avail himself of his Iranian nationality.
11. Ms Mallick submits that in granting permission UTJ Kekic focused on the wrong question. She takes me to the objective evidence of the UNHCR Handbook at paragraph 48 therein which states that possession of a passport cannot always be evidence of loyalty on the part of the holder or as an indication of the absence of fear and that the mere possession of a valid national passport is not a bar to refugee status. Further any national passport or an extension of its validity under certain exceptional circumstances would not involve terminating refugee status; for example whereas the holder of a national passport would not be permitted to return to the country of his nationality without specific permission. She consequently submits that what has happened is not such that would constitute re-availment and thereafter refers me to paragraph 128 of the handbook which suggests that nationality must be expressly or impliedly accepted before cessation under Article 1C(2) would be appropriate and that the guidelines on the application of cessation clauses suggest that the mere possibility of reacquiring the lost nationality by exercising a right of option is not sufficient to put an end to refugee status. She therefore submits that the Appellant did not nothing to re-avail his status. The Secretary of State accepts that the burden is on the Appellant. Thus she contends he has done nothing to re-avail himself of his status and that the error that the Secretary of State has fallen into and Judge Kekic is considering this case as an asylum appeal when it is not. It is a re-availment appeal.
12. She takes me to paragraph 27 of the decision pointing out that all the Appellant did was sign early release relating to the balance of his prison sentence in Iran. She submits that that did not constitute re-availment and that the judge has made the appropriate and correct conclusions. Further she submits that the judge was entitled to consider the Appellant's additional fear in 2007 and that paragraph 27 does not say that the Appellant was no longer in fear of the authorities by reason of his faith. She asked me to find that there is no material error of law and to dismiss the Secretary of State's appeal.

The Law

13. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational

conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

14. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

15. I start by reminding myself that the issue before me is to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. I am not re-hearing this appeal. This is an appeal against the decision of the judge to find whether the Appellant has obtained an Iranian passport and thus re-availed himself of the protection of that country. The decision is very well constructed and logically set out. It starts by noting the basis upon which the Appellant was granted asylum back in November 1996. Thereafter it sets out the legal issue and the facts in detail at paragraphs 7 to 23 the evidence. The judge thereafter goes on to make detailed and important findings of fact at paragraphs 24 to 28. Judge Morron considered that the sole reason given for ceasing the Appellant's refugee status was that he had obtained an Iranian passport and thereby re-availed himself of the protection of the Iranian Government. The Secretary of State did not decide cessation based on Mr N's agreeing to return to Iran to serve his prison sentence in exchange for early release and in any case Mr N changed his mind. Therefore the agreement to facilitate early release was not sufficient irrespective of the reasons that played on his mind at the time and that is something considered by the First-tier Tribunal Judge.
16. The judge had correctly started off by considering the reason for the refugee status was that the Appellant was a Christian and the reasons why the Secretary of State applied Article 1C. That reason the judge found was that the Appellant had an Iranian passport. However the judge thereafter went on to make findings accepting that it was plausible that Mr N was seeking to go to Austria with his family on his UK travel documents and that he did not have an Iranian passport.

17. Thereafter the judge made findings of fact at paragraph 27 and 28 which he was entitled to. He found that Mr N was prepared to return to Iran in October 2009 but changed his mind in less than a week and although the judge found that the reason for his change of mind was the Iranian mafia it was never suggested by the Secretary of State that Mr N had suggested that he no longer feared persecution because he was a Christian.
18. Thereafter the judge had focused on the key issue that he had not obtained a genuine Iranian passport and gave reasons which the judge was entitled to for reaching that conclusion.
19. The matter to be decided was whether or not the Appellant had re-availed himself of the protection of Iran and the judge's conclusion that he had is properly framed in the context of the argument put on the day. In such circumstances the decision reveals no arguable material error of law and the appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Notice of Decision

The decision of the First-tier Tribunal Judge discloses no material error of law. The appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal Judge is maintained.

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 D N Harris

TO THE RESPONDENT FEE AWARD

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris