



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

Appeal Number: AA/08610/2015

THE IMMIGRATION ACTS

**Heard at City Centre Tower Birmingham
On 25th April 2016**

**Decision & Reasons
Promulgated
On 24th May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

**[G S]
(~~ANONYMITY DIRECTION NOT MADE~~)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss P Solanki, Counsel instructed by Morden Solicitors LLP
For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a male citizen of Iran born on [] 1990. The Appellant apparently first arrived in the UK on 13th August 2008 and claimed asylum the following day. That application was refused. The Appellant appealed

unsuccessfully, and the Appellant's appeal rights were exhausted by 6th June 2011. He made a number of further submissions, and eventually he was refused asylum for the reasons set out in the Respondent's letter of 26th May 2015. The Appellant appealed, and his appeal was heard by First-tier Tribunal Judge Burns (the Judge) sitting at Birmingham on 6th October 2015. She decided to dismiss the appeal for the reasons given in her Decision dated 17th October 2015. The Appellant sought leave to appeal that decision and on 12th November 2015 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The Appellant's original case was that he was at risk on return to Iran as someone who had been discovered smuggling alcohol. However, whilst in the UK the Appellant, an ethnic Kurd, had become an active member of the KDPI. This was evidenced in part by the fact that the Appellant's attendance at a Martyrs Day celebration had been captured on video which without his knowledge had been uploaded to YouTube. The Appellant had been visible on the video, and as a consequence an Order had been issued against him to attend the Computer Crimes Court.
4. The Judge dismissed the appeal because although she accepted that the Appellant had had some limited involvement with the KDPI in the UK as evidenced in the video, she was not satisfied that his *sur place* activities had come to the attention of the Iranian Authorities. It was not clear to the Judge that the Appellant appeared in the video which in any event had not been widely viewed.
5. There were a total of six grounds of application on which the Appellant relied. I only need deal with one of them in this Decision. At the hearing, Miss Solanki referred to her Skeleton Argument and submitted that the Judge had erred in law in dealing with the YouTube evidence. The Judge had made inconsistent findings in paragraphs 36 to 39 and 59 to 60 of the Decision. On the one hand the Judge had decided that the Appellant was involved with the KDPI from the evidence of the video, but later she decided that it was unclear if it was the Appellant who appeared in the video. Further, it was apparent from a screenshot of the video that more than a quarter of the Appellant's face was shown and that the Appellant was recognisable from the video. Also the Judge had concluded that the video would not have been seen by the Iranian Authorities as there had been only 250 viewings of it. This was the wrong approach. The issue was whether there was a reasonable degree of likelihood that the video had been seen by the Iranian Authorities. The Judge had not dealt with that issue in the context of the background country information and the decisions in **VA (demonstrations in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC)** and **AB and Others (internet activity - state of evidence) [2015] UKUT 257 (IAC)**. This information was that the

Iranian Authorities closely monitored internet activity both inside and outside of Iran showing that there was a reasonable degree of likelihood that the video in question had been seen by them.

6. In response, Mr Diwnycz was content only to say that he agreed with the comments of Miss Solanki as regards the YouTube video.
7. I do find an error of law in the decision of the Judge so that it should be set aside. In my judgment the Judge's findings in respect of the YouTube video were not supported by sufficient reasons from the evidence as explained by Miss Solanki. This error is material because the evidence provided by the YouTube video goes to the heart of the Appellant's claim that he is at risk on return to Iran.
8. I did not proceed to remake the decision of the First-tier Tribunal. Instead I decided that that decision should be remade in the First-tier Tribunal in accordance with paragraph 7.2(b) of the Practice Statements. At the remake hearing none of the Judge's findings as to credibility and fact will be preserved.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside that decision.

The decision will be remade in the First-tier Tribunal.

Anonymity

The First-tier Tribunal did not make an order for anonymity and I was not asked to do so. Whether an order for anonymity is eventually made will be a matter for the First-tier Tribunal when remaking the decision on the appeal.

Signed

Date 24 May 2016

Deputy Upper Tribunal Judge Renton