



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DA/01270/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 8 February 2016

Decision & Reasons Promulgated  
On 11 February 2016

Before

UPPER TRIBUNAL JUDGE FINCH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A S

(ANONYMITY ORDER MADE)

Respondent

**Representation:**

For the Appellant: Mr. J. Walsh of counsel, instructed by Morgan Has Solicitors

For the Respondent: Mr. L. Tarlow, Home Office Presenting Officer

**DECISION AND REASONS**

**History of Appeal**

1. The Appellant, who was born on 16 February 1992, is a citizen of Iran. His father was granted asylum in the United Kingdom in 1998 and in 2000, the Appellant was granted indefinite leave to enter to join him. The Appellant applied to naturalise as a British citizen on 22 May 2008 but his application was refused on the basis of character.

2. On 23 January 2014 he was convicted of one count of common assault and one count of assault occasioning bodily harm in relation to assaults on his then girlfriend and sentenced to two years imprisonment and an indefinite restraining order. On 26 June 2014 the Respondent made a deportation order against him and on 3 July 2014 the Appellant appealed against this decision.
3. He completed his term of imprisonment on 18 December 2014 and was detained under immigration powers. On 26 January 2015 he was granted bail and on 7 March 2015 he applied for asylum. His application was refused and his appeal against this decision was dismissed by First-tier Tribunal Judge Davey on 17 August 2015.
4. The Appellant appealed on 22 August 2015 and on 9 September 2015 First-tier Tribunal Judge Foudy refused him permission to appeal and also refused to extend time to appeal. The Appellant renewed his application to the Upper Tribunal on 30 September 2015 and on 16 October 2015 Deputy Upper Tribunal Judge Norton-Taylor granted him permission to appeal on two of his three grounds.
5. The Respondent filed her Rule 24 response on 5 November 2015.
6. On 1 January 2016 the Appellant completed his licence and his risk level was reduced to medium in relation to risk of harm to a named person.

#### Error of Law Hearing

7. At the error of law hearing, Mr. Walsh submitted that the First-tier Tribunal Judge had erred in law by adopting the test contained in the old pre-28 July 2014 version of the Immigration Rules. He also submitted that, even when he considered the old rules, the First-tier Tribunal Judge failed to apply all aspects of the old rule.
8. He also submitted that the First-tier Tribunal Judge had failed to address the risk of persecution which may arise if his tattoos were seen during the military service he would have to serve if he returned to Iran.
9. Mr. Tarlow relied on his Rule 24 response and said that read as a whole the First-tier Tribunal's decision had addressed the contents of the amended paragraph 399A. Therefore, he submitted that there were no material errors of law.
10. Paragraph 398(b) of the Immigration Rules applied to the Respondent as he had been convicted of an offence for which he had been sentenced to less than four years but at least 12 months. When the decision was made to deport him from the United Kingdom and he appealed against this decision, the previous version of the Immigration Rules relating to deportation were in force. Therefore, in paragraph 22 of her refusal letter the Respondent referred to the Appellant needing to establish that he had been here for a continuous period of at least twenty years and that he had no ties in Iran. The First-tier Tribunal Judge adopted this test in paragraph 5 of his decision.
11. However, the Immigration Rules were amended and from 28 July 2014 the version of paragraph 399A which the First-tier Tribunal Judge had to apply read:  
"This paragraph applies ... if  
(a) the person has been lawfully resident in the UK for most of his life; and

- (b) he is socially and culturally integrated in the UK; and
  - (c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported”.
12. The Rules also made it clear that where Article 8 was raised in the context of deportation under Part 13 of the Rules, the claim under Article 8 will only succeed where the requirements of the rules as at 28 July 2014 are met, regardless of when the notice of intention to deport or the deportation order, as appropriate was served.
  13. Mr. Tarlow did not dispute that this was the case but submitted that the new rule was very similar to the previous one.
  14. I find that this is not the case. The previous rule required at least twenty years continuous residence but the new rule only requires the Appellant to establish that he has been here for most of his life. He may well be able to show this as he entered the United Kingdom when he was nine and he is now 22 years old.
  15. The second limb of the previous rule was that an appellant had to show that he had lost all ties with his country of origin. To succeed under the amended Rules an appellant has to show that he is socially and culturally integrated in the United Kingdom and that there are very significant obstacles to integration there. I find that these are very different tests.
  16. Furthermore, the fact that his father was granted refugee status because of his fear of persecution in Iran and that the Appellant has tattoos which the authorities are likely to disapprove of are elements which he can rely on under the new Rules but which he would not be able to rely upon under the old rules.
  17. Mr. Tarlow also relied on the case of *Bossade (ss.117A-D-interrelationship with Rules)* [2015] UKUT 00415 (IAC). However, in paragraph 5 of its head note the Upper Tribunal found paragraph 399A no longer looks at ‘ties’ per se but at the more inclusive notion of integration and obstacles thereto. By requiring focus on integration both in relation to a person’s circumstances in the UK as well as in the country of origin, the new Rules achieve a much more holistic assessment of an appellant’s circumstances.
  18. He also relied on paragraph 25 of *Bossade* and noted that deportation was always in the public interest. However, at the end of the paragraph the Upper Tribunal found that the new rule does not as such preclude time in prison from being considered as to whether social and cultural integration is shown but its terms may leave very little scope for such argument.
  19. In relation to the second grounds of appeal, the First-tier Tribunal noted in paragraph 15 of his decision that the Appellant did not wish to do military service but he did not go on to give any detailed consideration of the consequence of his tattoos being discovered during military service. Therefore, I find that the First-tier Tribunal Judge did not apply the necessary anxious scrutiny to all aspects of the Appellant’s asylum appeal.
  20. Taking all of this into account, I find that First-tier Tribunal Judge Davey made material errors of law in his decision.

**Decision**

1. I allow the Appellant's appeal on grounds two and three of his application to the Upper Tribunal.
2. I set aside the decision of First-tier Tribunal Judge Davey.
3. I remit the Appellant's appeal to the First-tier Tribunal for a *de novo* hearing before a First-tier Tribunal Judge other than First-tier Tribunal Judge Davey.

**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 his 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.

Date: 8 February 2016

Nadine Finch  
Upper Tribunal Judge Finch