



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00643/2015

THE IMMIGRATION ACTS

Heard at Bradford
On 5 July 2016

Decision & Reasons Promulgated
On 6 July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

AAM
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms Petersen a Home Office Presenting Officer
For the Respondent: Miss Khan of Counsel

DECISION AND REASONS

Background

1. For the sake of consistency with the decision in the First-tier Tribunal I will hereafter refer to AAM as the Appellant and to the Secretary of State as the Respondent.
2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to retain the order previously granted.

3. The Respondent refused the Appellant's application for asylum and ancillary protection on 11 November 2014. His appeal against that decision was allowed by First-tier Tribunal Judge Hands following a hearing on 29 April 2016. This is an appeal against that decision.

The grant of permission

4. First-tier Tribunal Judge Lambert granted permission to appeal (25 May 2016) on the ground that it is arguable that the finding that the Appellant was at risk on return to Iran due to church attendance in the UK despite having found that his account of events in Iran was not credible and he was not a genuine Christian convert, was inconsistent with guidance case law.

Respondent's position

5. The Judge had failed to apply SB (risk on return-illegal exit) Iran CG [2009] UKAIT 00053, AB and Others (internet activity - state of evidence) Iran [2015] UKUT 257 (IAC), and BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC). The Appellant would not be expected to lie on return. He would not say he was a Christian. He had made no public statements. He had no profile, publicity, or problems before he left. He was just a failed asylum seeker who had no passport and he would be asked why he had been to church.

Appellant's position

6. The issue is how he would be perceived on return. Even if he just tells the Iranian authorities the truth, namely that he had fabricated an asylum claim, he would be at risk from them. Reliance was placed upon SA (Iran) v SSHD 2012 EWHC 2575 (Admin). I could not rely upon SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC) as that was not promulgated at the date of decision. The Judge was entitled to reach the view she did given his church attendance. She was aware of the circumstances and made findings open to her. The fact that a different Judge may take a different view is not the test.

The Judges findings

7. The Judge stated [34];

"I do not find the Appellant is a genuine convert to Christianity and I do not find his account of events in Iran prior to his departure to be credible. However, I do find that his attendance at church and his involvement with the Christian faith while he has been in the United Kingdom will mean that he faces a real risk of persecution on his return as it will be regarded as anti-Islamic conduct should he be returned to Iran having left illegally. In that regard only, the Appellant has established he is a refugee and is entitled to a grant of asylum."

Summary of case law

8. SB guides me to the view that Iranians facing enforced return do not in general face a real risk of persecution or ill-treatment. That remains the case even if they exited Iran illegally. Having exited Iran illegally is not a significant risk factor, although if it is the case that a person would face difficulties with the authorities for other reasons, such a history could be a factor adding to the level of difficulties he is likely to face. Being accused of anti-Islamic conduct constitutes a significant risk factor.
9. AB guides me to the view that there is insufficient evidence to give guidance on what can be expected in terms of the reception in Iran for those returning otherwise than with a “regular” passport in relation to whom interest may be excited into internet activity as might be revealed by an examination of blogging activity or a Facebook account.
10. BA guides me to the view that there is not a real risk of persecution for those who have exited Iran illegally or are merely returning from Britain.
11. SA stated [24] that “there must be a real risk that if she has professed herself to be a Christian, and conducted herself as one, that profession, whether true or not, may be taken in Iran as evidence of apostasy”
12. I also note here the very recent guidance case of SSH which I raised with the representatives and provided copies of the decision. This guides me to the view that an Iranian male whom it is sought to return to Iran, who does not possess a passport, will be returnable on a laissez passer, which he can obtain from the Iranian Embassy on proof of identity and nationality. An Iranian male in respect of whom no adverse interest has previously been manifested by the Iranian State does not face a real risk of persecution/breach of his Article 3 rights on return to Iran on account of having left Iran illegally and/or being a failed asylum seeker. No such risk exists at the time of questioning on return to Iran nor after the facts (i.e. of illegal exit and being a failed asylum seeker) have been established. In particular, there is not a real risk of prosecution leading to imprisonment.

Discussion

13. I do not agree that SSH is of no relevance. It considered and upheld previous case law having considered up-to-date evidence. It did not refer to SA but dealt with the question contained within it to which I have already referred. The Judge speculated as to whether self serving attendance and involvement at church would be regarded as anti-Islamic conduct and had no evidence to support the decision she reached. The Appellant had created a bogus asylum claim. The Judge was not entitled to reach the view she took without specific expert evidence that countered the body of jurisprudence summarised in SSH.
14. In those circumstances I am satisfied that there was a material error of law. I set aside the decision.

Remit or rehear

15. Miss Khan submitted that I should remit the matter to enable evidence to be adduced as to how he would be perceived regarding the lies he had told about his claimed conversion and his self-serving church attendance and involvement. Ms Petersen conceded that a remittal may preserve ongoing appeal rights.
16. In an abundance of caution, I decided to remit the matter to enable the specific question by Miss Khan raised to be considered by the First-tier Tribunal which would preserve any ongoing appeal rights should the matter go against the Appellant as would currently appear to be likely.
17. In doing so I preserve [30], [31], the 1st 4 sentences of [33] and the 1st sentence of [34]. I do not preserve sentence 5 of [33] or sentences 2, 3, or 4 of [34].

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 the decision.

I remit the appeal to the First-tier Tribunal to be heard by a Judge other than Judge Hands.

Signed:

Deputy Upper Tribunal Judge Saffer

5 July 2016