**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number:** PA/13491/2018 (V)

THE IMMIGRATION ACTS

Heard remotely by *Microsoft Teams* on 9 June 2021

Decision & Reason Promulgated On 23 June 2021

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

and

**M A B**

Respondent

*For the Appellant:* *Mr S P Crabb, Advocate, instructed by Quinn, Martin & Langan, Solicitors*
*For the Respondent:* *Mr D Clarke, Senior Home Office Presenting Officer*

## DETERMINATION AND REASONS

1. This is an appeal by the SSHD, but the rest of this determination refers to parties as they were in the FtT.

2. By a decision promulgated on 6 February 2019, FtT Judge Buchanan dismissed the appellant's appeal on "refugee" and "human rights" grounds, but allowed it "on the humanitarian protection grounds".

3. The SSHD's grounds of appeal challenge paragraph 9 of the decision, where the FtT was not persuaded that grounds for excluding the appellant

from a grant of humanitarian protection were made out, and could not agree with a decision made by the SSHD on 15 January 2014 (which had not carried a right of appeal).

4. The grounds say that the 2014 decision was not the subject of the appeal, but rather the decision dated 1 November 2018, and the only available ground was under section 84 (1) (b) of the 2002 Act that removal of the appellant "would breach the UK's obligations in relation to persons eligible for a grant of humanitarian protection". This is linked to an alleged error of deciding the case by reference to the immigration rules as they stood in 2014 and not as they stood in 2018.

5. The FtT granted permission on 6 March 2019, on the view that there was an arguable error of "allowing the appeal on a premise not allowed in law".

6. After multiple procedure, the SSHD's starting point on 9 June 2021 was the skeleton argument filed on 4 March 2021 (prepared by another presenting officer). Mr Clarke adopted this, apart from the passages about how to deal with evidence allegedly obtained by torture. On that aspect, he accepted the analysis of Mr Crabb.

7. Mr Clarke added that it was a "red herring" to refer to evidence derived from torture, because the evidence of the appellant's crime came not from anything elicited by torture in Iran, but from what he freely said in the UK.

8. In my view, Mr Clarke was correct on both those points. It is unnecessary to deal any further with the "evidence derived from torture" question.

9. Mr Clarke submitted that the judge erred by making no finding on whether the appellant committed a "serious crime", because he thought, wrongly, by reference to changes in the rules, that he was not required to do so. He said that was an omission which required a remit to the FtT.

10. Mr Crabb's starting point was his written submissions dated 1 June 2021.

11. Those submissions firstly renew his motion for the appeal to be struck out. Mr Crabb did not add anything on this aspect.

12. On the substantive challenge, Mr Crabb submitted that in deciding the case on humanitarian protection grounds, the FtT did exactly what it was required to do.

13. Alternatively, he said that any omission was immaterial because there was no basis to consider that on the balance of probability the appellant had committed a serious crime, based on his version of events, which was not disputed by the respondent.

14. Having heard submissions, I reserved my decision.

15. I am obliged to Mr Clarke and to Mr Crabb for their assistance, which has enabled this appeal at last to be resolved.

16. For the reasons given in my note dated 30 September 2020, I consider that striking out is not an available step, and, alternatively, is not justified.

17. The alleged error at last crystallised in final oral submissions as absence of a finding on whether the appellant committed a serious crime, which would exclude him from humanitarian protection.

18. The SHD has at various stages suggested that application might be made to amend the grounds, but has not done so.

19. The proposition now is that the judge misled himself, through applying outdated rules, into failure to make a necessary finding. The point is so obscure as to be beyond identification in the grounds. It did not emerge in the final written submissions. The appellant has not had fair specification of the case he had to meet.

20. Nevertheless, the appellant did tackle the point. In the alternative, I find force in his argument that there was not an adequate basis to hold that he was excluded for commission of a serious crime.

21. The only account of events is the appellant's, and it is undisputed. The outcome of the incident was fatal to his wife, but his trial resulted in a finding of minimal culpability. It was only through pressure from her family, and through unlawful influence being brought to bear, that he was at risk of further proceedings - see the decision at 9.15 – 16, under the heading "conclusions on the facts".

22. If I had set aside the decision, I would have found no reason to direct a rehearing in the FtT. I would have remade the decision as above.

23. The decision of the FtT, allowing the appeal on humanitarian protection grounds, stands.

24. The FtT made an anonymity direction, which remains in place.

25. There are other proceedings in the FtT, currently sisted, arising from a decision made and an appeal filed while this case was pending. Parties are directed to consider their positions in light of this outcome, and to advise the FtT accordingly, not less than 7 days after this decision is issued.

Hugh Macleman

10 June 2021
UT Judge Macleman

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**NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within

the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

**5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**

**6. The date when the decision is "sent' is that appearing on the covering letter or covering email.**