



The Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: AA/04597/2015

THE IMMIGRATION ACTS

Heard at Manchester
On August 20, 2015

Determination & Reasons Promulgated
On September 8, 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MR AMIN TOULABI NASAB
(NO ANONYMITY DIRECTION)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant

Miss Johnstone (Legal Representative)

Respondent

Mr McVeety (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant is a citizen of Iran. On September 16, 2013 the appellant left Iran and travelled through a number of unknown countries before arriving in the United Kingdom in a lorry on October 12, 2013. He claimed asylum the following day and was served with form IS151A by the respondent the same day.
2. The respondent refused his application on February 27, 2015 under paragraph 336 HC 395 and the same day a decision was made to remove him as an illegal entrant by way of directions under paragraphs 8-10 of schedule 2 to the Immigration Act 1971.

3. The appellant appealed that decision on March 18, 2015 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
4. The matter came before Judge of the First-tier Tribunal Pacey on June 3, 2015 and in a decision promulgated on June 17, 2015 the Tribunal upheld the refusal and dismissed the appellant's appeal for asylum, humanitarian protection and under ECHR.
5. The appellant applied for permission to appeal on June 29, 2015 submitting the Tribunal had erred. Permission to appeal was granted by Judge of the First-tier Tribunal Shimmin on July 7, 2015 who found it arguable firstly, the Tribunal had erred in its assessment of the risk the appellant faced and secondly, the Tribunal had failed to make a finding as to whether the appellant had left Iran illegally and whether he would face a real risk of persecution, regardless of any other findings.
6. A Rule 24 response was filed by the respondent on July 17, 2015 in which the respondent opposed the appeal.
7. The appellant was in attendance before me and was represented as set out above.
8. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I see no reason to make an order now.

ERROR OF LAW SUBMISSIONS

9. Miss Johnstone argued that the Tribunal made a clear finding that the appellant committed adultery outside of his own marriage and the Tribunal should have considered whether the appellant would be at risk on return because of that adultery. She referred to paragraphs [10] to [12] of the decision where the Tribunal appeared to have accepted the appellant had committed adultery. Regardless of the adverse findings made the Tribunal should have assessed the risk facing the appellant on the basis of its own findings. The Tribunal's decision was confusing and contained inconsistencies and these undermined the whole decision. The Tribunal further erred in suggesting corroborative evidence was required in circumstances where such evidence was not easily obtainable. The Tribunal referred in paragraphs [15] to [17] that the appellant's uncle and cousin could have provided statements but had erred in suggesting the evidence was easily obtainable. On the issue of illegal exit the Tribunal failed to make a clear finding on whether the appellant had left illegally and failed to have regard to the evidence that had been submitted. The Tribunal should have departed from the country guidance case of SB (Iran) CG [2009] UKAIT 00053 and should have considered the prison conditions that the appellant would face upon return.
10. Mr McVeety submitted there was no material error. Reading the Tribunal's decision as a whole he argued the Tribunal had rejected the appellant's account. Miss Johnson was "cherry picking" lines in the decision but the decision had to be read as a whole. The Tribunal spent five paragraphs considering the appellant's case and gave reasons why his claim lacked credibility. The Tribunal made clear that aspects of the

appellant's case were unbelievable and it was wrong to suggest the Tribunal had accepted the appellant's account as credible. The Tribunal had correctly considered the issue of corroboration and concluded that letters from the appellant's uncle and cousin could have been provided easily and the Tribunal was therefore entitled to take this failure into account. The Tribunal had considered risk on return and rejected his claim he had left illegally. The Tribunal had considered the objective evidence but concluded that there was no reason to depart from the case law of SB.

11. Miss Johnstone responded to these submissions and submitted that there was no positive finding on credibility and that the Tribunal had not rejected the appellant's claim to have been involved in an adulterous relationship. The Tribunal's criticisms about his behaviour were cursory at best and she submitted there were no firm negative findings against him. She argued the core reason for the appellant leaving Iran had been accepted by the Tribunal and she submitted that the Tribunal had found the appellant's case credible in paragraph [20] of its decision.

CONSIDERATION AND FINDINGS

12. The first challenge to the Tribunal's decision concerned the Tribunal's approach to the appellant's claimed relationship with Maryam and the fact that he said he was married.
13. Miss Johnstone submitted that the Tribunal accepted in paragraph [10] of its decision that the appellant had himself committed adultery. Mr McVeety submitted that this approach was naïve and failed to take into account the Tribunal's findings about the alleged relationship and his marriage.
14. In considering whether an error has been made it is important not to take sentences out of context but to have regard to the whole decision. The Tribunal's decision that did not contain any headings and included factual matters alongside findings.
15. The appellant's account is contained in paragraphs [4] to [6], [13], [14], [16] to [19] of the decision. In those paragraphs the Tribunal set out the appellant's claim. I am asked to make a finding that the Tribunal accepted the appellant committed adultery on the basis of sex outside his own marriage but I have satisfied that the reference in paragraph [10] of its decision was merely a statement of the appellant's case and not a finding of fact.
16. The Tribunal made its position clear in paragraphs [20] and [22] when it stated the appellant was not credible and it found the core claim lacked credibility.
17. The Tribunal rejected the appellant's claim that he had a relationship with Maryam and gave numerous reasons. The Tribunal explained why it doubted the account was credible these can be found in paragraphs [8] to [21].
18. The suggestion the Tribunal found his account credible has no merit whatsoever. Whilst the Tribunal's decision could have been written in an easier format I am left in no doubt how the Tribunal assessed the appellant's claim. The Tribunal gave

detailed reasons that were open to it and in those circumstances I find no merit to the first ground argued that the Tribunal had erred by failing to consider a risk based on the fact he had allegedly committed adultery.

19. Miss Johnstone argued the Tribunal had applied the wrong test for corroboration. The Tribunal reminded itself that corroboration was not required in an asylum case but an absence of evidence that could be obtained easily was a factor the Tribunal could take into account when assessing credibility.
20. Miss Johnson submitted that it would not have been easy for the appellant's uncle or cousin to send him statements but the Tribunal did not accept this submission and nothing argued today suggests the Tribunal was wrong in its approach.
21. The second ground argued related to risk on return but the Tribunal made it clear in paragraph [22] of its decision that the judge concluded that as the core of his account lacked credibility the Tribunal rejected his claim to have left illegally.
22. The argument put forward is that the country guidance case of SB has been superseded by further evidence. The First-tier Tribunal spent considerable time considering that evidence. At paragraph [29] of its decision the Tribunal found that as his core account was rejected there was no risk of him facing court proceedings if he were returned. If there was no risk of court proceedings then the Tribunal did not need to consider prison conditions as there was no risk the appellant would face such conditions.
23. In summary, I am not persuaded either of Ms Johnstone's submission have any merit. The Tribunal found the appellant lacked credibility and rejected his claim and gave reasons for that decision. Those findings were relevant to the assessment of illegal exit and risk on return. The Tribunal then considered other evidence submitted but found the principles of SB still applied and dismissed the appellant's appeal.
24. I am satisfied those findings were open to the Tribunal and accordingly I dismiss this appeal.

DECISION

25. There was no material error. The original decision shall stand.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT
FEE AWARD**

No fee award made.

Signed:

Dated:

A handwritten signature in black ink, appearing to read "SPAL" with a flourish underneath.

Deputy Upper Tribunal Judge Alis