



IAC-TH-CP-V1

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

Appeal Number: AA/08810/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 17 December 2015**

**Decision & Reasons Promulgated
On 05 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

**BM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Akinbolu of Counsel instructed by Duncan Lewis, solicitors

For the Respondent: Mr S Staunton of the Specialist Appeals Team

ERROR OF LAW DECISION AND REASONS

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 her or any member of her 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.

The Appellant

1. The Appellant is an Iranian national born in 1985. On 28 January 2008 she arrived with leave to enter as a student expiring on 21 October 2012. During June 2011 she had made an application for further leave to remain as the family member of a refugee which was refused in August 2011. On 11 April 2013 she made an application for subsidiary protection in her own right which on 26 August 2014 the Respondent refused. The Appellant's father has been recognised as a refugee on account of his political opinion and her claim was on the basis she also had been involved politically and in particular had maintained a blog critical of the Iranian authorities.

The Home Office Decision

2. By a letter of 26 August 2014 the Respondent rejected the Appellant's claim for subsidiary protection. She considered the Appellant was not credible in the light of the lack of evidence to support her claim, inconsistencies in her account and her delay in claiming asylum. The Respondent referred to Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and to the country guidance on sur place claims in *BA (demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC)*. She concluded that on return to Iran the Appellant would not be at risk.

The First-tier Tribunal's Decision

3. By a decision promulgated on 26 August 2015 Judge of the First-tier Tribunal Amin made adverse credibility findings against the Appellant and dismissed her appeal on all grounds.
4. On 16 September 2015 Judge of the First-tier Tribunal Reid granted the Appellant permission to appeal because it was arguable the Judge had failed to consider the Appellant's blogging claim with reference to the decision in *AB and Others (internet activity – state of evidence) Iran [2015] UKUT 0257 (IAC)*. Further, it was arguable her finding the Appellant would not be of interest to the Iranian authorities on return was based on speculation and she had failed to have full regard to the country expert report of 4 January 2015 prepared by Dr Van Engeland at pages 42-62 of the Appellant's first bundle.

The Upper Tribunal Hearing

5. The Appellant attended but other than to confirm her address took no active part in the proceedings, the purpose and the procedure of which I explained to her. It was quite clear at the opening exchange between the Appellant and myself that she had at least a minimum fluency in the English language.

Submissions for the Appellant

6. Ms Akinbolu relied on the grounds for appeal. These are full. Essentially, they challenged the Judge's failure to address the learning in *AB and Others* and its findings that there is evidence of people blogging outside Iran reporting that members of their families had, consequentially, been detained and of some monitoring of blogging activities outside Iran by the Iranian authorities.
7. The second ground took issue with the Judge's treatment of the relevance of the Appellant's membership and involvement in the Green Wave movement. The expert report had addressed this but the Judge had not. Further, there were no grounds for the Judge's finding that, since the Green Wave movement no longer existed as an organisation, the Appellant's fears on return were merely speculative.
8. The third ground challenged the Judge's treatment of the Appellant's claim that the United Kingdom's obligations under Article 8 of the European Convention to respect her private and family life in the United Kingdom were engaged by her appeal. This last ground asserts the Judge's adverse credibility findings were not well-founded and failed to give due weight to the Appellant's evidence and the submission of a disk and supporting evidence from Dr Khonsary evidencing her political involvement.
9. It was properly arguable that the Appellant fell within the guidelines and risk categories identified in *AB* and had the Judge taken this determination into account it might have well have made a significant difference to the outcome of the appeal.
10. The Judge had not addressed the statements from the Appellant's family and others who knew her from her political or blogging activities. Additionally, she had not expressly addressed the background evidence submitted in support of the appeal.
11. The Judge's treatment of the Article 8 claim contained material errors of law. She had not considered the aspects of the Appellant's claim based on her refugee parents' dependence on her because of their failing health. Ms Akinbolu referred to paragraph 113 of the decision which merely stated the meaning of what constitutes private and family life. If it was meant as a criticism of the strength of the Appellant's claim it was unsustainable.
12. The decision as a whole was not safe and could not stand. It should be set aside.

Submissions for the Respondent

13. Mr Staunton accepted, quite properly, that the Judge had failed to address the learning in *AB* and that if there was an error of law the appeal would need to be heard afresh in its entirety.

Findings and Consideration

14. I shall follow the order of paragraphs in the First-tier Tribunal's decision and the paragraph numbers are references to it.

15. The reference at paragraph 70 to Somalia embedded in a paragraph in which the Judge states she has considered the background evidence when the Appellant is an Iranian national is at the very least careless.
16. At paragraph 74 the Judge repeats the Appellant's claim to be at risk because of her blog and political activities but in fact makes no express finding whether this fundamental part of the Appellant's claim is accepted or not.
17. The apparent inconsistency when the Appellant opened her blogging account, whether it was in 2009 or 2010 identified at paragraph 76, was, absent any other contextual material, not a matter which could be considered as undermining the Appellant's credibility, especially having regard to the Appellant's claims mentioned in paragraph 10 of her decision to which it would have been appropriate for the Judge to refer. She also does not make it clear whether she reached her conclusion after allowing that the Iranian calendar year starts in March.
18. At paragraph 78 the Judge finds the Appellant's claim was "opportunistic" but fails to give any reason to support this finding which therefore is no more than speculation.
19. At paragraph 80 the Judge refers to the Appellant's delay in claiming asylum but fails to take into account her full immigration history set out in the Respondent's Reasons for Refusal Letters but not in paragraphs 2 and 3 of her own decision.
20. At paragraph 81 the Judge criticises the Appellant for supposing the blogs critical of her evidence that the Iranian authorities are the perpetrators of threats against her or that they closed her blog accounts but no reasons are given for her adverse conclusion.
21. At paragraph 82 the Judge finds the Appellant's claimed fear of persecution on return to be speculative because the expert report states that the media outlets in which she claimed to have been involved had ceased to exist. There is no explanation why the closure of the media outlets in which the Appellant claimed to have been involved means that her claimed historic involvement in them in an opposition role ceases to be of relevance to her claim.
22. Paragraph 89 makes the second and last reference to the expert report. It appears to refer to paragraph 37 of the report but does not fairly reflect what the report stated. The expert did not find that the Appellant's fear was objectively well-founded only if there was a court order against her. The expert concluded that the Appellant had "a well-founded fear of persecution on the basis of her political ideas, especially if the court order exists".
23. The Judge reached her conclusions at paragraph 94 without any reference to the background evidence of which a substantial quantity had been submitted for the Appellant. Her statement that the Appellant did not use social media in Iran is extraordinarily comprehensive and sweeping. The Appellant's claim is that she did not operate a political blog until after she had left Iran. There is no consideration

whether the Appellant might have used social media for non-political purposes. This may not be a material error but indicates a dis-connection between the evidence and the conclusion.

24. The Judge's conclusions in paragraphs 92 and 96 are inadequately reasoned, if only by the failure to take account of the determination in *AB and Others*.
25. At paragraph 99 the Judge fails to distinguish the different involvement which the immigration authorities are likely to have in respect of those departing and those entering a country.
26. At paragraph 100, the Judge's wording raises a serious doubt whether she has applied the correct standard of proof.
27. The Judge's treatment of the Appellant's claim under Article 8 outside the Immigration Rules at paragraph 109 dealing with Part 5A of the Nationality, Immigration and Asylum Act 2002 as amended fails to reflect the learning in *Dube (ss.117A-117D) Zimbabwe [2015] UKUT 90 (IAC)*. At paragraph 119 she conflates the treatment of Article 8 claims under the Immigration Rules and outside the Rules.
28. For all these reasons I find the First-tier Tribunal's decision contains material errors of law such that it should be set aside in its entirety. The appeal will need to be heard afresh.
29. Taking account of the nature of the errors, no findings can be preserved from the First-tier Tribunal's decision. Having regard to s.12(2) Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b) and the nature and extent of the fact-finding required, I conclude the appeal should be remitted to the First-tier Tribunal to decide.

NOTICE OF DECISION

The decision of the First-tier Tribunal contained errors of law and is set aside in its entirety. The appeal is remitted to the First-tier Tribunal for hearing afresh. Anonymity direction continued.

Signed/Official Crest

Date 29. xii. 2015

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal