



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/09991/2014

THE IMMIGRATION ACTS

Heard at Stoke
On 19 July 2016

Decision & Reasons Promulgated
On 19 July 2016

Before

Deputy Upper Tribunal Judge Pickup
Between

FKRA
[anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr P Draycott, instructed by Paragon Law
For the respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Garratt promulgated 22.4.16, allowing on human rights grounds only his appeal against the decision of the Secretary of State, dated 6.11.14, to refuse his asylum, humanitarian and human rights claims made on 28.1.11. The Judge heard the appeal on 15.2.16.
2. First-tier Tribunal Judge Macdonald granted permission to appeal on 20.5.16.

3. Thus the matter came before me on 19.7.16 as an appeal in the Upper Tribunal.

Error of Law

4. For the reasons briefly set out below, I found there was an error of law in the making of the decision of the First-tier Tribunal such that the decision of Judge Garratt should be set aside and remade.
5. The appellant first arrived in the UK in about December 2010, aged 16. He sought asylum and/or international protection on the basis that on return to Iran he would face mistreatment due to his political opinion, namely distributing KDPI leaflets with his father, a KDPI member.
6. His application was first refused on 1.4.11, the Secretary of State rejecting his factual account of events in Iran, but he was granted discretionary leave to remain until 1.5.12, when he would reach the age of 17½, in accordance with the Secretary of State's policy. His appeal against refusal was dismissed by the First-tier Tribunal on 2.6.11 and he was refused permission to appeal to the Upper Tribunal.
7. On 16.5.12 the appellant made an application for further leave to remain in the UK. This was refused in the decision of 6.11.14, which decision is the subject of this appeal. His appeal to the First-tier Tribunal was dismissed by the decision of First-tier Tribunal Judge Frankish promulgated 27.2.15. However, on appeal to the Upper Tribunal, the decision of the First-tier Tribunal was set aside for failure to give detailed consideration to the expert report of Dr Kakhki, and the decision in the appeal was remitted to be remade afresh in the First-tier Tribunal.
8. The appeal was then heard before First-tier Tribunal Judge Garratt on 15.2.16. In the First-tier Tribunal decision promulgated 22.4.16 Judge Garratt gave careful consideration to Dr Kakhki's report but concluded at §63 that it was insufficient to displace the credibility findings of the first judge, who had accepted that the appellant left Iran illegally. Judge Garratt concluded that the appellant had not shown that on leaving Iran he was at risk of serious harm at the hands of the authorities because of any claimed support for the KDPI.
9. However, at §66 Judge Garratt went on to consider the issues of illegal exit and failure to perform military service, and the country guidance of SB (Risk on return – illegal exit) CG [2009] UKAIT 00053. At §67 Judge Garratt concluded that there were risk factors unique to this appellant that would reasonably likely lead to a period of detention on return which created a real risk of harsh treatment, especially when the appellant's poor health is taken into account. At §69 Judge Garratt concluded that investigation by the Iranian authorities would "attract the real risk of detention and ill-treatment at the hands of the Iranian authorities aggravated by his medical condition."
10. The judge then went on to state, "The consequences could be seen as making the appellant a refugee on that account alone but, if I am wrong in that conclusion, then I conclude that the appellant is entitled to humanitarian protection on account of the

serious harm, defined in paragraph 339C of the Immigration Rules, which he will suffer. To that extent I allow the appeal on humanitarian protection grounds." The Judge concluded that final paragraph of the decision by observing that as the appeal had been allowed on humanitarian protection grounds it was unnecessary to consider article 8 and 3, though in passing the judge also found it clear that the appellant was additionally at real risk of suffering which would amount to a breach of article 3.

11. The decision in the appeal was to allow the appeal on humanitarian protection grounds.
12. The appellant seeks to appeal Judge Garratt's decision, contending that he should also have been successful on asylum grounds. Additionally, it is pleaded that the judge failed to properly assess Dr Kakhki's expert report and erred in relation to the findings on the arrest/search warrant and the lack of supporting evidence.
13. In granting permission to appeal, Judge Macdonald found that it was "arguably unclear as to why, given the appellant's profile, the judge allowed the appeal on humanitarian protection grounds only. It can also be said that Dr Kakhki's report is very detailed and arguably did displace the findings of credibility within the earlier judge's determination. There may also be merit in the final point on the arrest/search warrant and in the adverse inference drawn against the appellant by the lack of supporting evidence."
14. It is not clear to me why, given his clear findings, Judge Garratt did not allow the appeal on asylum grounds. It may be, from the wording of the last paragraph of the decision that the Judge intended to allow the appeal on asylum grounds and in the alternative on humanitarian protection, and indeed in the further alternative on article 3 ECHR grounds.
15. It seems clear from the findings of Judge Garratt that on the basis of the risk to the appellant on return of being detained and interrogated and thereby suffering ill-treatment at the hands of the Iranian authorities, the appellant would qualify for asylum as having a well-founded fear of persecution on grounds of his actual or imputed political opinion. At §67 the judge accepted Dr Kakhki's opinion that a failed asylum seeker would face an investigation on return and that it should be assumed that he would then tell the truth about his illegal departure and time in the UK. He would also, Judge Garratt found, disclose that he is a Kurd from the Kurdish region of Iran, who left the country illegally to make a claim based on support for KDPI and arrest, even if those claims were rejected by the Tribunal on appeal. Dr Kakhki's report suggested that those factors would give rise to the interest of the authorities in the appellant and he would likely be detained, rather than bailed. It will also be noted that he had avoided military service.
16. It was those risk factors, which Judge Garratt considered to be unique to the appellant, that persuaded the judge that the appellant is reasonably likely, to the lower standard of proof, to face mistreatment on return. In effect, the mistreatment

would arise from imputed political opinion. As the grounds of appeal explain, the appellant only has to establish a connection between the serious harm he will face and one of the Convention reasons; it need not be the sole or primary reason for the apprehended mistreatment, provided it is an effective reason.

17. I am satisfied that the First-tier Tribunal should, and may well have intended, to allow the appeal on asylum grounds on the basis of imputed political opinion, arising from his failed KDPI-related claim, his illegal exit and his continuing evasion of military service, in conjunction with his susceptibility to harm by reason of his ill-health. Mr Bates did not offer any resistance to this conclusion.
18. In the circumstances, it is not necessary to address the other grounds of appeal, as Mr Draycott agreed.
19. The correct course should be to set the decision aside and remake it on exactly the same findings, but to allow it on asylum grounds.

Conclusions:

20. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I re-make the decision in the appeal by allowing it on asylum grounds.

In the alternative, the appeal is allowed on humanitarian protection grounds, and in the further alternative on article 3 ECHR grounds.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did make an order. Given the circumstances, I continue the anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable and thus there can be no fee award.



Signed

Deputy Upper Tribunal Judge Pickup

Dated