



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

Appeal Number: AA/03625/2011

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 8 November 2013  
Oral Determination**

**Determination Sent**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**A S B  
(ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Dhanji, Counsel

For the Respondent: Mr P Nath, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant appeals with permission against the determination of First-tier Tribunal Judge Nightingale which was promulgated on 14 July 2011 in which she dismissed his appeal against the decision of the respondent made on 11 March 2011 refusing his claim for asylum and making a decision to remove him to Syria under Section 10 of the Immigration and Asylum Act 1999. I do not propose to set out in any detail the appellant's

claim. It is set out adequately in the witness statement and in the refusal letter and also it is recorded in the decision of Immigration Judge Nightingale. It is not suggested that her recording of the facts of the case is incorrect.

2. The respondent refused the application for the reasons set out in the refusal letter. Again I do not propose to set those out in any detail. There is no dispute of the basis on which that was reached.
3. Judge Nightingale heard evidence from the appellant. She also had a large number of documents before her, including in particular an expert report from Dr Fatah as well as other evidence which is set out in detail in paragraph 19 of her determination. In summary, Judge Nightingale did not believe the appellant's account of what happened to him in Syria and considered, for the reasons set out particularly at paragraph 52 of her decision, that the appellant would not be identified as a failed asylum seeker on return to Syria, concluding that as he had a valid Syrian passport which bears a UK visa he would not be in difficulty on return. The judge also went on to consider that the detailed references in Dr Fatah's report to those detained on arrival in Syria are largely to those who had some political involvement or anti-government activity or religious extremism. The judge then dismissed the appeal on all grounds.
4. An application was then made by the appellant to the First-tier initially for permission to appeal to the Upper-tier. That was refused as was the renewed application which was refused by Upper Tribunal Judge Warr on 10 July 2012. Subsequent to that the appellant then made an application for leave to apply for judicial review against that decision and by a consent order dated 8 February 2013 the High Court ordered first that the claim is allowed and that the Upper Tribunal's decision to refuse permission dated 18 July 2012 was quashed. The High Court also ordered that the determination of the claimant, that is the appellant's application for permission to appeal be remitted back to the Upper Tribunal for reconsideration in light of the country guidance set out in **KB (failed asylum seekers and forced returnees) Syria CG [2012] UKUT 426 (IAC)**.
5. Subsequent to that order the matter came back before the Upper Tribunal and on 22 August 2013 Upper Tribunal Judge Eshun granted permission stating:

"The judge heard the appeal on 13 July 2011 and the determination was promulgated on 25 July 2011. The appellant was refused permission to appeal and this decision was upheld by Upper Tribunal Judge Warr on 10 July 2012. The appellant applied for JR and by consent of both parties the High Court quashed Upper Tribunal Judge Warr's decision so that the Tribunal can reconsider the appellant's application in light of the country guidance. Permission is granted to deal with this issue."

6. When the matter came before me it was a matter of agreement between both parties that the order of the High Court was in effect difficult to implement given that the issue in this case is whether the First-tier Tribunal Judge's determination involved the making of an error of law which is of necessity confined to the situation as at the date on which it was promulgated, it being obvious that the country guidance in **KB** postdated that significantly.
7. Mr Dhanji's submissions were to the effect that because the decision in **KB** set out in some detail what had happened in 2011 that the judge's findings in respect of what happened in 2011 should be viewed from that prism and that on that basis it was evident that she had erred in her assessment of the evidence. Mr Nath, on the contrary, submitted that this was not an appropriate way to do so and that looking at the judge's determination as a whole it contained conclusions which were open to her on the evidence that had been presented for her and that it could not reasonably be said that she had erred in her assessment of that evidence, had reached findings which were not open to her or that her evaluation of the evidence, particularly the evidence of Dr Fatah, was flawed.
8. The grounds on which permission was granted (drafted by Mr Fripp of Counsel who appeared below) are detailed and they do, with particular reference to the third ground, consider that the judge's assessment of the risk was flawed in particular due to the failure to evaluate all the evidence of what happened to failed asylum seekers and the general level of violence.
9. Having considered the matter carefully I consider that the judge did, in the particular circumstances of this case, when viewing the evidence of the rapidly deteriorating situation in Syria which is set out in significant and considerable detail in the material presented to her, fail to attach sufficient weight to the opinion of Dr Fatah who is an acknowledged expert and whose expertise has been approved in numerous country guidance decisions.
10. In particular, whilst Judge Nightingale is correct in stating as she does at paragraph 52 that some of the examples referred to of those asylum seekers who had difficulty on return are those who are suspected of Islamic extremist activity, that does not deal with the more specific examples of other failed asylum seekers who were not in that category nor does it deal sufficiently with the difficulties identified by Dr Fatah at paragraph 109 and 121 of his report. I consider that that those taken with the other material are such that the judge should have explained why she rejected Dr Fatah's opinion on that point, having accepted his expertise on other points. On that basis I am satisfied that the determination of Immigration Judge Nightingale did involve the making of an error of law affecting the outcome of the decision and I set it aside on that narrow point, that is the risk to the appellant as a failed asylum seeker. The other findings of the judge are preserved.

11. It therefore follows that I must re-make the determination. I think it fair to say that both parties are in agreement that re-making the decision now in light of the decision in **KB** that as a failed asylum seeker the appellant is at risk of persecution on return to Syria on that basis. It is not suggested that he is one of those very small number of people who would not be at risk on return due to connections to the regime and it is not disputed that he comes from the Druze minority.
12. Accordingly, on the basis of the country guidance in **KB** which has not been challenged, I am satisfied that as a failed asylum-seeker, the appellant has a well-founded fear of persecution in Syria on account of his perceived political opinions and accordingly that to remove him would be in breach of the United Kingdom's obligations pursuant to the Refugee Convention. It also follows on that basis that his removal would be contrary to the United Kingdom's obligations pursuant to Article 3 of the Human Right Convention. I therefore allow the appeal on refugee grounds on that basis.
13. The appellant is not entitled to humanitarian protection, it being found that he is a refugee and I dismiss the appeal on that basis but I allow the appeal on human rights grounds on the basis that his removal would be in breach of Article 3. It is unnecessary for me to consider any of the other grounds of appeal in the circumstances.

### **SUMMARY OF CONCLUSIONS**

- 1 The decision of the First-tier Tribunal did involve the making of an error of law and I set it aside.
- 2 I remake the decision by allowing the appeal on refugee grounds and on human rights grounds.

Signed:

Date: 26 November 2013

Upper Tribunal Judge Rintoul