



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

Appeal Number: DA/01568/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Determination**

**Promulgated**

**On 12<sup>th</sup> March & 1<sup>st</sup> May 2014**

**On 02nd May 2014**

**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**MR KAVEH HESHMATI**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms G Thomas (instructed by Kesar & Co, Solicitors)

For the Respondent: Ms A Holmes (12/03/201) & Ms A Everett (01/05/2014)  
(Senior Home Office Presenting Officers)

**DETERMINATION AND REASONS**

1. This is an appeal to the Upper Tribunal by the Secretary of State which first came before me on 12th March 2014. For the sake of continuity and clarity I shall continue to refer to Mr Heshmati as the Appellant and the Secretary of State as the Respondent.
2. As a result of directions issued by the Principal Resident Judge, the hearing on 12th March 2014 was confined to whether or not the First-tier Tribunal had made an error of law in its determination of the appeal and if so whether and to what extent the determination should be set aside.

3. The Appellant in this case is a citizen of Iran born on 23rd September 1981. He arrived in the UK on 4th March 2004 illegally and made a claim for asylum. That claim was refused on 6th April 2004 and his appeal against that refusal dismissed on 28th June 2004 by Adjudicator McKee (as he then was). All the Appellant's appeal rights were exhausted on 1st June 2005. However, the Appellant did not leave. In June 2008 the Appellant claimed that he travelled to Ireland on a number of occasions in order to make a fresh claim to asylum. He was eventually detained in Ireland and transferred back to the UK under the Dublin Convention on 8th July 2008.
4. On 18th June 2009 the Appellant was convicted at Isleworth Crown Court of possessing a false document and sentenced to 12 months imprisonment. The document in question was a forged Cypriot passport in the name of another person but containing his photograph. Notice of liability for deportation was served on the Appellant on 15th July 2009. Further representations were submitted on his behalf on 10th November 2011 and a decision to deport him was taken on 19th July 2013. He claimed that to deport him to Iran would be a breach of the Refugee Convention and Article 3 of the ECHR.
5. Suffice it to say that the grounds upon which he had initially claimed asylum and in respect of which he lost his appeal before Adjudicator McKee were found to have been a fabrication. Indeed, Adjudicator McKee found there to be no serious possibility of any material part of his story being true.
6. His current claim for asylum is based upon firstly, his sur place activities in the UK and secondly, the fact that he has a tattoo of the Royal emblem of the Shah on his left shoulder/upper arm. He confirmed that the tattoo was done in the UK.
7. When the matter came before the First-tier Tribunal, Judge Clarke sitting with a non legal member Mr P Bompas, it made findings that the Appellant is not a man to be trusted in terms of his evidence. The panel concluded that his sur place claim was calculated with a view to him being allowed to remain in the UK; that he had not been politically active in Iran before he came to the UK and that if he had been it would have formed part of his original claim. His original claim had been found to be totally false. The Tribunal did not believe he held a genuine allegiance to the Shah's regime and found that he was merely using it as a means to remain in the UK. However, the Tribunal acknowledged that the motivation for sur place activities was irrelevant and what was important was whether those activities would place an Appellant at risk on return. The Tribunal referred to the case of BA (demonstrators in Britain-risk on return) Iran CG [2011] UKUT 36 (IAC) and was provided with YouTube footage of the Appellant at a pro-Shah demonstration in London. The Tribunal made no finding that the Appellant had in fact come to the attention of the authorities in Iran but then in paragraph 28 found that even a cursory body search would reveal his tattoo. They were uncertain of the significance of the sun on the tattoo but found that the fact that he had the tattoo would mean that

enquiries would be made and the YouTube footage studied more closely and thus the Appellant would be at risk.

8. In seeking permission to appeal the Secretary of State asserted that the First-tier Tribunal had failed to give any or any adequate reason for findings on a material matter in particular that he would come to the attention of the authorities and the Secretary of State asserted that the tattoo was not determinative.
9. At the hearing on 12th March 2013, having heard submissions from both representatives, I found that paragraph 28 of the determination, being the paragraph in which the First-tier Tribunal decided to allow the appeal to be inadequately reasoned. The First-tier Tribunal's finding that his credibility was non-existent was sustainable but there were inadequate findings to support the conclusion that he would be at risk. The First-tier Tribunal did not explain why he would be at risk on return. I therefore set aside the determination in that respect only and adjourned the case for a resumed hearing when the sole issue was to be whether or not the tattoo would put him at risk and whether his activities as recorded on the YouTube video would come to the attention of the authorities and thus put him at risk.
10. On 1<sup>st</sup> May 2014, Ms Everett was at a disadvantage in that she had been a late replacement for the original presenting officer and was without a file or papers. However, having been provided with a Respondent's and Appellant's bundle and given time to prepare she expressed herself in a position to proceed. It was agreed that the hearing should proceed by way of submissions only subject to our viewing the DVD of the demonstration in question and examining the Appellant's tattoo, the photograph in the bundle being almost illegible.
11. The DVD was played. It was accepted on a previous occasion that this was displayed on You Tube. It clearly showed a pro-Shah demonstration in the UK. A large number of people were waving the imperial flag of Iran from prior to the 1979 revolution and others, including the Appellant were holding aloft pictures of the Shah. They were chanting "bless the Shah"; "death to the Republic of Iran"; "death to the Supreme Leadership" and "Death to Khomeini". The Appellant is clearly visible wearing a white suit holding a picture of the Shah aloft and joining in with the chanting.
12. The Appellant has a large tattoo on his left upper arm/shoulder which is an accurate representation of the lion holding a sword with a sun behind as displayed on the pre-1979 imperial flag. Since that time the emblem of the Persian coat of arms has been replaced with a stylised script of the Arabic word "Allah".
13. On behalf of the Secretary of State Ms Everett submitted that there is no evidence that the Appellant has been identified by the Iranian authorities from the YouTube footage and no evidence that the tattoo would be seen on his return to Iran. She acknowledged however that the tattoo itself was likely to be incendiary in Iran.

14. I agree that if the Appellant is dressed on return as he was dressed in court, namely with a suit and tie, than the tattoo will not be visible. If he has not been previously identified, and there is no evidence that he has, given infrequent attendance at demonstrations, there is no reason why he should be searched upon arrival. Thereafter however it is reasonably likely that the tattoo will be seen and its existence come to the attention of the authorities. The nature of the tattoo, being a clear symbol of the Shah's regime is highly likely to be regarded as indicative of support for an anti-regime group and will lead to arrest, detention and it is reasonably likely, persecution. Bearing in mind the low standard of proof in asylum cases I find that the existence of the tattoo, particularly together with the You Tube Footage is enough to make the Appellant at risk on return. Whilst it may well be that the tattoo and his attendance at the demonstrations are no indication of his actual political views, and done in a cynical attempt to secure his remaining in the UK; his motives are immaterial if the result is that he would be at risk and bearing in mind the low standard of proof, I find that he would.
15. My findings accord with those of the First-tier Tribunal and had the First-tier Tribunal given reasons for its conclusions the appeal to the Upper Tribunal could have been avoided.
16. While the Secretary of State's appeal to the Upper Tribunal is allowed in that the First-tier Tribunal made a material error of law, in re-deciding the appeal I allow it on asylum grounds and under Article 3 of the ECHR.

Signed

Date 1<sup>st</sup> May 2014

Upper Tribunal Judge Martin