



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

Appeal Number: AA/01549/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 21 October 2015**

**Decision & Reasons Promulgated  
On 18 December 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

**MR  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Acharya, Acharyas Solicitors

For the Respondent: Ms A. Fujiwala, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Iran, born on 3 April 1979. He arrived in the United Kingdom and claimed asylum on 1 November 2004. The basis of his claim is that he was a member of the workers communist party of Iran, known as the Heckmatist party. He attended a party meeting at the house of a friend, which was attacked by Hezbollah and the Appellant received a blow to the head. He managed to escape and subsequently fled the country. Following his arrival in the United Kingdom he joined the UK branch of Heckmatist and has attended demonstrations against the Iranian authorities in front of the Embassy and other buildings. He also formed a relationship with a Turkish national, Ms A

and helps her to care for her autistic son, E. His application was refused by the Respondent on 16 January 2015 and he appealed against that decision.

2. The appeal hearing came before First Tier Tribunal Judge Lamb for hearing on 20 May 2015. In a decision promulgated on 2 July 2015 he dismissed the appeal, essentially on the basis that he did not find his evidence credible in respect of his political involvement prior to arriving in the United Kingdom [81] and he was not satisfied that his political involvement in the United Kingdom would cause him to be at risk of persecution on return to Iran [82]. He did not accept that he had formed a family life with Ms A and her son, who would become 18 on 26 June 2015 and even if he had, his removal to Iran would be proportionate [96]-[100].

3. Permission to appeal to the Upper Tribunal was sought in time on the basis that the Judge: (i) failed to give proper consideration to the delay in processing his claim under the provisions of the legacy casework programme; (ii) failed to give adequate consideration to section 117B(6) and has not adequately considered whether family life exists; (iii) failed to make any findings as to the impact of removal on the Appellant's partner and son; (iv) in relation to the asylum claim, the Judge failed to give due weight to the relevant evidence of the witness, H, that the Iranian authorities monitor demonstrations in London and record who is involved in them and has at [82] in finding that the Appellant would not be detected as an atheist acted contrary to the decision in HJ (Iran) [2010] UKSC 31.

4. Permission to appeal was granted by First Tier Tribunal Judge Kelly in respect of the fourth ground only, on the basis that it was arguable that the Tribunal erred "*by treating the cynicism with which it found the appellant had participated in demonstrations against the Iranian regime [paragraph 70] as being of relevance to the question of whether he would be at risk on return, especially given its acceptance that the Iranian authorities (a) monitor such demonstrations and record who is involved in them [paragraph 67] and (b) would regard the appellant's Marxist philosophy and atheism "as being anti-Islamic" so as to "put him at risk of persecution and ill-treatment" [paragraph 68].*"

#### *Hearing*

5. On behalf of the Appellant, Mr Acharya took me through the Judge's decision and submitted that at [70] that whilst the Judge did not accept what the Appellant said in evidence about his activities in Iran before he left in 2004 he also found that on arrival he was promptly in touch with members of the party that might cause him to infer he had been active in the party or at least a member of it, previously. At [81] the Judge stated that he had not accepted the Appellant was actively involved politically before he left Iran, but he did accept that since his arrival in the United Kingdom he had participated in demonstrations against the Iranian government. At [66] the Judge expressly accepted the evidence of H about the activities of his party and the involvement of the Appellant in the demonstrations. Photographs were produced showing the Appellant holding a placard. At [67] the Judge accepted

the evidence of H that the Iranian authorities monitor demonstrations in London and record who is involved in them and that, in light of the background evidence, illegal exit may result in imprisonment on return if such a person attracts the attention of the authorities for some other reason. At [68] the Judge accepted the evidence of H and the Appellant that the Iranian authorities would equate the Marxist philosophy of the party and the Appellant's atheism and therefore, if he were investigated by the authorities and his views become known he would be treated as anti-Islamic and that would put him at risk of persecution. However, at [82] the Judge held that he was not satisfied that the Appellant's political activity has been of an extent or character to constitute a risk on return to Iran he will be investigated and subject to ill-treatment or persecution and there is a similar lack of risk that he will be detected as an atheist.

6. Mr Acharya stated that the nature of the demonstrations and where they were videoed were on YouTube. He drew my attention to the fact that a DVD had been sent to the Home Office at [41] although this had not been seen by Judge Lamb. He also drew my attention to the fact that in the Appellant's bundle photographs had been produced at 39-40, 41 & 112 & 114. There was also a letter from H at pages 2-4 of supplementary bundle. He submitted that the Judge erred at [70] in that he does not deal with the fact that the Appellant attended demonstrations and this would have brought him to the attention of the authorities in Iran. He drew my attention to pages 10, 11 and 13 of Bundle 2 and the country guidance note (Australia June 2013) which refers to the authorities in Tehran airport collecting photographs of Iranians in protest gatherings outside Iran and that people were detained in the airport whilst their faces were compared to these photographs. He submitted that there was a material contradiction between the Judge's findings at [70] and [81].

7. In response, Ms Fijiwala sought to rely on the rule 24 response. She submitted that there were no errors in the determination; the Judge considered the evidence before him and there was no contradiction between his findings at [70] and [81]. The Judge does consider at [70] that on arrival the Appellant promptly contacted members of the party but this was not a finding that he was active before arrival. At [81] the Judge finds the Appellant was not involved prior to arrival in the UK and the Judge was entitled to reach that conclusion. In respect of the evidence regarding monitoring, this was correct but other factors had to be considered in relation to the Appellant and whether he would attract interest on return. At [70] the Judge considered whether the Appellant had attended demonstrations in the United Kingdom and that it was unlikely he was involved in many due to him having moved to East Anglia. Frequency is a relevant factor *cf.* BA Iran at [1] of the headnote. She submitted that the methods are haphazard and it depends on whether information is known about the individual on return. With regard to Headnote [4] there was no evidence the Appellant had played a leading role. It was accepted that he was holding a placard in one of the photographs but does not mean he was playing a high level role. The Judge found that he was an infrequent demonstrator who played no particular role in demonstrations and whose participation is not highlighted in the media. In respect of the fact that he is an atheist at [82] the Judge noted that he described himself as a Muslim in his screening interview and found he

would do so on return. At [54] the Judge noted that he had made no mention of problems as a result of not practicing his faith. Based on BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC) the Judge properly dealt with risk on return and the Appellant’s sporadic involvement in demos.

8. In reply, Mr Acharya relied on BA Iran at [69] and submitted that he placed weight on the fact that the Appellant’s face is clearly recognizable. The Judge accepted at [68] that the Appellant has Marxist beliefs. Whilst the Judge considered BA Iran he did not consider the relevant factors *viz* where the Appellant was demonstrating, whether his face was identifiable; what was written on the placard and whether this would cause him to be at risk on return.

### *Decision*

9. I made my decision at the hearing, which was that I found a material error of law in relation to the manner in which the Judge applied the guidance in BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC). I now give my reasons for so finding.

10. The appeal before me was confined to asylum (and Article 3) only and focused on the risk on return to Iran to the Appellant as a result of his political activities in the United Kingdom and his atheism. The Judge’s material findings in this respect are at [66] through to [70] and at [79]-[82]:

(i) he accepted the evidence of H about the activities on the party (Hekmatist) and the involvement of the Appellant in demonstrations, evidenced by photographs showing him holding a placard [66];

(ii) he accepted the evidence of H that the Iranian authorities monitor such demonstrations in London and record who is involved with them [67];

(iii) those who leave Iran illegally without an exit permit face being fined on return or sentenced to imprisonment and such illegal exit may be an aggravating factor, if such a person attracts the attention of the authorities for some other reason [67];

(iv) if the Appellant were investigated by the authorities and his views were to become known he would be treated as being anti-Islamic and that would put him at risk of persecution and ill-treatment [68];

(v) he did not accept what the Appellant said in evidence about his activities in Iran before he left in 2004 but he also found that on arrival he was promptly in touch with members of the party that might cause him to infer he had been active in the party or at least a member of it, previously. He could not find any evidence to indicate that he was in any way active in the party from 2004 onwards. He was happy to be photographed taking part in demonstrations with a view to using such evidence in support of his application [70];

(vi) he did not know whether or not it was true that the Appellant left Iran without a passport but it was clear he arrived at Heathrow Airport with a false passport and had been assisted in his journey by a trafficker [80];

(vii) he did not accept that the Appellant was actively involved politically before he left Iran. He accepted that since his arrival in the United Kingdom in recent years he has participated in demonstrations against the Iranian government in public places and has made himself liable to be recorded by that government as such a participant. They have been few in number and intermittent [81];

(viii) he was not satisfied that the Appellant's political activity has been of an extent or character to constitute a risk that on return to Iran he will be investigated and subject to ill-treatment or persecution and there is a similar lack of risk that he will be detected as an atheist - he would expect him to identify as a Muslim as he did in his screening interview [82].

11. I have carefully considered the submissions of both parties and the decision of the Upper Tribunal in BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC). It is clear, as Ms Fijiwala pointed out, that the first headnote states that: "*regard must be had to the level of involvement of the individual here as well as any political activity which the individual might have been involved in Iran before seeking asylum in Britain.*" I find that the Judge did not make clear findings as to the level of the Appellant's involvement with Hekmatist in the United Kingdom beyond attending a few intermittent demonstrations at which he was photographed holding a placard [81]. It is clear from headnote 4 that this is insufficient given that the factors identified by the Upper Tribunal include the nature of *sur place* activity. I find that the Judge did not engage with the theme of the demonstrations and how this would be perceived by the regime. Given that the Appellant is a member of a Marxist party this is clearly relevant. Whilst the Judge found that the Appellant was only an intermittent attender of demonstrations he did not define what he meant by this nor what, if any, role the Appellant played at the demonstrations. Nor did he explore whether the demonstrations had attracted publicity in the United Kingdom or Iran and if so, of what nature. 12. There was also no analysis of the risk of identification, including the extent of surveillance and the regime's capacity to identify individuals. There was evidence before the Judge in respect of the second of these factors, in the form of an Australian country guidance note dated June 2013 which was drawn to my attention by Mr Acharya and I find the Judge erred in failing to engage with this evidence and making findings as to the risk of identification of the Appellant in the light of it.

13. The third category constitutes factors triggering inquiry/action on return. The Appellant's method of exit from Iran is clearly relevant but the Judge failed to make a clear finding at [80] as to whether or not the Appellant left Iran illegally.

14. It is clear from 2(a) & (b) of the headnote that Iranians returning to Iran are screened on arrival and that there is a risk of detention but there is a not a real risk of persecution simply for having exited illegally. What is of paramount

importance is the level of political involvement in assessing the risk of persecution. In this respect, I find that the Judge further materially erred in his assessment of the Appellant's involvement in Hekmatist before arriving in the United Kingdom in that I accept Mr Acharya's submission that there is a contradiction between his finding at [70] that he did not accept the Appellant's evidence about his activities in Iran before he left in 2004 and the fact he was promptly in touch with members of the party after his arrival in the United Kingdom might cause him to infer that he had been active in the party or at least a member of it previously and his finding at [81] that the Appellant was not actively involved politically before he left Iran.

15. For these reasons, I find that the Judge's findings as to the Appellant's involvement with Hekmatist in Iran cannot stand and findings need to be made in this respect and as to the extent of his political activities in the United Kingdom with Hekmatist, bearing in mind the detailed guidance set out in BA (Iran) and the background evidence material to this consideration, in order to reach a clear and fully reasoned decision as to the risk to this Appellant on return to Iran.

### **Notice of Decision**

16. The appeal is allowed to the extent that it is remitted for a hearing *de novo* in the First-tier Tribunal, on the issues of asylum and article 3 only, to be heard by a judge other than First-tier Tribunal Judge Lamb.

The anonymity direction is maintained.

Deputy Upper Tribunal Judge Chapman

3 December 2015