



**The Upper Tribunal
(Immigration and Asylum Chamber) Appeal number: AA/09071/2014**

THE IMMIGRATION ACTS

**Heard at Manchester
On July 17, 2015**

**Decision & Reasons Promulgated
On July 21, 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

**MR ESHAN DASTGIR
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant Ms G Patel, Counsel, instructed by Broudie, Jackson &
Canter
Respondent Mr Harrison (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant is a citizen of Iran and is now almost thirty-one years of age. He arrived in the United Kingdom on or around June 19, 2012 and applied for asylum on June 20, 2012. The respondent refused his application on October 16, 2014 and at the same time served him with removal directions as an illegal entrant.
2. The appellant appealed that decision on October 16, 2014 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.

3. The matter came before Judge of the First-tier Tribunal Brookfield on February 16, 2015 and in a decision promulgated on February 24, 2015 she dismissed the appellant's appeal.
4. The appellant applied for permission to appeal on March 13, 2015 submitting the Tribunal had erred because the Tribunal had:
 - a. Failed to make clear findings regarding whether the appellant had come to the attention of the authorities.
 - b. Erred in considering whether the Iranian authorities would issue court documentation.
 - c. Failed to give weight to the expert report of Dr Kakhki.
 - d. Failed to consider the risk on illegal exit from Iran.
5. On March 25, 2015 Designated Judge of the First-tier Tribunal Zucker granted permission to appeal primarily on the fourth ground albeit he went on to state that it would be necessary for the appellant's representative to satisfy the Tribunal that the concession relied on had not been made.
6. The matter came before me on the above date and the appellant was represented as set out above and present at the hearing.
7. The First-tier Tribunal did not make an anonymity direction and I see no reason to make an Order pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008.

PRELIMINARY ISSUES

8. I reviewed the record of proceedings that the Tribunal had taken and in particular page 8 of the Judge's notes. The Judge recorded the following:

"Paragraph 2.4 of the skeleton argument-there is an allegation that he left illegally and this will give rise to screening. This would be of no import if he were only of interest as a result of his illegal departure.

Dr Kakhki says that the position of returnees who left illegally is now worse than that in SB (risk on return-illegal exit) [2009] UKAIT 00053 or BA (Demonstrators in Britain-risk on return) Iran CG [2011] UKUT 00036 (IAC)."
9. Mr Harrison confirmed that his colleague's note of hearing did not include any of the submissions. Ms Patel submitted that the Judge's note confirmed her colleague's submission that Dr Kakhki's report raised the stakes regarding risk to persons who had left Iran illegally. Ms Patel submitted that her colleague had argued that following SB and BA illegal departure was not enough but the expert report demonstrated that the position had changed.
10. Having considered the Judge's record of proceedings and the submissions made I agreed that the appellant's original representative had not made the concession set out at paragraph [10(xiv)] of the Tribunal's decision. The record of proceedings confirmed that following SB illegal departure

would not be sufficient but expert evidence now supported the appellant's claim that he would be at risk because of his illegal departure.

ERROR OF LAW SUBMISSIONS

11. Ms Patel adopted the grounds of appeal and submitted that the Tribunal had failed to have regard to country evidence and in particular the fact that summonses were not always issued in court proceedings. Reliance was placed on the country of origin report and country evidence contained in pages 101 and 128 of the appellant's bundle. This evidence confirmed the Iranian authorities detained many individuals without going through an official court process. Whilst the Tribunal had considered the expert report Ms Patel argued the Tribunal had failed to consider the appellant as a failed asylum seeker. The Tribunal had selectively examined the expert report but had failed to have regard to all of its contents and in particular the risk he would face having departed illegally and without proper documentation. The Tribunal had accepted that the appellant had been arrested in both 2007 and 2009 and his illegal departure was an aggravating factor. Ms Patel submitted that taking into account matters accepted by the Tribunal and having regard to the fact the appellant had left illegally she submitted that the appellant would be at risk. Permission to appeal had been given in a number of other cases on this very point and there was an expectation the Upper Tribunal would be required to adjudicate afresh on this issue.
12. Mr Harrison adopted the Rule 24 letter dated April 14, 2015. He submitted the Tribunal had dealt with the issue of illegal exit in paragraph 10 of its decision and had noted that the only evidence of illegal departure was the unsupported claims of the appellant. The expert report was of limited usefulness and had to be considered in light of SB. Illegal exit was not a significant risk factor and in any event the Tribunal had not explicitly accepted, in this case, that the appellant had exited illegally and had merely considered the appellant's position at its highest. The Tribunal found there were no other factors that would place the appellant at risk and those findings were open to the Tribunal. Ms Patel's submissions amounted to a mere disagreement and were an attempt to re-argue the case. The Tribunal had carefully considered all of the paperwork and evidence but there was insufficient evidence in the expert report to depart from the findings of SB and there was no evidence that people detained at the airport would be detained in prison and detention at the airport for questioning was not unreasonable. Evidence showed that anyone detained and found to have exited illegally was usually fined. Mr Harrison submitted there was no error of law in the decision.

FINDINGS ON ERROR IN LAW

13. What is clear from the Tribunal's decision is that the Tribunal had regard to all the documents that had been submitted. The appellant's account was summarised at paragraph [9] of the decision and at paragraph [10] the Tribunal made a number of significant findings on the evidence.

14. The Tribunal considered the appellant's claims of what happened in both 2007 and 2009 and concluded that both accounts were credible but noted that on neither occasion was the appellant charged with any offence. The Tribunal concluded he would not be perceived as a political opponent of the regime.
15. In particular, during the demonstrations in 2009 the appellant was one of thousands of people who had both taken part and had been arrested. The appellant did not claim to have experienced any problems after his arrest and release in June 2009 and there was no evidence adduced that supported any claim that he had joined any anti-regime groups or had taken part in meetings or demonstrations after June 2009. There was also no evidence that he had experienced any problems of harassment at the hands of the Iranian authorities. The appellant claimed that he had allowed students to congregate in his shop and access banned internet sites and download books. The Tribunal considered this claim and the alleged visit by the authorities and concluded that if the authorities believed he was involved in anti-regime activities they would not have raided his shop unless he was present. The Tribunal rejected the core of his claim.
16. Ms Patel argued that the Tribunal failed to make findings about whether the appellant accessed the internet to download illegal books and distribute literature. However, it is clear from the Tribunal's decision that careful consideration was given to this aspect of the claim. My attention was drawn to paragraph 1.2.1 of the country information and guidance report. This paragraph is not evidence to suggest that the authorities would raid his shop without him being present and the appellant has never suggested that he had bribed the security forces or ensured that they went to his shop when he was not present.
17. In granting permission to appeal the Designated Judge referred to ground one of the grounds of appeal as being misconceived and that the determination had to be read as a whole. I agree and find that there is no merit to ground one of the grounds of appeal.
18. The second ground of appeal related to whether the Iranian authorities would issue court documentation and Ms Patel submitted that the Tribunal had erred by finding that because there had been no contact with his family since July 2012 and no summons had been issued for his attendance his account lacked credibility.
19. The second ground challenged this finding and referred to evidence within the appellant's bundle that many individuals were detained without going through an official court process. The Tribunal considered the appellant's account and based on the fact that there had been neither visits to the family home since 2012 nor a summons issued the Tribunal rejected his claim.

20. Ms Patel argued that this is an error but I am satisfied that the Tribunal was entitled to reach this conclusion on the evidence presented to it. As the Tribunal rightly pointed out there is a difference between a warrant for arrest and a summons. The findings made by the Tribunal were clearly open to it and I find there is no merit to the second ground of appeal.
21. With regard to the Dr Kakhki's report Ms Patel submitted no weight had been attached to it but that submission is not supported by the detailed examination of the report carried out by the Tribunal detailed between paragraphs [10](ix) and [10](xii).
22. The Tribunal examined the report in considerable detail and the findings made were clearly open to it. The Tribunal found it significant that the report did not contain any recent examples of prosecutions for the possession of banned literature and that the examples cited were between eight and fifteen years old. The Tribunal gave reasons for finding that the authorities had not pursued persons, including students with a political profile, in possession of banned books with any vigour over the last eight to fifteen years and the Tribunal's finding that the appellant was of no interest was based not only on findings taken from the report but also having regard to the fact no proceedings have been issued against the appellant since the raid on his premises in May 2012. The fact that the appellant experienced no problems after his release in 2009 provided further argument that he was not at risk. The Tribunal's conclusion on the report was clearly open to it.
23. Mr Harrison had submitted to me that Ms Patel's arguments were a mere disagreement with the Tribunal's findings. I agree and find there is no error of law in respect of the first three grounds of appeal.
24. The final ground of appeal related to the issue of whether the Tribunal had considered the risk of illegal exit from Iran. I have already accepted, as a preliminary issue, that the Tribunal incorrectly interpreted the appellant's representative's submissions on the issue of risk.
25. In light of my other findings, I have to consider whether the position would be any different bearing in mind I upheld all the other Tribunal's findings.
26. The Tribunal did not carry out an extensive examination on the risk of return following illegal exit but this was because the Tribunal had considered the appeal based on the concession referred to above.
27. The Tribunal did consider the fact the appellant left the country illegally and the Tribunal took into account the report submitted on the appellant's behalf. The expert sought to distance himself from his earlier conclusions in the case of SB in which he had provided expert evidence. The Tribunal noted the examples put forward by the expert but concluded that the appellant's case could be distinguished from the examples that had been put forward by the expert because the appellant, on his own evidence, had

demonstrated an ability to live without harassment or problems after his arrest and detention in June 2009.

28. The Tribunal rejected his claim that he had a political profile and ultimately considered the case on the basis of the country guidance decision of SB.
29. The appellant's original representative accepted that based on the guidance in SB a claim based on illegal departure would not place the appellant at risk of persecution or serious harm. Although the Tribunal may have misinterpreted the appellant's representative's submissions I am left in no doubt that the Tribunal did not find any support for the appellant in the expert evidence and it follows, on the representative's own submission, that illegal departure alone would not have placed the appellant at risk of persecution or serious harm.
30. I was reminded that the Court of Appeal has given leave on this very issue in other cases but the mere fact that leave has been given does not mean the position in SB has changed.
31. The Tribunal assessed the evidence submitted and based on that evidence it reached conclusions that were perfectly open to it. The expert report was considered by the tribunal and nothing further has been submitted to persuade me that Tribunal approached that report erroneously.
32. I am satisfied that the Tribunal was entitled to dismiss this claim on asylum, humanitarian protection and human rights grounds. There is therefore no error of law.

DECISION

33. There was no material error in respect of the asylum/humanitarian protection/article 3 or the article 8 ECHR decisions. I dismiss the appeal

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT FEE AWARD

I make no fee award.

Signed:

Dated:

A handwritten signature in black ink, appearing to read 'S. Alis'. The signature is written in a cursive style with a long horizontal stroke at the end.

Deputy Upper Tribunal Judge Alis