IAC-CH- CK-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/09144/2014

THE IMMIGRATION ACTS

Heard at Columbus House, Newport	**Decision and Reasons Promulgated**
On 15th July 2015	**On 31st July 2015**

Before

UPPER TRIBUNAL JUDGE POOLE

Between

MR RAUFI SHAPOL
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Bandegani, Counsel
For the Respondent: Mr Irwin Richards, Home Office Presenting Officer

REMITTAL & REASONS

1. The appellant is a male citizen of Iran, born 5 April 1994. He arrived in the United Kingdom in March 2010 and applied for asylum. At the time he was an unaccompanied minor. In December 2013 he made an application for further leave to remain which was refused. He appealed that decision and his appeal came before Judge of the First-Tier Tribunal Suffield-Thompson sitting at Newport on 2 March 2015. There was an oral hearing and both parties were represented.

2. In a determination dated the same day the judge allowed the appeal "on asylum grounds" and "under the Immigration Rules", but dismissed the appeal on humanitarian protection grounds. The judge did not adjudicate in respect of Article 8 ECHR.

3. The Secretary of State sought leave to appeal. There is one ground alleging error in a failure to adequately reason findings and a failure to apply a Country Guidance case (**SB Iran**). By way of amplification the Secretary of State contends that the judge gave no explanation as to how the situation has changed in Iran since **SB Iran** and subsequently the judge had failed to give adequate reasoning to support the contention that failed asylum seekers are now targeted in Iran, and further had failed to explain why the appellant would be at risk due to his race and religion beyond suffering discrimination. Finally, it is suggested the judge had failed to explain why the appellant would be perceived as a draft evader.

4. Leave to appeal was granted by Judge of the First-Tier Tribunal Simpson who gave the following as her reasons:

> "1. The respondent seeks permission to appeal, in time, against a decision of the First-Tier Tribunal (Judge Suffield-Thompson) who, in a decision promulgated on 9 March 2015, allowed the appellant's appeal against the Secretary of State's decision to refuse asylum and/or humanitarian protection.
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> 2. The respondent's grounds are as follows:
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> (a) the Judge failed to explain why he believed that the situation had materially changed in Iran since SB (risk on return – illegal exit) Iran CG [2009] UKAIT 00053 was decided:
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> (b) the Judge failed to give adequate reasoning to support his finding that failed asylum seekers are now targeted by the authorities in Iran;
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> (c) the Judge failed to adequately explain why the appellant would be at risk due to his race and religion;
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> (d) the Judge failed to explain why the appellant is or will be perceived as a draft evader. In
>
> 3. Country Guidance cases are meant to be followed: they should only be departed from in the circumstances described in Practice Direction 12.2 and 12.4 and the UT (IAC) Guidance Note 2011, no. T, paragraphs 11 and 12 (see: DSG & Others (Afghan Sikhs: departure from CG) Afghanistan [2013] UKUT 128 (IAC)) i.e. where there is credible fresh evidence relevant to the issue that has not been considered in the country guidance case or, if a subsequent case includes further issues that have not been considered in the CG case. Moreover, in [28] it is arguable that the Judge has misdirected himself as to Devaseelan: the earlier Judge found that the appellant lacked credibility and dismissed his case on that basis and it is unlikely that a change in circumstances in Iran would undermine the earlier Judge's assessment of credibility. Finally, in [39], the fact that the appellant has evaded military service is not a reason to grant asylum.

4. The grounds do identify an arguable material error of law".

5. Thus the matter came before me in the Upper Tribunal.

6. At the commencement of the hearing Mr Bandegani mentioned that there was a cross-appeal. Neither I nor Mr Richards were aware of that. Mr Bandegani produced an application and a copy of an Upper Tribunal decision by Judge Jordan. Mr Bandegani explained that an application for a cross-appeal was lodged, but it had not been dealt with by the First-Tier Tribunal. Upper Tribunal Judge Jordan had, in effect, noted that leave to appeal had been granted to the Secretary of State and he therefore granted leave to the appellant "to permit the Upper Tribunal full scope in its consideration".

7. Mr Richards indicated that he was content to proceed and indeed he indicated that it was clear that Judge Suffield-Thompson had not dealt with Article 8 at all, and that this was an error of law material to the outcome and her determination should be set aside, and the case remitted back to the First-Tier Tribunal. Mr Bandegani indicated that to be the appropriate action. He did however intend to oppose the Secretary of State's appeal and referred to a Rule 24 letter dated 29 April 2015. Unfortunately that letter had not made its way to my court file.

8. Mr Richards made a submission on behalf of the Secretary of State in which he relied upon the grounds seeking leave. He described the determination as "woefully inadequate". He said the conclusion was wrong, had been decided outside Country Guidance case law in the form of **SB (risk on return: illegal exit) Iran [CG 2009] UKAIT 00053**. The decision should be set aside. The judge had also found the appellant to be at risk because of Kurdish ethnicity. Her conclusions had been inadequately reasoned by reference to the guidance notes available. The judge had found the appellant also to be at risk as a Sunni Muslim and again this conclusion was reached on the basis of inadequate evidence. There is no evidence to show that just any Sunni Muslim is at risk in Iran. In conclusion the judge has simply not done enough. The determination contains a material error of law. It cannot stand and should be returned for re-hearing.

9. Mr Bandegani in his submission accepted that sub-paragraph (d) in the grounds had merit. The judge was wrong to find that the appellant was a draft evader and thereby at risk. This amounted to an error of law, but it was not material to the outcome. However the judge was right to conclude that the appellant was at risk as a Sunni Muslim, a Kurd, a failed asylum seeker and someone who had left illegally. This was explained in paragraph 28 of the determination.

10. Mr Bandegani referred me to paragraph 37 of the determination where the judge indicates that she had only quoted some of the "independent evidence" and then back at paragraph 29 reference is made to the "Country Information Guidance" on Iran.

11. Mr Bandegani then took me through (in some detail) the information contained in the appellant's original bundle. I made a note in the Record of Proceedings of the pages to which I was referred and I marked the various passages within the bundle. Having noted Mr Bandegani's comments as he made them, I can summarise his submission as being that whilst the judge referred in detail to only some of the objective information there was clearly enough within the appellant's bundle to establish that the appellant was at risk under a number of headings, but in particular his religion, his ethnicity, his position as a failed asylum seeker and as someone who had left Iran illegally. The judge was therefore perfectly entitled to depart from Country Guidance as set out in **SB (Iran)** and upon that basis the judge could allow the appeal. The findings of risk were open to her.

12. Mr Richards in response said that it was just not good enough to refer, as the judge had done, (paragraph 37) that "only some of which I have quoted here". The losing party (in this case the Secretary of State) should be able to understand from the determination why the judge had reached her conclusion. It was not appropriate for that losing party to have to go away to trawl through "a wealth of independent evidence". Mr Richards repeated that the reasons given were inadequate.

13. At the conclusion of the hearing I indicated that I would reserve my decision. The "Article 8 appeal" would in any event be remitted to the First-Tier Tribunal. It was acknowledged that if I found a material error of law in how the judge had dealt with the "asylum" appeal to the extent that her decision must be set aside, then it would be appropriate to remit that aspect of the appeal back to the First-Tier as well.

14. There are various issues in this appeal, but in particular I have to consider whether or not the judge was correct in departing from **SB Iran** and did she adequately explain why she considered she was able to allow the appeal of the appellant despite the Country Guidance case? Another issue is whether or not she correctly applied the guidance of **Devaseelan** (paragraphs 27 and 28 refer). This was referred to in the reasons given by the judge in granting leave to appeal. However that was not a point argued by the Secretary of State in the grounds seeking leave and certainly not referred to by Mr Richards. It is not appropriate for me to comment further on that point.

15. Mr Bandegani quite properly acknowledged an error of law with regard to the reference to draft evasion. He is correct in his submission that on its own that error might not be material.

16. However I do find that Judge Suffield-Thompson made a material error in the determination in the way she dealt with the Country Guidance case law. The adage that a losing party should know why they lost is often referred to, but it is a very relevant point. In this case the judge was faced with a Country Guidance case in the form of **SB Iran**. She was obliged to follow that guidance unless it can be found that the situation

has materially changed since **SB Iran** or the appellant's situation can be differentiated. In either case there has to be reasoned findings and I am afraid that in this case the reasoning is inadequate. The contents of paragraph 37 cannot be used as a blanket to avoid detailed examination of all the objective information (not "evidence").

17. In short I find the judges treatment of Country Guidance does indeed to amount to a material error of law and as such her decisions must be set aside.

18. I have given thought to whether or not any of the judge's findings can be preserved, but I have concluded that they cannot. Indeed it is difficult to conclude exactly what findings the judge made and in the circumstances it is appropriate that all aspects of this appeal be dealt with *de novo* before First-Tier Tribunal with a judge other than Judge Suffield-Thompson.

Signed Date

Upper Tribunal Judge Poole