



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

Appeal Number: AA/09436/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 3rd June, 2015
Given extempore**

**Decision and Reasons Promulgated
On 10th June 2015**

Before

Upper Tribunal Judge Chalkley

Between

**MR A A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Hoshi, Counsel instructed by Brighton Housing Trust

For the Respondent: Ms A Fijiwala, Home Office Presenting Officer

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008) and consequently, this determination identifies the appellant by initials only.

DETERMINATION AND REASONS

1. This is the appeal of Mr AA, a national of Iran born on 27th December, 1993. He entered the United Kingdom, travelling in a lorry, on 30th November, 2010, when he was 16 years of age. He made a claim for asylum based on his imputed political opinion and Kurdish ethnicity which the Secretary of State refused. The reasons for the Secretary of State's refusal were set out in a letter addressed to the appellant dated 12th February 2011. The appellant was given discretionary leave until he reached the age of 17½ on 27th June, 2011. That grant of leave was for less than six months and so refusal of the appellant's asylum claim attracted no right of appeal. Further applications for leave to remain were made and in the light of these further submissions there was a further refusal on 21st October, 2014.
2. As a result of the refusal letter on 21st October, 2014, the appellant appealed to the First-tier Tribunal and his appeal came before First-tier Tribunal Judge Plumptre at Hatton Cross on 28th January, 2015. Those representing the appellant sought and were granted permission to appeal to the Upper Tribunal from the First-tier Tribunal in respect of six of their seven challenges to the judge's determination and on application to the Upper Tribunal, were successful in obtaining permission to challenge the First-tier Tribunal Judge's decision in respect of the seventh ground set out in the grounds of appeal.
3. At the hearing before me today Mr Hoshi appeared on behalf of the appellant instructed by Brighton Housing Trust and Ms Fijiwala, a Home Office Presenting Officer, appeared on behalf of the respondent.
4. Since there appeared to be no Rule 24 response from the Home Office I asked Ms Fijiwala to indicate the respondent's views in respect of each of the seven challenges. She did so briefly and then I invited Counsel to address me in opening and during the course of his submission in respect of the first challenge it became clear that the First-tier Tribunal Judge was concerned about the expertise of the expert who had provided a report in respect of the appellant's claim. Such was the degree of concern she expressed about the expert's expertise that she asked the appellant's representatives to obtain and submit to her within fourteen days a letter answering several of her concerns.
5. A letter was subsequently written and that appears at pages 57 to 60 in the appellant's bundle before me. It sets out the three specific questions the judge felt she needed the expert to answer. The first question asks her to confirm that she is an Iranian citizen, the second to give details of whether or not she had ever been to Iran and if so when she went there and the date of her last trip, and the last question asks her to confirm whether she had prepared expert reports for other asylum cases, whether any of them are reported decisions and whether she had appeared to give evidence as an expert witness at any asylum appeals.
6. It was clear to me that the nature of the enquiries which the Immigration Judge caused to be made, demonstrated that the First Tier Tribunal Judge must have had considerable reservations about the expertise of the witness. Unfortunately the reply

from the expert dated 3rd February, 2015, which was sent to the First-tier Tribunal before the judge's determination was promulgated, did not reach the First-tier Tribunal Judge until after her determination was promulgated, if at all. As a result her determination was promulgated at a time when she clearly harboured grave concerns about the expertise of the author of the expert report.

7. Ms Fijiwala suggested initially that any error on the part of the First Tier Tribunal Judge was not material, but subsequently, quite properly in my view, accepted that this must amount to a material error of law because the judge's determination was promulgated at a time when she clearly harboured grave concerns about the expertise of the author of the expert report, sufficient to cause her to insist that the expert answer three specific questions designed to assess the witnesses expertise. The Home Office Presenting Officer accepted that is impossible to know to what extent the Immigration Judge was concerned.
8. I am satisfied that the nature of the enquiries raised by First Tier Tribunal Judge Plumptre showed that she had grave concerns about the expertise of the witness and did not, therefore accord the contents of the report the weight which she otherwise would have accorded. It is impossible to know what affect this had on the outcome of the appeal hearing.
9. I set aside the determination of First-tier Tribunal Judge Plumptre. Bearing in mind the Senior President's Practice Direction, I believe that the appropriate course for me in the circumstances is to direct that the appeal should be heard again *de novo*, by a judge other than First-tier Tribunal Judge Plumptre at Hatton Cross. The time estimate is three hours.

Upper Tribunal Judge Chalkley