



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

Appeal Number: AA/04390/2015

**THE IMMIGRATION ACTS**

**Heard at : IAC Manchester**

**Decision & Reasons  
Promulgated**

**On : 4 May 2016**

**On : 13 May 2016**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**[M J]**

Respondent

**Representation:**

For the Appellant: Mr G Harrison, Senior Home Office Presenting Officer  
For the Respondent: Mr I Hussain, instructed by Lei Dat & Baig Solicitors

**DETERMINATION AND REASONS**

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing [MJ]'s appeal against the

respondent's decision to remove him from the UK following the refusal of his asylum claim.

2. For the purposes of this decision, I shall refer to the Secretary of State as the respondent and [MJ] as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is a citizen of Iran, born on 20 April 1985. He entered the United Kingdom clandestinely on 26 August 2014 and was served with illegal entry papers on 29 August 2014 when found by the police. He claimed asylum on 3 September 2014. His application was refused on 13 February 2015 and a decision was made the same day to remove him from the UK. The appellant appealed against that decision. His appeal was heard by the First-tier Tribunal on 4 November 2015 and allowed in a decision promulgated on 13 November 2015. The Secretary of State has been granted permission to appeal that decision.

### **The Appellant's Claim**

4. The appellant claims to be at risk on return to Iran as an Arab from Ahvaz. He claims to have met a man, [Q], through his friend [H], who spoke to him about the rights of the people in Ahvaz and he told him that he wanted to help. [Q] gave him envelopes to distribute. A month later he went out with [H] to distribute the material and he did this five times. On the fifth occasion [H] was arrested and taken away in a vehicle. The appellant then ran away and went to his uncle's house. His uncle arranged for a person to take him out of Iran. He told him that he could not return to Ahvaz because the Ettela'at had raided his house. He feared returning to Iran.

5. The respondent noted that some of the appellant's account was consistent with the background country information about the Ahvazi Arab community, whereas his claim that his mother and sister worked as teachers was not. The respondent did not accept the appellant's claim to have distributed leaflets and CDs due to discrepancies in his account and considered that he had given inconsistent evidence about whether or not he was politically active. It was not accepted that the authorities had raided his house or that he was wanted by the authorities. It was not considered that he would be at risk on return on the basis of having exited Iran illegally, pursuant to SB (risk on return-illegal exit) Iran CG [2009] UKAIT 00053. In the light of such adverse credibility findings the respondent did not accept that the appellant was an Arab from Ahvaz or that he had left Iran illegally.

6. The appellant's appeal was heard by First-tier Tribunal Judge Foudy. Judge Foudy heard oral evidence from the appellant and considered a report from a Mr Samim Rashti. She accepted that the appellant was of Arab ethnicity and from Ahvaz and she accepted his account of his involvement in promoting Arab human rights. She found that he would be at risk on return to Iran as a result of his activities and his Ahvazi profile, in addition to his illegal exit from Iran. She

accordingly allowed the appellant's appeal on asylum and human rights grounds.

### **The Secretary of State's appeal**

7. The respondent sought permission to appeal Judge Foudy's decision on the grounds that she had failed to provide adequate reasons for accepting the appellant's Ahvazi Arab ethnicity and for accepting his account of his political activities. With regard to the first ground, the respondent considered that the judge had not engaged with the respondent's concerns about the inconsistency between the appellant's background and the country information about the Ahvazi Arabs, that she had erroneously considered that the respondent had conceded that the appellant was from Ahvaz, that she had erroneously considered that the respondent had relied on the appellant's use of Farsi to undermine his claim to be an Ahvazi Arab, and that she had erroneously placed weight upon a report which she had accepted was not an expert report. With regard to the second ground, the respondent asserted that the judge had failed to engage with the respondent's position as to the appellant's inconsistent evidence about his own political motivations.

8. Permission was granted on 27 November 2015 by First-tier Tribunal Judge Andrew.

9. At the hearing before me I raised the matter of the respondent's reliance, at [18] of the refusal letter, on the appellant's apparent statement that he was a member of Party Ahvaz Group, a matter that the appellant had repeatedly denied. Neither party was able to assist as to where that statement was recorded and Mr Harrison had no knowledge of any interview prior to the screening interview containing such a statement.

10. By way of submissions, Mr Harrison simply relied on the grounds of appeal.

11. Mr Hussain submitted that the judge's error in considering that the respondent had accepted that the appellant was from Ahvaz was not material since she gave various other reasons for concluding that he was an Ahvazi Arab. She gave good reasons for accepting that he would speak Farsi as a first language even though he was an Arab. She was entitled to place the weight that she did upon the report from Mr Rashti. Further, the judge gave adequate reasons for accepting that the appellant believed that the leaflets he delivered were of a political nature even though he was not aware of their contents. There was no material error of law in the judge's decision.

12. I advised the parties that, in my view, there was no error of law in the judge's decision requiring that it be set aside. My reasons for so concluding are as follows.

### **Consideration and findings.**

13. It is accepted that the judge erred in relying upon the respondent's concession that the appellant was from Ahvaz, when no such concession had in fact been made. However it is argued on behalf of the appellant that that error was not material, given the judge's various other positive findings. I agree with that. The judge gave several reasons, at [18] to [20] of her decision, for finding the appellant's account of his ethnicity and origins to be credible. She accepted that he had given a consistent account of his background. She considered his use of Farsi rather than Arabic as his first language and gave full and proper reasons, at [18], for concluding that that was not inconsistent with his ethnicity. She also relied upon the report of Mr Rashti.

14. The respondent argued in her grounds that the judge had erred by relying upon that report when she had otherwise found that Mr Rashti could not be described as an expert in linguistics and ethnicity. However I would agree with Mr Hussain's submission in that respect, namely that the judge was fully aware of the failings in the report and was therefore cautious in her approach to the evidence given by Mr Rashti, but that she was entitled to rely on parts of the report which were not infected by those failings. Very specific questions were put to the appellant about the geography of the area from which he claimed to originate, namely Ahvaz, and likewise very specific questions were put to him about the Arab ethnicity, all of which he was able to answer correctly. The respondent has not sought to suggest that the questions were not answered correctly. Accordingly, I see no reason why the judge was not entitled to rely on that aspect of the report in supporting the appellant's claim to be an Ahvazi Arab.

15. I would also agree with Mr Hossain's submission in regard to the respondent's concern about the appellant's evidence of his mother and sister's roles as teachers being inconsistent with the background information about the Ahvazi Arabs. Mr Hossain submitted that the country information did not say that no Ahvai Arab women had professional jobs, but rather that in general Ahvazi women were severely discriminated against, and accordingly there was no inconsistency. Mr Harrison did not dispute this in his submissions. Although that was not a point specifically addressed by Judge Foudy, I agree with Mr Hossain that there were more than sufficient reasons given by her for otherwise finding the appellant to be an Ahvazi Arab. I therefore find that the first ground has not been made out.

16. As regards the second ground, the respondent asserts that the judge failed to engage with the concerns in the refusal letter as to the inconsistency in the appellant's evidence about his political involvement. However that was a matter to which the judge gave consideration in the latter three subparagraphs of [18]. It seems to me that, contrary to the respondent's assertion in the grounds, the judge gave full and proper reasons for concluding that the appellant's evidence as regards his level of political involvement and knowledge was credible. She found, at [21], that the appellant had genuinely been involved in promoting Arab human rights in Ahvaz, despite his lack of knowledge of the contents of the leaflets he was delivering and his limited

political involvement. That was a finding that she was entitled to make on the evidence before her and for the reasons properly given. I therefore also find no merit in the second ground of appeal.

17. The respondent's grounds challenge only the judge's credibility findings. There is no challenge to her findings on risk on return. At [22] and [23] the judge gave full and proper reasons, based upon the background country information, for concluding that the appellant would be at risk on return on the basis of the profile she had accepted. That was clearly a conclusion which was fully and properly open to her on the evidence.

18. Accordingly, and for all of these reasons, I find no errors of law in Judge Foudy's decision such as to require that it be set aside. I therefore uphold her decision.

## **DECISION**

19. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The Secretary of State's appeal is dismissed and the decision of the First-tier Tribunal to allow the appellant's appeal stands.

Signed  
Upper Tribunal Judge Kebede