



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

Appeal Number: PA/07190/2018

THE IMMIGRATION ACTS

**Heard at Newport
On 4 January 2019**

**Decision & Reasons
Promulgated
On 11 February 2019**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**SSA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Hodgetts, instructed by South West Law

For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.
2. The appellant appeals, with permission, against the decision of the First-tier Tribunal (Judge Coaster) which dismissed his appeal on asylum and

humanitarian protection grounds and under Arts 2 and 3 of the ECHR but allowed his appeal under Art 8 of the ECHR.

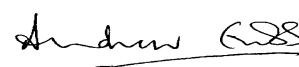
3. At the hearing, Mr Howells, who represented the Secretary of State, accepted that the judge's decision should be set aside and that I should remake the decision allowing the appellant's appeal on asylum grounds and under Art 3 of the ECHR.
4. The basis for that position is that the judge accepted that the appellant was an Iranian national (at para 47) and then concluded (at para 48) that:

"... the appellant has discharged the low standard of proof that he would be detained and persecuted on arrival in Iran and in the alternative that he would be subject to mistreatment in breach of Art 3".
5. Nevertheless, having made that finding - which is, in all the circumstances, only consistent with allowing the appellant's appeal on asylum and Art 3 grounds - at the conclusion of her decision she erroneously stated that the appeal "fails" on those grounds.
6. In the circumstances, and accepting the basis of the appellant's appeal to the Upper Tribunal and the position taken by Mr Howells, I am satisfied that the judge materially erred in law in dismissing the appellant's appeal on asylum grounds and under Art 3 of the ECHR. As a consequence, I set aside the judge's decision.
7. In the light of the judge's finding in para 48, I remake the decision allowing the appellant's appeal on asylum grounds and under Art 3 of the ECHR.
8. The judge also allowed the appellant's appeal under Art 8 of the ECHR. Mr Hodgetts, who represented the appellant, indicated that Art 8 had not been relied on before the judge and, in agreement with Mr Howells, he invited me to set aside the decision allowing the appeal on Art 8 grounds and, as a result of Art 8 not being pursued, he invited me not to remake the decision in respect of Art 8.
9. For those reasons, the judge's decision to allow the appellant's appeal under Art 8 is also set aside.

Decision

10. The entirety of the judge's decision is set aside.
11. I remake the decision substituting a decision allowing the appellant's appeal on asylum grounds and under Art 3 of the ECHR.

Signed



A Grubb
Judge of the Upper Tribunal

16 January 2019