



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

Appeal Number: AA/07938/2012

**THE IMMIGRATION ACTS**

**Heard at North Shields  
on 5<sup>th</sup> December 2013**

**Determination Sent  
on 10<sup>th</sup> January 2014**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**A O  
(Anonymity direction made)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss Pickering instructed by David Gray Solicitors.  
For the Respondent: Mr McVeety - Senior Home Office Presenting Officer.

**DETERMINATION AND REASONS**

1. This is an appeal against a determination of First-tier Tribunal Judge Hands, promulgated following a hearing at North Shields on 15<sup>th</sup> October 2012, in which she dismissed the Appellant's appeal against the direction for his removal to Iran which accompanied the refusal of his claim for asylum or any other form of international protection and/or claim to be entitled to remain on human rights grounds.
2. Permission to appeal was granted to the Appellant by Upper Tribunal Judge Renton on 20<sup>th</sup> September 2013 and the matter comes before me for the purposes of a hearing to establish whether Judge Hands made legal error(s) material to her decision to dismiss the appeal.

3. I indicated to the advocates of the outset of the hearing that having read the documents and the determination a number of legal errors arise, the key ones of which can be summarised as follows:
  - i. In paragraph 29, finding that there was insufficient evidence to demonstrate the Appellant was telling the truth about his identity when this issue had not been raised by the Secretary of State in the refusal letter and the Judge did not indicate to the parties that this was a matter of concern to her. In proceeding without giving the Appellant an opportunity to comment or produce evidence regarding his identity, following an adjournment if necessary, the Judge committed a procedural irregularity sufficient to amount to an error of law.
  - ii. In paragraph 36, in claiming that there was nothing placed before her which indicated that, even if she took the Appellants evidence at its highest, he would be persecuted in Iran on return or to showing the Iranian authorities would have an interest in him. There was an expert report relating to the issue of risk on return and a reading of the determination does not indicate that the Judge properly engaged with the country expert or the relevant country guidance case law.
  - iii. Again, in paragraph 29, by reference to a copy of the Facebook entry in finding that the Facebook exerts contain names of people as well as writing in Farsi that she was not able to understand, the Judge appears to have overlooked the fact that an English translation was provided in the supplementary bundle which was referred to in submissions.
  - iv. Paragraph 43, the Judge refers to SB, a country guidance case relating to risk on return, without making reference to the more recent decision of BA [2011] UKUT 36 which examined risk on return and the process at the airport and SF and others v Sweden (Application no. 52007/10) ECtHR published on 15<sup>th</sup> May 2012 in which the European Court of Human Rights commented upon country information relating to the Iranian authorities monitoring Internet communications both within and outside Iran.
4. Mr McVeety conceded the errors stating that on his reading of the determination it was clear the Judge had erred.
5. I set the determination aside. It was accepted that the Appellant has not had a fair hearing before the First-tier Tribunal as it is not clear that all the relevant evidence was probably considered by the Judge and, on that basis, it was accepted that the most appropriate way to proceed was for the appeal to be remitted to the First-tier Tribunal to be heard afresh by a judge other than Judge Hands.

6. Mr McVeety did not believe that the identity issue is at large. This shall remain the position unless the Respondent's representative writes to the Tribunal and Appellants representatives no later than two weeks from the date of this hearing putting all on notice that it is.

**Decision**

7. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. The appeal shall be remitted to the First-tier Tribunal sitting at North Shields to be heard afresh.**

Anonymity.

8. 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).

Signed.....

Upper Tribunal Judge Hanson

Dated the 5<sup>th</sup> December 2013