



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/03756/2015,
AA/04236/2015 & AA/04235/2015

THE IMMIGRATION ACTS

Heard at Birmingham
On 18 April 2016

Decision & Reasons Promulgated
On 25 April 2016

Before

Deputy Upper Tribunal Judge Pickup
Between

SMAG

NK

SBG

[Anonymity direction made]

Appellants

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellants: Mrs Duru, instructed by Jemek Solicitors

For the respondent: Mrs R Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Asjad promulgated 5.6.15, dismissing on all grounds their linked appeals against the decisions of the Secretary of State to refuse their asylum, humanitarian protection and human rights claims. The Judge heard the appeal on 19.5.15.

2. First-tier Tribunal Judge Shimmin refused permission to appeal on 20.8.15. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Chalkley granted permission to appeal.
3. Thus the matter came before me on 18.4.16 as an appeal in the Upper Tribunal.

Error of Law

4. After hearing the submissions of Ms Duru and Mrs Pettersen, I reserved my decision on error of law, which I now give.
5. For the reasons set out below, I find no error of law in the making of the decision of the First-tier Tribunal such as to require the decision of Judge Asjad to be set aside.
6. The relevant background can be summarised briefly as follows. The appellants are Iranian nationals and comprise husband (first appellant), his wife and their infant son, born in Australia in 2013. After completing military service and university education the first appellant worked as a civil engineer. He was granted a visa to study a Masters course in Australia. Their son was born with a defected hand and their lives became difficult such that they decided to return to Iran for family support.
7. On return to Iran the first appellant claims that he was interrogated about the reasons he was in Australia and accused of cooperation with anti-Islamic republic government activity and working for Zionism, engaging in anti-national security activities against the regime, all of which he denied. He was held in detention for 87 days before being granted 3 days on bail, but not told when and where to return. He used an agent to leave Iran and come to the UK, arriving on 16.11.13 and immediately claimed asylum. He claimed asylum on the basis of imputed political opinion. Not raised with the Secretary of State, but only on appeal to the First-tier Tribunal he claimed to be a Christian convert from Islam. He also claims to be at risk on return because of illegal exit.
8. The Secretary of State considered it implausible that the first appellant was detained by the Iranian authorities on return and does not accept he is at any risk on return.
9. The grounds first argue that the First-tier Tribunal Judge made credibility findings not supported by the evidence, and secondly that the judge failed to take relevant evidence into account.
10. In relation to the first ground, complaint is made that the judge found that the first appellant's motive for coming to the UK was linked to obtaining treatment for his son's disability and that the level of care in the UK was not available in Iran or Australia. It said that the child does not have any medical condition requiring attention and he has not accessed any treatment in the UK. It is argued that since the first appellant had a 3 year visa to study in Australia, which was still valid, there was no need for him to come to claim asylum in the UK.

11. In relation to the second ground, complaint is made that the judge failed to apply country background evidence which post-dates the Country Guidance case law of SB (risk on return -illegal exit) Iran CG [2009] UKAIT 00053, and BA (demonstrators in Britain - risk on return) Iran CG [2011] UKUT 00036 (IAC), to the effect that on return failed asylum seekers may be interrogated, detained and mistreated, whether or not they have been political activists in Iran or abroad, referring to what are by now rather well-known references in the COIR of 2013 to published reports and an article by an unnamed judge in Iran.
12. In granting permission to appeal, Judge Chalkley stated that he did not wish to raise the appellant's hopes but thought that it was possible that the First-tier Tribunal Judge may have erred. Judge Chalkley did not explain in what regard he considered the decision of the First-tier Tribunal to be arguably made in error of law.
13. I note that Judge Shimmin had refused permission to appeal, finding that the judge had made findings that the appellant is not credible, fully justified by proper and strong reasoning, and that in relation to risk on return the Judge had followed the county guidance case law, considering that the country background evidence is not sufficiently strong to warrant departing from the country guidance.
14. In the Rule 24 reply, it is submitted that the judge's conclusion that the first appellant came to the UK for free health care was entirely open, given the reliance on the severity of the son's condition, for which reason they had left Australia and returned to Iran, and the judge's credibility findings.
15. The judge specifically rejected the first appellant's factual claims, finding his account not credible; finding his account of detention to have been fabricated, and finding his claimed conversion contrived and unsupported by any pastor or church member. The judge was entitled to rely on FS & others (Iran -Christian Converts) Iran CG [2004] UKAIT 00303, cited at §25 of the decision, to the effect that an ordinary convert is not at real risk of persecution on return to Iran. The findings are cogently reasoned and justified by the discussion addressed in the decision.
16. There was no evidence as to health care in Australia, but the judge noted that the UK provides free health care and that the appellants left Australia because of their son's defect. Whether or not they have accessed health care in the UK, the claimed asylum reason for coming to the UK was rejected, and stands independently of the judge's observations about the appellants' motivation.
17. In essence this ground is no more than a disagreement with the judge's clear and well-reasoned conclusions for rejecting the entirety of the first appellant's factual claim.
18. In relation to the risk on return as a failed asylum seeker or having made an illegal exit, and the appellants' reliance on background information of potential risks, the Secretary of State relies on DSG & Ors (Afghan Sikhs: Departure from CG) Afghanistan [2013], and SG (Iran) [2012] EWCA Civ 940, where it was held that unless it has been expressly superseded or replaced by any later CG determination, or

is inconsistent with other authority that is binding on the Tribunal, such a country guidance case is authority in any subsequent appeal, and that decision makers and Tribunal judges are required to take country guidance determinations into account, and to follow them, “unless very strong grounds supported by cogent evidence, are adduced, justifying their not doing so. To do otherwise would amount to an error of law.”

19. I agree with the submission of Ms Pettersen that the very COI and Amnesty International evidence relied on by the appellants is insufficient to displace the current country guidance relied on by the judge. There are obvious shortcomings in the relied on passages. One is distinctly lacking in detail, with no examples cited, and the other refers to existing laws cited by an unnamed judge. These two articles or extracts post-date the CG, but on the test for departing from CG, set out above, the judge considered the objective evidence available and was entitled to follow the country guidance cases cited at §27. The background material cannot be described as cogent or amounting to strong grounds to depart from the country guidance.
20. Mrs Pettersen also points out, as the judge did at §23 that despite the serious charges the first appellant claims he faced, he was released on bail without any conditions and was able to plan his exit from Iran with his wife using her own passport. The judge found all of this implausible, particularly the speed with which it was accomplished, and ultimately not credible. Mrs Pettersen suggests that this must raise a serious doubt as to whether the first appellant left illegally as claimed.
21. Much of Ms Duru’s submissions consisted of rhetorical questions as to why a person with unexpired leave for Australia chose to come to the UK and live in destitution if not fleeing the Iranian authorities. It is not the role of the Tribunal to answer such questions, only to consider whether the findings and conclusions of the First-tier Tribunal involved an error of law. If not, I cannot interfere with the decision. It may be that a different judge may have come to different conclusions, but I cannot agree with the submission that the decision of this judge was irrational or perverse. No material error of law is disclosed.

Conclusions:

22. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal of each appellant remains dismissed on all grounds.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal made an order. Given the circumstances, I continue that anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable and thus there can be no fee award.



Signed

Deputy Upper Tribunal Judge Pickup

Dated