



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/11779/2017

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 13 August 2018  
Given 13 August 2018

Decision & Reasons Promulgated  
On 27 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

B A H H

(ANONYMITY DIRECTION MADE)

Respondent

**Appearances:**

For the Appellant: Miss R Pettersen, Senior Presenting Officer  
For the Respondent: Miss R Pickering, Counsel instructed by Legal Justice Solicitors

**DECISION AND REASONS**

1. In this decision the Appellant is referred to as the Secretary of State and the Respondent is referred to as the Claimant.
2. The Claimant, a national of Iran, appealed against the Secretary of State's decision, dated 31 October 2017, to refuse an asylum/protection claim. The matter came before First-tier Tribunal Judge Henderson (the Judge) who on 3 January 2018 allowed the Claimant's appeal on asylum grounds, human rights grounds and under the

Immigration Rules, particularly paragraph 276ADE in relation to his private life. The Judge accepted in connection with that claim that there were very significant obstacles to the Appellant's integration into life in Iran on return. The Secretary of State's challenge essentially was in relation to the protection claim and in the drafting of the grounds it is perhaps a touch ambiguous as to whether or not they were intended to embrace what appears to be the Judge's findings in relation to risks associated with Article 3 ECHR. In the circumstances it seemed to me likely although poorly drafted (not by Miss Pettersen) that the grounds were intended to challenge both the Article 3 and the protection claim decisions. In the circumstances, it was accepted that the Judge's decision under the Immigration Rules was unchallenged and stands.

3. In relation to the protection and asylum-based claims, the position was that the Judge set out much of the evidence and indicated where she could or could not reach a view upon that evidence. The Judge also raised, legitimately, concerns about aspects of the evidence which simply had not been addressed with any form of corroborative or supportive evidence bearing in mind an issue existed as to whether or not as such some could have been obtained in a reasonable period of time. Reference to the point that frequently arises by reference to the decision in TK (Burundi) [2009] EWCA Civ 40 as to the availability of confirmatory evidence bearing in mind it appeared that on the Claimant's account he had sought to obtain some measure of supporting evidence of his involvement in the Komala Party.
4. Miss Pickering attractively argued that essentially the Secretary of State's objections were to the original grounds of application. The Secretary of State's renewed grounds to the Upper Tribunal are really expressing a repetition of the submissions of disagreement that were made before the First-tier and also essentially iterative of a disagreement with the findings that the Judge made.
5. It is trite law to say that a party to an appeal is entitled to know with sufficient and adequate reasons how the decision has been arrived at or what was the evidence that formed the basis for the Judge's findings. In this case the Judge was faced with a Claimant who was claiming to be at risk particularly for two reasons. First, that his

identity card issued by the Komala Party, known to be vigorously opposed by the Iranian regime, had been discovered and that his uncle, said to be a supporter or member of the Komala Party, had also been detained: Although what followed therefrom was less than clear. The Judge looked at what the Claimant had said, had considerable and legitimate reservations about whether the Komala Party would even issue such membership cards, bearing in mind the opposition from the Iranian state and the serious penalties that might arise from membership. The Judge appeared to have reached no conclusion on that issue and there was nothing by way of evidence from the Komala Party to confirm the existence or presence of membership cards at the relevant time. In addition, the Judge made no particular findings on the issue of the uncle's arrest and detention although recorded the Claimant's say so of the matter. The evidence was indeed scant in presentation of that issue. Nevertheless the Judge felt able to conclude at paragraph 67:

“As the Appellant (Claimant) has been identified as involved with the Komala Party and a close relative of a member it is likely that he is perceived as a threat to the state. This is sufficient to put him at risk of harm for a Convention reason.”

6. It seemed to me that the difficulty that the Judge faced, which was not resolved by the reasons expressed, was that there was a good deal said by the Appellant of his claim but very little to confirm it. For example, the Judge noted at paragraph 60:

“The document provided adds little weight to the Appellant's claim and whilst I accept that he has been in contact with the Komala Party (by reference to a request which was before the Judge) he has yet to receive confirmation from them of his role or his uncle's role in the Party.”

7. In these circumstances there was no other evidence emanating from family members whether for good reason or bad to confirm or support the Claimant's claim of his membership or the existence of the ID card or the raid which had led to the discovery of the card.

8. It seemed to me that this was a case where the Judge came to a conclusion of risk on return but did so without expressing sufficient or adequate reasons as to how that decision was ultimately made. The decision was definitely made but the absence of cogent and sufficient reasons to explain it was harder to understand. I find the Original Tribunal's decision was an error of law on that issue in failing to give sufficient and adequate reasons. Accordingly the appeal is allowed to the extent that the issue of risk on return associated either with the Refugee Convention or Articles 2 and 3 ECHR need to be considered and properly reasoned. That is not to say the same result might not arise, but that may well be the product of evidence coming forward one way or another to support the claim.

## **DECISION**

The Original Tribunal's decision on the protection claim does not stand and the matter including the necessity for findings of fact should be addressed in the First-tier Tribunal. No findings of fact to stand on the membership of Komala.

The Original Tribunal's decision on the Immigration Rules to stand.

## **DIRECTIONS**

- (1) Relist to the First-tier Tribunal not before Judge K Henderson.
- (2) Relist in Bradford unless otherwise directed by the Tribunal.
- (3) Any further evidence to be disclosed together with any further witness statements not less than ten clear working days before the further hearing of the appeal.
- (4) Any background evidence relied upon to support the claims of risk on return or the absence of risk to be filed not less than ten clear working days before the further hearing.

**ANONYMITY**

An anonymity order was made and one is continued.

**DIRECTION REGARDING ANONYMITY - RULE 14 OF THE TRIBUNAL  
PROCEDURE (UPPER TRIBUNAL) RULES 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed  
Deputy Upper Tribunal Judge Davey

Date 20 August 2018