Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/11191/2014

THE IMMIGRATION ACTS

Heard at : IAC Manchester	**Determination Promulgated**
On : 4 May 2016	**On : 12 May 2016**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

ALI ABEDI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No Appearance
For the Respondent: Mr E Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Iran born on 3 August 1994. He claims to have entered the United Kingdom clandestinely in early May 2007. He claimed asylum on 18 June 2007. His claim was refused on 18 March 2008. He appealed

against that decision and his appeal was heard on 1 May 2008 and dismissed in a determination promulgated on 13 May 2008.

2. On 25 March 2011 the appellant applied for leave to remain in the UK on the grounds that he had a brother in the UK who had since been granted indefinite leave to remain under the legacy programme (on 3 March 2011). On 5 August 2011 he was granted limited leave to remain until 3 February 2012 outside the immigration rules, as an unaccompanied child. On 17 January 2012 he applied for a variation of his leave on asylum and human rights grounds. His application was refused on 2 December 2014, at which time a decision was made to remove him from the UK.

3. The appellant appealed against that decision. His appeal was heard in the First-tier Tribunal on 29 January 2015 and was dismissed in a decision promulgated on 25 February 2015. Permission was granted on 13 April 2015 to appeal to the Upper Tribunal.

The Appellant's Case

4. The appellant claims to be at risk on return to Iran as a result of his brother Behrooz's disappearance during military service. The Iranian authorities came to the family home looking for Behrooz and caused problems for his other brother, Mehdi. His father was frequently arrested and released and Mehdi was beaten up by the authorities. Mehdi then left Iran and in October 2006 came to the UK where he claimed, and was refused, asylum. The appellant claimed that in February 2007 he and his father and brother Mohamed were taken from home by armed men and he was questioned about Mehdi and Behrooz and later released. He subsequently left Iran. In the UK he was put in the care of his brother Mehdi. He feared returning to Iran.

5. The respondent, in refusing the appellant's claim on 18 March 2008, noted that his brother Mehdi's claim, based on the same facts, had been refused and his appeal dismissed in March 2007, in a decision concluding that he was not of any interest to the Iranian authorities because of problems caused by Behrooz. The respondent therefore refused the appellant's claim on the same basis, considering that he would be at no risk on return to Iran.

6. The appellant's application on 17 January 2012 for further leave was made on the basis that he still feared return to Iran, that there had been a deterioration in relations between the UK and Iran, that he had no contact with his family in Iran and that he had developed a relationship in the UK with a British citizen and had established ties in the UK.

7. The respondent refused the appellant's application on 20 November 2014 for the same reasons as previously as well as on the basis that, as an adult, he did not meet the criteria under Appendix FM with respect to his relationship with his brother or otherwise, that he did not meet the criteria in paragraph 276ADE(1) and that his removal would not breach his Article 8 rights. The

respondent considered the factors in paragraph 353B but concluded that there were no grounds upon which to justify a grant of leave.

8. The appellant's appeal against that decision was heard by Judge Morris in the First-tier Tribunal on 28 January 2015. Judge Morris considered an adjournment request made by the appellant's representative on the basis that it was intended that an expert be instructed to provide a report on the risk to those who had left Iran illegally, a matter that had again become a live issue since the country guidance in SB (risk on return-illegal exit) Iran CG [2009] UKAIT 00053, that there was a general lack of evidence in the appellant's case and that a decision was awaited on the question of funding from the legal aid agency, without which the representatives would be unable to represent the appellant. The judge noted that two previous adjournment requests had been refused by the Tribunal and she declined to adjourn the proceedings. The appellant's representative did not withdraw, however, but he made submissions on behalf of the appellant, although not calling the appellant to give oral evidence. The submissions were essentially based upon the risk to the appellant as a result of having exited Iran illegally, the respondent's delay in considering the appellant's application and the length of time the appellant had spent in the UK, the fact that the appellant had not been granted indefinite leave to remain together with his brother and the breach of Article 8 arising from the appellant's removal.

9. Judge Morris relied upon the decision of the Tribunal in the appellant's previous appeal, following the principles in Devaseelan [2002] UKIAT 00702, in relation to his claim based upon his brother Behrooz. With regard to risk on return on the basis of having left Iran illegally, she followed the country guidance in SB and concluded that the appellant would not be at risk on that basis. The judge found that the appellant could not meet the requirements of the immigration rules on the basis of family and private life and she considered that neither the delay in the respondent's consideration of the application nor any other matter constituted exceptional circumstances justifying a grant of leave outside the rules on wider Article 8 grounds. She accordingly dismissed the appeal on all grounds.

10. Permission to appeal the judge's decision was sought on the following grounds: that the judge had erred in law by refusing to adjourn the proceedings; that the judge had failed to give proper reasons for rejecting the arguments based on the change in circumstances since the country guidance in SB and the risk on return on the basis of illegal exit; and that she had failed to give proper consideration to the question of delay in the consideration of the appellant's application and the respondent's policy in that respect as set out in Chapter 53 of the Enforcement Instruction Guidance. The grounds asserted that the judge had failed to record how the respondent had agreed to an adjournment before the hearing but had then opposed it at the hearing.

11. Permission was granted on all grounds.

12. At the hearing before me there was no appearance by or on behalf of the appellant and no explanation for his absence. I noted from the file that his former representatives, Greater Manchester Immigration Aid Unit, had withdrawn from the case in September 2015 and were no longer instructed. They had provided an up-dated address for the appellant, which was the address to which the Notice of Hearing had been sent. It appeared therefore that the appellant had been properly served with notice of the hearing and I could see no reason why the appeal should not, and could not, proceed in his absence.

13. By way of submissions, Mr Harrison simply relied on the respondent's Rule 24 response.

14. I advised him that I was upholding the judge's decision.

Consideration and findings.

15. There was clearly no merit in the substance of the appellant's claim based on his brother Behrooz's problems and that matter had been considered previously by a different Tribunal. The appeal before Judge Morris was being pursued on a different basis, namely the question of risk on return as a result of illegal exit from Iran, as well as the issue of delay and Article 8.

16. The request for an adjournment of the proceedings was primarily based upon the need for further evidence in relation to the question of illegal exit. Reliance was placed by the appellant's representative on various grants of permission and decisions in cases involving that issue and it was claimed that the situation in Iran had changed since the country guidance in SB.

17. It is indeed the case that the Upper Tribunal are shortly to hear a new country guidance case on the issue of illegal exit from Iran on the basis of country information and expert evidence post-dating the date of the previous country guidance in SB and BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36. However it does not seem to me that that in itself is a reason to conclude that the judge erred in law by proceeding with the appellant's appeal and refusing the request for an adjournment. The judge gave full and careful consideration to the adjournment request. She noted that two previous requests had been refused. She properly considered the basis upon which she could depart from existing country guidance and took careful account of the evidence relied upon in that regard, which included decisions made by other judges and background country information. Having assessed all the evidence she was entitled to conclude that it was appropriate for her to proceed with the appeal before her and to rely upon the existing country guidance. I do not agree with the assertion in the grounds that the judge failed to give adequate reasons for rejecting the appellant's claim on that basis.

18. Neither do I find merit in the assertion that the judge failed to have regard to the delay in deciding the appellant's claim and to the other considerations relevant to an assessment of Article 8 and to the factors included in the Home

Office policy guidance in Chapter 53. At [44] she specifically dealt with the Enforcement Guidance and took account of the delay in the consideration of the appellant's application and the time spent in the UK, as well as the appellant's relationship with his brother. She concluded that these did not amount to exceptional circumstances justifying a grant of leave and that the appellant's removal from the UK would not breach Article 8. That was a conclusion she was perfectly entitled to reach on the limited evidence that she had before her.

19. For all of these reasons I find no errors of law in the judge's decision.

DECISION

20. 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 decision to dismiss the appeal stands.

Signed

Date

Upper Tribunal Judge Kebede