



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

Appeal Number: PA/06074/2016

**THE IMMIGRATION ACTS**

**Heard at Liverpool**

**Decision & Reasons  
Promulgated**

**On 18<sup>th</sup> September 2017**

**On 28<sup>th</sup> September 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**D Z  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr T Hodson of Counsel, Elder Rahimi Solicitors

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against a decision of Judge Monson of the First-tier Tribunal (the FtT) promulgated on 9<sup>th</sup> February 2017.
2. The Appellant is a male national of Iran born 11<sup>th</sup> September 1986. His asylum and human rights claim was refused on 2<sup>nd</sup> June 2016 and his subsequent appeal heard by the FtT on 31<sup>st</sup> January 2017.

3. The FtT did not find the Appellant credible and did not accept that he had genuinely converted to Christianity. The FtT found that the Appellant would not be at risk if returned to Iran.
4. The FtT declined to consider Article 8 on the basis that although Article 8 was raised as a ground of appeal, submissions were not made by Mr Hodson in relation to Article 8, as public funding only covered the Appellant's protection claim. Mr Hodson submitted that the FtT nevertheless had to consider Article 8, but the FtT declined to do so. The appeal was dismissed.
5. The Appellant applied for permission to appeal to the Upper Tribunal. The Appellant did not challenge the FtT findings in relation to risk on return. The challenge was made with reference to the refusal of the FtT to consider Article 8.
6. It was submitted that Article 8 had been considered at some length in the Respondent's refusal decision, with fifteen paragraphs of the refusal decision being devoted to Article 8. It was contended the FtT was wrong to refuse to consider Article 8, and because Article 8 had been raised as a ground of appeal, the FtT was obliged to consider it.
7. Permission to appeal was granted by Judge Robertson in the following terms;

"At the hearing, the Appellant's representative did not include submissions in relation to the Appellant's appeal under Article 8 ECHR because his public funding only covered the appeal on asylum grounds. He submitted, however, that the judge must grapple with the Article 8 claim in light of the evidence presented in the appeal. The judge declined to do so, because no case was put in the skeleton argument and because it would not be the Appellant's advantage for the Article 8 claim to be decided on the primary facts found on his asylum appeal. The only ground of application is that the judge erred in failing to decide the Appellant's appeal under Article 8. This is clearly an arguable error of law as the ground of appeal was available to the Appellant and had been pleaded in the grounds. It may be that for the purposes of that part of the hearing, the judge may have had to treat the Appellant as an unrepresented Appellant."
8. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008, contending, in summary, that the FtT did not err in law and directed itself appropriately. It was contended that in view of the adverse credibility findings made by the FtT, the Appellant would not be in a position to have an arguable Article 8 claim.
9. Directions were issued making provision for there to be a hearing before the Upper Tribunal to ascertain whether the FtT decision contained an error of law such that it should be set aside.

### **The Upper Tribunal Hearing**

10. Mr McVeety did not rely upon the rule 24 response, but accepted that the FtT had materially erred in law in failing to consider Article 8. Mr McVeety

accepted that the decision of the FtT should be set aside and remade by the FtT in relation to Article 8. Mr Hodson agreed.

### **My Conclusions and Reasons**

11. I find that the FtT materially erred in law in declining to consider Article 8. It is common ground that Article 8 was raised as a ground of appeal. Section 86 of the Nationality, Immigration and Asylum Act 2002 provides that the FtT must determine any matter raised as a ground of appeal. The FtT was therefore obliged to consider Article 8, even though the Appellant's representative, because of the constraints of public funding, had no submissions to make on that point.
12. Both representatives submitted that it would be appropriate for the appeal to be remitted to the FtT. I find that it is appropriate, having considered paragraph 7.2 of the Senior President's Practice Statements. This is because I accept the submissions made by both representatives, that it would be appropriate for the FtT to make primary findings in relation to Article 8, rather than those primary findings being made by the Upper Tribunal, which if adverse to the Appellant, would only afford a limited right of appeal to the Court of Appeal.
13. In my view it is fair and appropriate for the Article 8 claim to be considered by the FtT and therefore it is appropriate to remit this appeal back to the FtT.
14. As I made clear at the hearing, and as accepted by Mr Hodson, there had been no challenge to the comprehensive findings made by the FtT in relation to risk on return. Those findings are preserved. The only issue to be considered by the FtT relates to Article 8 of the 1950 European Convention on Human Rights.
15. As the Appellant resides in Manchester, the FtT hearing will take place at the Manchester Hearing Centre. The parties will be advised of the time and date of the hearing in due course. The appeal is to be heard by an FtT Judge other than Judge Monson.

### **Notice of Decision**

The decision of the FtT involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the FtT for Article 8 to be considered.

### **Anonymity**

The FtT made an anonymity direction. I continue that direction pursuant to 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 his 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

Date: 20<sup>th</sup> September 2017

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT  
FEE AWARD**

No fee award is made by the Upper Tribunal. The issue of any fee award will need to be considered by the FtT.

Signed

Date: 20<sup>th</sup> September 2017

Deputy Upper Tribunal Judge M A Hall