Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11633/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 27 April 2017	**On 18 May 2017**

Before

UPPER TRIBUNAL JUDGE COKER

Between

F T
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Butterworth, Counsel instructed by Lambeth Law Centre
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant in this determination identified as FT. This

direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

1. First-tier Tribunal Judge Black, in a decision promulgated on 9th December 2016, dismissed the appellant's appeal against the decision of the respondent dated 30th September 2016. Permission to appeal was granted by First-tier Tribunal Judge Page.

2. The grounds relied upon by the appellant assert, inter alia:
   - It had been accepted by First-tier Tribunal Judge Neyman in an earlier appeal heard in March 2006 that the appellant was an opponent of the Islamic Regime in Iran and had been involved in low level activity;
   - That there was evidence before First-tier Tribunal Judge Black that the appellant had been involved in *sur place* political activity in the UK;
   - That neither First-tier Tribunal Judge Black nor First-tier Tribunal Judge Neyman found the appellant was not sincere in his political opposition;
   - That First-tier Tribunal Judge Black failed to consider and make findings upon evidence before her; in particular letters from the People's Mujahadeen organisation and Anglo Iranian Academics;
   - That Judge Black had concluded there was no link between the Constitutional Movement of Iran and the People's Mujahadeen but had failed to consider his claimed *sur place* activities;

3. There was also reference to the confusion between the initials of two organisations but little seems to turn on that given they are initials of the English translation of Iranian organisations.

4. The applicant relies upon letters submitted in support of his claim. In particular a letter dated 27 September 2010 from Sia Rajabi, president of the Anglo Iranian Academics in the UK, where in the second paragraph, referring to attacks by the Iranian authorities, it says "the pick of these attacks was in July 28th 2009". In the next paragraph it says:

   > "Ever since the attack worldwide campaigns of various nature have been launched in defense of Camp Ashraf. Mr Tosi has taken an active part in numerous demonstrates, meetings and lobbying activities and in support of Camp Ashraf".

   That seems to be saying the appellant has been active in the UK since 2009.

5. Judge Black does not address these various letters. Although, as Mr Melvin submits, none of the writers of the letters attended the hearing and they are 'old', it is still incumbent upon the judge to consider them

in reaching her decision, particularly given there had been an earlier decision in March 2006 where there were findings of a lack of relevant activity that would render the appellant at risk of being persecuted if he were removed to Iran. The judge has erred in law in failing to consider evidence that was before her.

6. The question remains whether, had she taken them into account they would have made a material difference to her decision. It may be that a judge considering the evidence as a whole would take the view that they were of little weight either because of their age, lack of verification or lack of attendance at the hearing by the writers but I simply do not know what view Judge Black took of those letters or the weight she placed upon them, if any.

7. I am satisfied the failure to consider the four or five letters is material and I set aside the decision to be remade.

8. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal; s.12(2) of the TCEA 2007 requires me to remit the case to the First-tier Tribunal with directions or remake it for myself. The facts of this appeal are disputed and the findings of fact made by the First-tier Tribunal are set aside in their entirety. I conclude that the decision should be remitted to a First-tier Tribunal Judge to determine the appeal.

Conclusion of Decision

The First-tier Tribunal Judge made an error of law and the decision is set aside to be remade.
I remit the appeal to the First-tier Tribunal.

Signed

UTJ Coker
17th May 2017