



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

Appeal Number: AA/06804/2013

THE IMMIGRATION ACTS

**Heard at Newport
On 3 July 2014**

Determination Sent

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**RR
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms V Delgado of Duncan Lewis Solicitors
For the Respondent: Mr I Richards, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal is subject to an anonymity order made by the First-tier Tribunal pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited me to rescind the order and I continue it pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

The Background

2. The appellant is a citizen of Iran who was born on 23 December 1988. On 11 June 2013, the appellant entered the United Kingdom illegally. He was accompanied by "SG" with whom he had undergone a 'Sigheh' marriage in Iran. The appellant claimed asylum on the basis that SG's father, who was a colonel in the Sepah which is part of the Iranian Revolutionary Guard, had threatened to kill the appellant and harm SG when he discovered that the appellant and SG had a pre-marital sexual relationship.
3. On 2 July 2013, the Secretary of State refused the appellant's claim for asylum and humanitarian protection and also under Articles 2, 3 and 8 of the ECHR. Also on that date the Secretary of State made a decision to remove the appellant by way of directions to Iran.
4. SG did not make a separate claim for asylum but her situation has been considered in the context of the appellant's claim and subsequent appeal.

The Appeal

5. The appellant appealed to the First-tier Tribunal. In a determination dated 6 November 2013, Judge Buckwell dismissed the appellant's appeal on all grounds. Judge Buckwell made a number of positive findings in favour of the appellant. He noted that the accounts of the appellant and SG were generally consistent. He accepted that SG's father was a colonel in the Sepah. However, he concluded that there was no objective risk to the appellant or SG because, at its highest, the evidence only showed that SG's father was angry. There was no evidence that he had ever previously inflicted injury on anyone or that he had ever hurt anyone in his family. In addition, Judge Buckwell concluded that the appellant and SG could internally relocate within Iran. Judge Buckwell also found that the appellant had not established, on an alternative basis of his claim, that he and his wife were at risk by reason of their illegal departure from Iran applying SB Iran CG [2009] UKAIT 53 and BA Iran CG [2011] UKUT36 (IAC). Finally, Judge Buckwell concluded that it would not be a breach of Article 8 for the appellant, SG (and their child who was born in the UK) to be returned to Iran.
6. The appellant sought permission to appeal to the Upper Tribunal. On 9 December 2013, the First-tier Tribunal (UTJ Martin) granted the appellant permission to appeal on two grounds. First, in reaching his findings the Judge had arguably erred in law by failing to take into account an expert report which dealt with the potential risk from SG's father if he were a colonel in the Sepah. Secondly, the Judge had arguably failed to give adequate reasons for concluding that there was no objective risk to the appellant and SG on the basis that there was no evidence that SG's father had inflicted injury on anyone else or anyone in the family previously.
7. The appeal in the Upper Tribunal was initially listed for hearing on 24 March 2014. Following that hearing, the Upper Tribunal (McCloskey J and Arfon-Jones V-P) in a decision promulgated on 15 April 2014 set aside

Judge Buckwell's decision. The reasons are set out in full in the panel's decision. In summary, the panel concluded that the Judge had erred in law in reaching his finding that the appellant and SG had failed to establish that they were at risk from SG's father if returned to Iran. The panel concluded that the Judge had failed to take into account the expert's report which supported the appellant's claim and had failed to give sufficient reasons for his findings based upon the absence of any evidence that SG's father had a propensity to act violently.

8. The hearing was adjourned to be relisted for a continuation hearing in order to remake the decision in respect of the appellant's international protection claim and also under Article 8 of the ECHR.
9. Thus, the appeal came before me.

The Accepted Facts

10. At the outset of the hearing, I invited the representatives to clarify whether any of the underlying facts relied upon by the appellant were in dispute following Judge Buckwell's decision. Mr Richards, on behalf of the Secretary of State accepted the underlying facts of the appellant's claim. Those facts can be summarised as follows derived from the appellant's asylum interview, his statement dated 10 September 2013 and the oral evidence recorded in the determination of Judge Buckwell before whom both the appellant and SG gave evidence. In that latter regard, Judge Buckwell noted that:

"The account given by the appellant and his wife is generally consistent"
(at para 64).

11. The appellant and SG are Iranian nationals who lived in Mashad. The appellant met SG in early 2012 when their mothers became friends. After a few months, a relationship began with them communicating by text and telephone. They met about once a month in a park. Their families did not know about their relationship.
12. About nine months after their relationship started, they decided that the appellant should approach SG's family and ask for permission to marry. SG's father, however, disapproved of their relationship as the appellant was not "an army man". The appellant contacted SG's father on a number of occasions to try to persuade him to change his mind but he would not do so.
13. One day, SG overheard her parents arranging her marriage to a friend of her father's. He was an army man and her father approved of him. In an attempt to force her father to recognise that she could not marry another man, SG told her mother that she had a sexual relationship with the appellant. Her mother then told SG's father whilst they were away from Mashad on a day out. SG's father became enraged and he told SG's mother that he was going to "chop" SG "to pieces". SG's father also telephoned the appellant and threatened to kill him. SG's mother

telephoned the appellant to come and take SG away because of what her father would do. The appellant collected SG and they went to a friend's house and from there by taxi to Tehran. There they stayed in the house of a friend of the friend for about a week. Whilst there, they underwent a 'Sigheh' religious marriage on 14 February 2013. The friend with whom they were staying helped to find them an agent who organised their departure from Iran travelling via Greece to the UK.

14. Since being in the UK, the appellant and SG have had a daughter.

Submissions

15. Ms Delgado, on behalf of the appellant relied upon her skeleton argument which she developed in her oral submissions. She submitted that the appellant's principle claim was that the appellant and SG were at risk on return from SG's father who is a colonel in the Sepah. In addition, she submitted that the appellant and SG would be at risk on return to Iran as they had illegally exited Iran. On my enquiry, Ms Delgado expressly disavowed any reliance upon a claim by the appellant that he was at risk of prosecution for any offence in Iran and as a consequence at risk of persecution or serious ill treatment contrary to Article 3 of the ECHR.
16. In relation to risk on return and lack of state protection, Ms Delgado relied upon passages in the appellant's bundle of background evidence and two expert reports prepared by Dr Mohamed Kakhki dated 24 September 2013 and 19 May 2014. The latter report was not before the First-tier Tribunal but Mr Richards raised no objection to its admission under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).
17. Ms Delgado also relied upon a document entitled "Gender and Equality and Discrimination: The Case of Iranian Women" from the Iran Human Rights Documentation Center (USA) dated 8 March 2013 at page 26 of the bundle in particular section 1.2 highlighting instances of honour killings by fathers of their own children; and 1.4 in relation to the "legal immunity" given to fathers if they kill their children in honour killings. Further, Ms Delgado relied upon the document entitled "Honour Killings in Iran" by the Landinfo Country of Origin Information Centre (Norway) dated 22 May 2009 at page 62 of the bundle in particular, section 3.1 dealing with violence within families as being a private and internal matter and widespread problem; section 3.2 on the absence of effective protection for those threatened with honour killings or other forms of violence; section 4 dealing with the "unpredictability" of the Iranian legal system and section 4.2 dealing with the Iranian states' response to honour killings.
18. In relation to Dr Kakhki's second report, Ms Delgado relied upon passages at pages 5, 7 and 8. She relied upon these passages as evidence to establish that SG's father as a member of the Revolutionary Guard was likely to have strong hard-line Islamic beliefs and sentiments and that:

"It is not only their professional role but their personal faith and integrity that will be undermined by an improper unacceptable relationship within

their own family, and in particular when instigated by a female family member.”

19. Ms Delgado relied upon Dr Kakhki’s opinion (at page 7) that given SG’s position:

“It will be very unlikely that they would successfully evade him as the Revolutionary Guard is a very powerful organisation within Iranian society, well-connected, and capable of finding an individual of interest. Thereby making the option of relocation anywhere else in Iran unfeasible.”

20. Ms Delgado also relied upon a passage at page 8 of the report where Dr Kakhki says:

“...In my opinion, it would no longer be an option to deal with the issue within the family upon the couple’s return to Iran. They would return as a couple who had eloped without parental consent and had borne a child, likely out of wedlock. As a ranked officer of Sepah [the appellant’s] father-in-law would be expected to react harshly to uphold the principles he represents as a senior officer in the Revolutionary Guard.”

21. In relation to Dr Kakhki’s first report, Ms Delgado relied, in particular upon his conclusion at page 20 that:

“... It is my opinion that if [the appellant’s] father-in-law possesses a role within the Revolutionary Guard or indeed has sufficiently important connections within the security forces, he could use such positions to influence or initiate any criminal proceedings against his daughter and her husband upon their return to Iran. Such influence in my opinion can extend to the situation of honour killings/causing grievous bodily harm as he can use his connections to justify that her actions were impacting upon his honour and reputation in society.”

22. As I have already indicated, Ms Delgado, having cited this passage to me in her submissions, confirmed that she did not directly rely upon the risk to the appellant of prosecution.

23. As regards illegal exit, Ms Delgado relied upon extracts from the UKBA’s OGN for Iran dated October 2012 at 3.15 and 3.17.12 and 3.17.13 which, she submitted, established that the appellant and SG were at risk of detention on return and that detention was likely to be in harsh and potentially life threatening conditions such that Article 3 would be breached.

24. Mr Richards, on behalf of the Secretary of State submitted that the appellant could not succeed on the basis of illegal exit and he relied upon the decision in SB. As regards the principal basis of the appellant’s claim, he accepted the primary facts were established. He also accepted that the FtT’s negative finding that there was no evidence of previous harm caused by SG’s father-in-law was not a point which he now relied upon. He invited me to determine the appeal on the objective evidence and Dr Kakhki’s two reports applying what was said there to the appellant’s circumstances in the light of SG’s father-in-law being a colonel in the

Sepah. Mr Richards accepted, in the light of Dr Kakhki's report, that internal relocation was not an option.

Discussion and Findings

25. In relation to the appellant's asylum claim, he must establish that there is a real risk or reasonable likelihood that if returned to Iran he would be subject to persecution for a Convention reason, namely race, religion, nationality, membership of a particular social group or political opinion.
26. In this appeal, it was not suggested by Mr Richards that if the appellant and SG are risk of persecution from SG's father that would not be for a Convention reason. It is accepted in the respondent's decision letter of 2 July 2013 that any risk would be as a result of the appellant's imputed political opinion (see para 15 of the refusal letter).
27. As regards Article 3 of the ECHR, the appellant must establish that there are substantial grounds for believing that he would be at real risk of torture, inhuman or degrading treatment on return to Iran.
28. As I have already indicated, the Secretary of State accepts the primary facts in this appeal. It is accepted, therefore, that the appellant and SG had an illegal premarital sexual relationship. As Dr Kakhki points out in his first report (at pages 5-6) the fact that the appellant and SG underwent a 'Sigheh' religious marriage subsequently would not:

"negate the liability for past misdemeanours (if investigated for premarital sexual relations etc) nor will it protect them from familial/societal persecution if their actions have taken place against the wishes of their family.
29. That, of course, is precisely the situation in which the appellant and SG would find themselves on return to Iran. Before Judge Buckwell the issue was raised as to the period of validity of that temporary marriage. The evidence of the parties before Judge Buckwell was that it was only for a period of one month. Neither representative made any submissions before me concerning the length of its validity. The parties' evidence before Judge Buckwell was, as he pointed out, generally consistent. Dr Kakhki notes in his report that this form of temporary marriage, in the circumstances, would in any event bring dishonour upon the family. He said this (at page 2):

"...If [the appellant] and his wife entered into sexual relations and temporary marriage in order to circumvent the requirement for her father's permission (as well as the necessary virginity element for a first marriage) they have brought dishonour upon their families and could be legally prosecuted for their actions, based on immoral/sexual offences."
30. As I have already indicated, Ms Delgado expressly disavowed any reliance upon a risk to the appellant (or SG) of prosecution.

31. Given that it was not challenged, I see no reason not to accept the parties' evidence that the temporary marriage was only valid for one month. In any event, even if it remains valid, in the light of Dr Kakhki's opinion, which I accept, the dishonour would remain cast upon, in particular, SG's family.
32. Added to that is, of course, the accepted evidence that SG's father had threatened to kill the appellant and to "chop" into pieces his daughter because of their illicit premarital sexual relationship.
33. At para 13 of his first report, Dr Kakhki expresses the following opinion concerning the likely attitude of SG's father given his background:

"Applying this information to [the appellant] and his wife's circumstances, as they claim to have been involved in an illegal premarital sexual relationship (a fact allegedly known to their families) it is likely that they would receive some form of retaliation, particularly from (SG's) father, who may perceive his honour has been tarnished by their actions. They are unlikely to receive any sympathy or protection from the government or society in general as they would be regarded as having deserved such retaliatory actions based on their lack of adherence to Islamic moral values etc. The authorities and societal/family attitude has resulted in the victims of such abuse refraining from making complaints to the authorities about their treatment as there is a firm belief that they would not get any sympathy from these sources."

34. At page 5 of his second report Dr Kakhki, as I set out earlier, expresses the view that SG's father would consider his own "personal faith and integrity" undermined by the unlawful sexual relationship between the appellant and his daughter.
35. The background evidence demonstrates that honour killings and harm is meted out by families, particularly to female offspring, who engage in unlawful relationships considered to be morally repugnant (see "Gender Inequality and Discrimination: The Case of Iranian Women", page 26 of the bundle at paras 1.2 and 1.4). The background material also demonstrates that the state does not provide effective protection against this and, in this appeal, that reality is only emphasised by the status of SG's father as a colonel in the Sepah. At page 16 of his first report, Dr Kakhki's deals with this issue of state protection with particular reference to the position of SG's father as follows:

"The government's implicit support for vigilante groups targeting individuals implicated in acts considered immoral, such as [the appellant's] premarital sexual relationship, therefore creates fertile ground for such vigilantism. This is particularly the case if, on return to Iran, they disobey the wife's family and decide to continue their relationship. The extent of danger to [the appellant] and his family is only likely to increase, as the creation of the Special Protection Division (also known as the Special Protection Headquarters), by the government illustrates its complete support for organisations taking justice into their own hands, with complete disregard for procedural protections. This is especially the case if [the appellant's] father-in-law is a ranked Revolutionary Guard

Officer, who may use his contacts in order to locate the couple and punish them for their disrespectful conduct.”

36. I accept Dr Kakhki’s evidence. SG’s father is a colonel in the Sepah and I accept he evidence that he is likely to view adversely the ‘dishonour’ of his daughter’s relationship even more a civilian Iranian father. The accepted evidence of his threats unequivocally supports this and reflects on what his likely reaction will be. I am satisfied, therefore, on all the evidence that there is a real risk that SG’s father will kill or cause serious harm to the appellant and SG on return as a result of the dishonour which he considers to have been caused to his family by their illegal premarital relationship. I find, on the basis of the background material, that punishment under Iranian law for crimes committed in this context by families who are “dishonoured” (including honour killings) is limited and, as Dr Kakhki points out in his reports, the position of SG’s father in the Sepah would provide him with protection from the consequences of his actions. I also accept Dr Kakhki’s evidence that the position of SG’s father in the Sepah means that it is likely that the appellant and SG would not be able to evade him if they return to Iran (see page 7 of Dr Kakhki’s second report). That later fact was accepted by Mr Richards when he accepted that internal relocation was not an option.
37. Consequently, I am satisfied on the evidence that the Iranian state would not provide a sufficiency of protection to the appellant and SG given SG’s father’s position in the Sepah.
38. Further, it is accepted that the appellant and SG could not safely relocate within Iran.
39. Thus, I am satisfied that the appellant has established a real risk of persecution. It is accepted that if the appellant is at risk it is for a Convention reason, namely imputed political opinion. The latter follows both from the perception within Iran of the appellant’s and SG’s “dishonour” as being contrary to the Islamic mores of the State and from the basis upon which the State will not provide a sufficiency of protection. Further, I am satisfied that on return the appellant would be subject to serious ill-treatment contrary to Article 3 of the ECHR.
40. For those reasons, the appellant’s appeal is allowed on asylum grounds and under Article 3 of the ECHR.
41. Ms Delgado relied, by way of alternative, to a risk to the appellant on return simply on the basis of his illegal exit. That submission cannot, in my judgement, be made good in the light of SB (approved in BA Iran CG [20111] UKUT 00036 (IAC)). Ms Delgado sought to argue that the *OGN* for October 2012 should lead to a different conclusion because in paras 3.17.12 and 3.17.13 it was recognised that if a person were detained in prison or detention facilities the circumstances of that imprisonment or detention were likely to breach Article 3 of the ECHR. Ms Delgado did not provide me, nor rely upon, the entirety of the section of the *OGN* containing paras 3.17.12 and 3.17.13. Those latter provisions are, in my

judgement, not in play simply on the basis of an individual's return where they have illegally exited. That is clear from the section at paras 3.15 of the *OGN* dealing with "illegal exit from Iran" which concludes, citing SB, that those who have exited Iran illegally are not generally at risk of persecution or ill treatment on return. There is nothing in the evidence to suggest that the appellant and SG would be treated anything other than as an ordinary returnee, albeit who has illegally exited. I am not satisfied that the appellant and SG face a real risk of detention in the circumstances contemplated in paras 3.17.12 and 3.17.13 merely on the basis of their illegal exit. Applying SB, I reject the appellant's claim on this alternative basis.

42. As regards article 8, Ms Delgado did not make any oral submissions in relation to Article 8. Her skeleton argument, upon which she placed reliance, addressed the issue of Article 8 in four lines but solely on the basis that the appellant and SG would not be able to live safely in Iran. On that basis, no separate issue arises under Article 8. Given my finding that the appellant's return would breach Article 3 on the only basis upon which Article 8 is relied, he has also established a breach of Article 8 of the ECHR.

Decision

43. The decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law and is set aside.
44. I remake the decision allowing the appellant's appeal under the Refugee Convention and Articles 3 and 8 of the ECHR.

Signed

A Grubb
Judge of the Upper Tribunal

Date: