



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

Appeal Number: AA/00208/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 14 September 2015**

**Decision and Reasons
Promulgated
On 21 December 2015**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**MSM
(Anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Yeo instructed by B.H.T Immigration Legal Services.

For the Respondent: Mr Bramble - Senior Home Office Presenting Officer.

DECISION AND REASONS

1. In a determination promulgated on the 4 September 2014 Upper Tribunal Judge Pitt found a material error of law in the determination of the First-tier Tribunal which was set aside. The matter comes before me today for the purposes of a Resumed hearing to enable the Upper Tribunal to remake the decision by either allowing or dismissing the appeal.

2. The challenge to the original determination was made on three grounds. Judge Pitt found no merit in the first ground [7] but found merit in Grounds 2 and 3. In relation to the First-tier determination Judge Pitt found:

“6. At [21] Judge Hamilton found that:

“[The appellant] did not produce any independent evidence to support his claim that he was the organiser of the anti-government protests in Sussex. The friend with whom he claimed to have organised the protests did not attend the appeal hearing. He provided a written statement but I can only give that limited weight. The witness who did appear on the Appellant’s behalf was unaware he had organised any protest and doubted he would be able to do so unless he has a member of a larger organisation with access to infrastructure. It is reasonable to expect this witness to have known that the Appellant organised the first protest in Brighton. He claimed to have spoken about it on the telephone. It is not credible that the Appellant would not have mentioned he was the one organising this protest. The Appellant’s claim to be an organiser also appears inconsistent with his claim that over last (sic) 7 years he had been on a depressed state merely – surviving (sic). Looking at the evidence as a whole, even applying the lower standard of proof, I do not find the Appellant has shown that he organised any demonstrations or that he is active in any anti-government movements.”

7. It did not appear to me that the First-tier Tribunal was in error in concluding that it had not been shown that the appellant had organised protests. He was entitled to place less weight on an unaffirmed witness statement. He was entitled to draw an adverse inference from the evidence of the witness who could be expected to know if a particular demonstration was being organised by the appellant if they had discussed it together and who, as someone involved in such demonstrations himself, considered that demonstrations were organised at a higher level than an individual such as the appellant. The appellant was legally represented at the hearing and when the evidence of the witness arose the legal representative could be expected to deal with it where it specifically addresses the question of the appellant being an organiser. The appellant could have been recalled to give evidence on the point and it could have been dealt with in submissions. I did not find that the first ground of appeal had merit.”

3. Despite attempts by Mr Yeo to reopen this head of challenge during the course of the hearing by the use of additional evidence, no reason was made out to depart from the findings of Judge Pitt in relation to this issue.

Background

4. MSM is an Iranian national born in 1978. He entered the UK on 2 May 2006 and claimed asylum. His claim for asylum was refused on 6 November 2006 and appeal against the refusal dismissed on 23 December 2006 by Judge Baker. It was found the appellant had not

been telling the truth in respect of significant parts of his account. Further representations were made on 15 May 2007 which were rejected on 23 October 2008. On 19 May 2011 the appellant made further representation asking for his asylum claim to be reconsidered.

5. The reconsideration request was made on the basis:
 - (i) Judge Baker had found as a fact that the Appellant worked in the defence industry in Iran. There was expert evidence that showed that this fact alone would put him at risk if he were returned to Iran.
 - (ii) The Appellant had been interviewed by the Ministry of Defence while he had been in the UK. Again, expert evidence showed that this fact would put him at risk if he were returned to Iran.
 - (iii) Whilst he had been in the UK, the Appellant had taken part in and organised demonstrations against the Iranian government. This fact would put him at risk if he were returned to Iran.
 - (iv) It was also asserted that the Appellant had established family life in the UK with a British Citizen and her children and that his removal would breach their rights under Article 8 of the European Convention on Human Rights ("ECHR").

6. The First-tier Tribunal made the following findings of fact
 - a. The appellant used deception to gain entry to the UK. He has shown that he is prepared to tell lies in order to be able to enter and live in the UK. Judge Baker found him to be an unreliable witness [21]
 - b. The appellant has produced a number [of] photographs said to be stills from video on the internet showing that he was present at a number of anti-government demonstrations and an anti-government conference [22]
 - c. It was accepted that some elements of the Iranian authorities are paranoid and oppressive. It was accepted that significant resources have been put into monitoring the internet for the purposes of preventing what are deemed to be unacceptable ideas being disseminated and spying on known anti-government activists. There is no evidence of the authorities having identified anyone in this manner even though their sophisticated internet filtering system has been in place since about 2009 [25]
 - d. The reference by the expert of 90 Iranians living overseas being warned by their government to stop their activities on social media or face retribution, appears to relate to individuals who came to the attention of the authorities because they were openly active on social media and easy to identify rather than because the authorities had tracked them down through detailed analysis of photographs of protests and demonstrations. There is no evidence that this is being done or that facial recognition software or other methods are being used for this purpose or in order to identify participants in protests who may return to Iran [26]

- e. Judge Baker found the appellant is not on 'on the regimes radar'. It has been found that although the appellant may have worked at the Defence Industries Complex, Hadid Plant, he had not been engaged in high level sensitive work as he claimed. He had not shown he had any serious difficulties with his employers or that the authorities were looking for him or that he was of interest to them [27]
 - f. The fact the appellant was working as a technician at the Defence Plant does not necessarily mean he was working on "prototype weapons systems and armaments". The evidence is that he was effectively a lathe operator. The account of having made unauthorised copies of software was rejected by Judge Baker and Judge Hamilton on the basis that if his account was true, despite being accused of spying and detained, when released he did not think to remove the software from his home computer despite the clear risk with possessing the same. This was found to be implausible "given the appellants obvious intelligence" [29].
 - g. The suggestion by the expert that the appellant is highly likely to be arrested on return to Iran because he was interviewed by the Ministry of Defence on arrival is rejected as it is said to be based upon an assumption the appellant might have sensitive information about the countries security. It is said there was insufficient evidence to support such an assumption. It was noted the expert did not say that the fact of being interviewed per se placed an individual at risk [33].
 - h. The appellant has not adduced sufficient evidence to permit departure for the case of **SB**. The appellant has not shown he will be perceived as a threat or that the authorities have any interest in him. The appellant has not shown he left Iran illegally [34].
 - i. The claim based upon family life was not actively pursued and the appellant no longer claimed to have family life in the UK. It was accepted the appellant has a private life in the UK but as he has been granted limited leave to remain there is no interference at this stage with his private life in the UK sufficient to engage Article 8 [35]
7. The profile as found of the appellant is therefore
- (i) of an individual who left Iran but who has not proved he did so illegally
 - (ii) a person who worked for the named defence contractor as a lathe operator with no access to sensitive information
 - (iii) a person whose claim to have downloaded sensitive software was found not to be credible
 - (iv) a person who was interviewed by the MOD having entered the UK
 - (v) a person who produced photographs showing his attendance at demonstrations and a conference in the UK

- (vi) a person whose claim to have been responsible for organising demonstrations has not been found to be credible.
8. The appellant gave oral evidence at the hearing. In a further witness statement dated 11 September 2015 the appellant repeated his claim in relation to previous demonstrations in 2009 in support of the Green Movement. He claims he does not want to overthrow the government but wants a peaceful transition to democracy. He asserts that on return to Iran he would be frightened to express himself in the way he has been able to do in the UK because he is frightened of the authorities there. He claims that if he were in Iran and a demonstration was arranged in Tehran next year, he would have to attend even though he was aware it would be dangerous.
 9. In his oral evidence the appellant confirmed he last attended a demonstration in the UK in 2011 and that there were no documents or information on the internet showing he organised demonstrations.
 10. As the appellant has been granted limited leave to remain this is an upgrade hearing only. The appellant has been granted leave to May 2016.

The law

11. There are a number of cases dealing with the issue of risk on return.
12. In relation to risk on return for failed asylum seeker: in **MA v Switzerland (Application no. 52589/13)** it was held that removal to Iran, where the appellant claimed to face a sentence of seven years imprisonment and flogging for his participation in anti-regime demonstrations breached Article 3 of the ECHR. However, at paragraph 57 the ECtHR also said that "Whilst being aware of the reports of serious human rights violations in Iran as set out above, the Court does not find them to be of such a nature as to show, as they stand, that there would be as such a violation of the Convention if the applicant were to return to that country". The decision to allow the appeal was taken on the specific facts claimed by the Appellant and not on the basis that removal to Iran *per se* would breach Article 3.
13. In **FM (Risk - Homosexual - Illegal departure) Iran CG [2002] UKIAT 05660** (Collins J) the Tribunal concluded that "there is no evidence of any general persecution or ill treatment of failed asylum seekers merely because they are failed asylum seekers." The general view seems to be that returning asylum seekers will only be at risk on arrival back in Iran where there were other factors which make them stand out, such as a political profile.
14. In **GN (Iran) v SSHD 2008 EWCA Civ 112** the Court of Appeal agreed with the Tribunal that the objective material demonstrated that neither

illegal departure nor asylum failure would of themselves give rise to mistreatment on return contrary to Article 3 of the ECHR.

15. In **SB (risk on return - illegal exit) Iran CG [2009] UKAIT 00053** the Tribunal held at headnote (ii) that Iranians facing enforced return do not in general face a real risk of persecution or ill-treatment. That remains the case even if they exited Iran illegally. Having exited Iran illegally is not a significant risk factor, although if it is the case that a person would face difficulties with the authorities for other reasons, such a history could be a factor adding to the level of difficulties he or she is likely to face.
16. In **BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 00036 (IAC)** the Tribunal held that Iranians returning to Iran are screened on arrival. A returnee who meets the profile of an activist may be detained while searches of documentation are made. However, there is not a real risk of persecution for those who have just exited Iran illegally or are merely returning from Britain. The conclusions of the Tribunal in the country guidance case of **SB (risk on return -illegal exit) Iran CG [2009] UKAIT 00053** are followed and endorsed.
17. In relation to the procedure at airport: in **BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 00036 (IAC)** the Tribunal held that Iranians returning to Iran are screened on arrival. A returnee who meets the profile of an activist may be detained while searches of documentation are made. Students, particularly those who have known political profiles are likely to be questioned as well as those who have exited illegally. There is no evidence of the use of facial recognition technology at the Imam Khomeini International airport, but there are a number of officials who may be able to recognize up to 200 faces at any one time. The procedures used by security at the airport are haphazard. It is therefore possible that those whom the regime might wish to question would not come to the attention of the regime on arrival. If, however, information is known about their activities abroad, they might well be picked up for questioning and/or transferred to a special court near the airport in Tehran after they have returned home. It is important to consider the level of political involvement before considering the likelihood of the individual coming to the attention of the authorities and the priority that the Iranian regime would give to tracing him. It is only after considering those factors that the issue of whether or not there is a real risk of his facing persecution on return can be assessed.
18. In **SB (risk on return-illegal exit) Iran CG [2009] UKAIT 00053** the Tribunal held that events in Iran following the 12 June 2009 presidential elections have led to a government crackdown on persons seen to be opposed to the present government and the Iranian judiciary has become even less independent. Being a person involved in court proceedings in Iran who has engaged in conduct likely to be seen as insulting either to the judiciary or the justice system or the government

or to Islam constitutes another risk factor indicating an increased level of risk of persecution or ill treatment on return. Being accused of anti-Islamic conduct likewise also constitutes a significant risk factor.

19. In **BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC)** the Tribunal held that

- (i) given the large numbers of those who demonstrate here and the publicity which demonstrators receive, for example on Facebook, combined with the inability of the Iranian Government to monitor all returnees who have been involved in demonstrations here, regard must be had to the level of involvement of the individual here as well as any political activity which the individual might have been involved in Iran before seeking asylum in Britain;
- (ii) (a) Iranians returning to Iran are screened on arrival. A returnee who meets the profile of an activist may be detained while searches of documentation are made. Students, particularly those who have known political profiles are likely to be questioned as well as those who have exited illegally.
 - (b) There is not a real risk of persecution for those who have exited Iran illegally or are merely returning from Britain. The conclusions of the Tribunal in the country guidance case of **SB (risk on return -illegal exit) Iran CG [2009] UKAIT 00053** are followed and endorsed.
 - (c) There is no evidence of the use of facial recognition technology at the Imam Khomeini International airport, but there are a number of officials who may be able to recognize up to 200 faces at any one time. The procedures used by security at the airport are haphazard. It is therefore possible that those whom the regime might wish to question would not come to the attention of the regime on arrival. If, however, information is known about their activities abroad, they might well be picked up for questioning and/or transferred to a special court near the airport in Tehran after they have returned home.
- (iii) It is important to consider the level of political involvement before considering the likelihood of the individual coming to the attention of the authorities and the priority that the Iranian regime would give to tracing him. It is only after considering those factors that the issue of whether or not there is a real risk of his facing persecution on return can be assessed.
- (iv) The following are relevant factors to be considered when assessing risk on return having regard to *sur place* activities
 - (a) Nature of *sur place* activity. Theme of demonstrations – what do the demonstrators want (e.g. reform of the regime through to its violent overthrow); how will they be characterised by the regime? Role in demonstrations and political profile – can the person be described as a leader; mobiliser (e.g. addressing the crowd),

organiser (e.g. leading the chanting); or simply a member of the crowd; if the latter is he active or passive (e.g. does he carry a banner); what is his motive, and is this relevant to the profile he will have in the eyes of the regime. Extent of participation – has the person attended one or two demonstrations or is he a regular participant? Publicity attracted – has a demonstration attracted media coverage in the United Kingdom or the home country; nature of that publicity (quality of images; outlets where stories appear etc)?

(b) Identification risk. Surveillance of demonstrators – assuming the regime aims to identify demonstrators against it how does it do so, through, filming them, having agents who mingle in the crowd, reviewing images/recordings of demonstrations etc? Regime’s capacity to identify individuals – does the regime have advanced technology (e.g. for facial recognition); does it allocate human resources to fit names to faces in the crowd?

(c) Factors triggering inquiry/action on return. Profile – is the person known as a committed opponent or someone with a significant political profile; does he fall within a category which the regime regards as especially objectionable? Immigration history – how did the person leave the country (illegally; type of visa); where has the person been when abroad; is the timing and method of return more likely to lead to inquiry and/or being detained for more than a short period and ill-treated (overstayer; forced return)?

(d) Consequences of identification. Is there differentiation between demonstrators depending on the level of their political profile adverse to the regime?

(e) Identification risk on return. Matching identification to person – if a person is identified is that information systematically stored and used; are border posts geared to the task?

Discussion

20. The appellant’s claim is based upon a number of elements. In relation to his claim to be at risk in relation to his interview by the MOD [para 27 A’s 2014 witness statement] Mr Bramble submitted the evidence was incomplete in that no evidence had been provided of (i) when the interview took place (ii) where this occurred (iii) the duration of the interview (iv) how he was invited. That may be so, but the assessment of potential risk must be viewed through the eyes of the persecutor and it is not said this information is not available to the respondent in any event. There is no information the authorities are aware of the fact an interview occurred or that the appellant would not be entitled to not reveal the fact as it is not connected with any fundamentally held belief. There is an argument that if the authorities were aware of the interview they may wish to interview the appellant to establish the type of questions he was asked. The appellant’s country expert, in a report dated 21 April 2011, states

“25. [MSM] prior employment as a technician as a defence industry complex, working on prototype weapons systems and armaments, would most likely cause difficulties for him on return to Iran. Ordinary individuals face problems of return, but to a former staff of the defence industry who fled, there can be more severe consequences, because he could be seen as abusing his position and undermining his employment contract.

...

27. More importantly, the fact that [MSM] has been interviewed by the Ministry of Defence on his arrival in the UK is highly likely to result in his arrest and being accused of espionage. Iranian authorities like any other authority, consider crimes involving the revealing of the country’s military defence infrastructure as an infringement of national security.

28. This could also be perceived by the Iranian authorities as an infringement of the Iranian national interests. Furthermore, there is a real risk that he could be perceived to be a third party agent or collaborator; this is an issue of which the Iranian authorities are frequently suspicious.

...”

21. The later report dated 6 February 2014 does not amend this opinion.
22. The core claim to be working on prototype weapons has been rejected and not made out before the Upper Tribunal. It has not been shown the appellant required the permission/authorisation of the police to resign his position or that the same was not received if required. The report refers to employees of the Defence Ministry. The appellant claims to have been an employee of Defence Industries Complex, Hadid Plant. The Defence Industries Organization's Armament Industries Group (AIG) is controlled by Iran's Ministry of Defence Armed Forces Logistics (MODAFL) and the Hadid Industries Company is listed as an entity of concern for military procurement activities [Iran Watch, 16 January 2008]. They appear to be two separate entities and not one as the appellants evidence infers. The finding the appellant had left the country legally and lack of evidence in relation to his resignation not being accepted admits a finding it was and that no further issue has been shown to arise in relation to the same.
23. In relation to risk arising from political opinion and *sur place* activities, the appellant last attended a demonstration in the UK in 2011. He claims to be a follower of the Green Movement. The country expert comments upon internet monitoring in his two reports but this is an issues that was considered at some length by the Tribunal in **AB and Others (internet activity - state of evidence) Iran [2015] UKUT 257 (IAC)** in which it was held that the material put before the tribunal did not disclose a sufficient evidential basis for giving country or other guidance upon what, reliably, can be expected in terms of the reception in Iran for those returning otherwise than with a “regular” passport in relation to whom interest may be excited from the authorities into internet activity as might be revealed by an examination of blogging activity or a Facebook account.

24. The appellant has not proved he was the co-organiser of any protests in the United Kingdom. Mr Bramble referred the Tribunal to the evidence before First-tier Tribunal Judge Hamilton at paragraphs 138-158 in which there is mention of a demonstration in Brighton but which does not name the Appellant as the organiser.
25. It is accepted there are photographs of a demonstration at pages 146-150 in which the appellant can be seen at page 146 but his image is not as clear or is not present at pages 147-150. It is accepted he attended demonstrations the last of which was in 2011.
26. In relation to recognised risk criteria; the appellant is not a journalist, not a film maker who has produced films deemed contrary to the interests of the regime or Islam, and there is no evidence he has a web site or a Facebook account of his own. Even though the appellant appears on some media on the internet it has not been made out he has a prominent profile or one that will have led to his coming to the adverse interest of the authorities. The lack of evidence of facial recognition software at the airport that is programmed to detect those appearing in any publication on the internet supports the respondents case that there is no evidence of adverse interest in the appellant or risk of his being recognised or of detection on return.
27. Although the appellant has expressed a political belief and that he would attend a demonstration if called in Iran, the evidence indicates a person whose political activities do not reflect that of a committed activist in the UK or one who has the political opinions he asserts. As such the appellant is unable to benefit for the **HJ (Iran)** principle for there is insufficient evidence to show that on return he will be required to lie and deny a fundamentally held belief to escape persecution. In any event, not all supporters of the Green Movement in Iran have been persecuted. Many attended demonstrations but not all were arrested and many detained were released without charge. As with any such political group it is the organisers and those deemed to present a threat to the authorities in Iran who suffer the most. It has not been shown the appellant had such a profile in Iran or in the UK. The evidence as a whole supports a finding that the attendance at the demonstrations and conference is a cynical attempt to create an asylum claim rather than being reflective of a genuine opposition view that the appellant would be forced to conceal on return.
28. Mr Yeo accepted some copy photographs were not as clear as they could be but suggested the screen images are clearer. That may be so but these were not seen by the Tribunal and do not, in themselves, do anything other than to confirm the appellants attendance at demonstrations in the UK, which is accepted.
29. Both advocates refer to the 'pinch point argument' at the point of return when the appellant will come into contact with Iranian authorities. It is also accepted he does not have a valid Iranian passport but neither

create a real risk per se. The appellant has failed to make out that he meets the profile of an activist or that information is known about his activities abroad, either political or in relation to the interview with the MOD.

30. The claim to be an organiser of a demonstration in Brighton has been rejected as lacking credibility and has not been made out before the Upper Tribunal even applying the lower standard of proof applicable to appeals of this nature. The level of political involvement is low and it has not been made out that it is of a level that will result in the likelihood of the appellant coming to the attention of the authorities or of the Iranian regime having any interest in tracing him. **BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC)** considered and applied. It has not been made out that the appellant has a profile such that the authorities will wish to make further enquires.
31. The appellant is a failed asylum seeker from the UK whose claim has been found to lack credibility. As such he has not established that he is entitled to a grant of any form of international protection.

Decision

32. **The First-tier Tribunal Judge has been found to have materially erred in law and the decision set aside by Upper Tribunal Judge Pitt. I remake the decision as follows. This appeal is dismissed.**

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 8 December 2015