



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

Appeal Numbers: AA/07351/2013
AA/07352/2013

THE IMMIGRATION ACTS

**Heard at: Manchester
On: 26th February 2015**

**Determination Promulgated
On 28th April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

**PH
PR**

(anonymity direction made)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

**For the Appellant: Mr Brown, Counsel instructed by Broudie, Jackson
and Canter**

**For the Respondent: Ms Johnstone, Senior Home Office Presenting
Officer**

DETERMINATION AND REASONS

1. The Appellants are both nationals of the Islamic Republic of Iran. They have permission¹ to appeal against the decision of the First-tier

¹ Permission granted on the 14th January 2014 by Designated First-tier Tribunal Judge Murray

Tribunal (Judge Foudy)² to dismiss their linked asylum appeals³.

Background and Matters in Issue

2. The Appellants are mother and son. The basis of their claims for international protection is a fear of persecution for reasons of their imputed political opinion. The Appellants asserted, and the Tribunal accepted, that the First Appellant's husband H (also the Second Appellant's father) had been the mayor of a town in Iran. All three had claimed asylum in May 2013 on the basis that H had being coerced by the Iranian regime into taking that job, and presumably into implementing policies that he was opposed to. The family now feared persecution because he had abandoned his post at a point described by the Tribunal as the "critical time in the lead up to the Presidential elections in summer 2013". In June 2013 they learned that the eldest son of the family, who had remained in Iran, had been arrested and was being held until his father returned. H therefore withdrew his own asylum claim and returned to Iran to secure the release of his son. He has not been heard of since he returned to Iran, but the family believe that he must now be in custody, since his eldest son has now been released.
3. The Tribunal proceeded on the basis that the facts underpinning these appeals were all accepted. The appeals were nevertheless dismissed on the basis that there was no current risk to either Appellant. The release of the eldest son showed that the authorities in Iran had no on-going interest in any of H's family members. The son had been used as a bargaining chip to ensure H's return but there was no indication that a similar tactic would be used against these Appellants. The Tribunal found it "incredible" that the Iranian authorities would do any more than question the Appellants about why they had been out of Iran since February 2013: "that in itself does not amount to persecution or Article 3 ill-treatment".
4. The grounds of appeal are that the First-tier Tribunal's risk assessment was flawed for a failure to take relevant evidence into account. In particular no regard was given to the following:
 - i) Although it was believed that the elder son had been released the evidence was that his whereabouts and fate were unknown;
 - ii) The Appellant's had relied on a report by Iranian country expert Dr Kakhki who believed that the *whole family* could be at risk for suspected reformist sympathies in these circumstances;
 - iii) The Operational Guidance Note (OGN) and Country of Origin Information Report (COIR) before the Tribunal indicated that prison conditions in Iran breached Article 3 - no assessment was

² Determination dated 9th December 2013

³ Decisions appealed were decisions to remove from the UK pursuant to s10 of the Immigration and Asylum Act 1999 dated 23rd July 2013

made as to the likelihood of detention during or following the questioning that would occur on arrival;

iv) The Appellants' had professed their own dislike of the Iranian regime. No consideration was given to that evidence in the context of the questioning that they would be subject to: RT (Zimbabwe) v SSHD [2012] UKSC 38.

5. The Respondent opposed the appeal on all grounds. The evidence was that the Appellants had been unable to make contact with the eldest son. Asking the Tribunal to infer from this that he was somehow at risk was speculation. As for the evidence of Dr Kakhki he appeared to have overlooked the fact that the Iranian authorities had got what they wanted out of the detention of H's eldest son - in those circumstances there was no reason to detain or otherwise persecute any members of his family. No issue arose as to questioning on return since the Appellants had both left Iran on valid passports endorsed with UK visit visas and Iranian exit permits. The Home Office had those passports and would be using them to return the Appellants: the OGN only applies to "undocumented" failed asylum seekers. Ms Johnstone further submitted that no 'HJ/RT' point arises since the Appellants can tell the truth: the Iranians know that H tried to flee to Britain, since they managed to lure him back and now have him in custody.

Error of Law

6. On the face of it, the logic in this determination cannot be faulted. On the Appellants' own evidence the Iranian authorities were not interested in them, only H, and since he has now returned in order to secure the release of his son, there is no reason why the authorities would have any on-going interest in this family.
7. This analysis, attractive as it is, does however fail to take relevant evidence into account. It was already accepted that the regime had used another family member in order to get to the principle target: as the determination notes at paragraph 21, there is good country evidence that this is a method regularly employed by the Iranian regime. Where the fate of that family member was unknown it was arguable that he remained at "real risk", such an assessment being made in the context of a repressive, brutal and at times irrational regime. This was the point being made by Dr Kakhki.
8. I am further satisfied that there was an inadequate analysis of what might happen to these Appellants on return to Tehran. No consideration was given to the evidence in the OGN/ COIR. This states that checks are conducted not only into illegal departure (which Ms Johnstone correctly observes would not apply to these returnees) but where the person has "outstanding issues with the authorities" [32.11 COIR]. Nor was there any consideration given to the political views expressed by these Appellants. The fact that they had been out of

the country for a period longer than that permitted by their UK visas would indicate that this had not simply been a holiday. The most basic checks would have alerted the authorities to their relationship with H. In those circumstances some assessment should have been made of the 'HJ/RK' point that was, it would appear, argued before the First-tier Tribunal. For those reasons I set this decision aside, following a hearing on the 30th October 2014.

The Re-Made Decision

9. I re-make my decision with reference to the factual matrix found by the First-tier Tribunal but I must also have regard to the up to date material before me: by the time the appeal was re-heard in February 2015 there had been some development in the evidence as it had stood before Judge Foudy. I therefore begin by making findings of fact on the new material. I will then make an assessment of current risk.

Current Circumstances of Appellants: Additional Evidence

10. PH adopted her witness statement dated 22nd October 2014. Therein she gives evidence, supported by documentary evidence and her live testimony, that she had converted to Christianity. She states that whilst she was still in Iran she had dreamt about being held in Jesus' hand; she had felt him to be beautiful and pure. She was baptised at the Well Community Church in Rochdale in April 2014. The file contained evidence from Dr Iain Wight, Leader of that church, that she and her son had been regularly attending there since March 2014. Ms Johnstone put it to PH that this conversion appeared to coincide with her having lost her asylum appeal. The determination of the First-tier Tribunal was promulgated in December 2013 and the Appellants started attending church a matter of weeks later. PH agreed that she had been under stress following the dismissal of the appeal. She had been taking medication and was in need of support. Two Iranian friends in the UK introduced her to the church. She was helped there. In response to Mr Brown's questions she confirmed that she had been told that she had permission to challenge the decision of the First-tier Tribunal in January and that she had started to attend church in March.
11. PH consistently stated that the whereabouts of her son and husband remained unknown. She had not been able to make enquiries about it with her family in Iran. She said that she was reluctant to use the telephone or email to Iran because she believed them to be monitored by the authorities. A relative of hers who lives in Germany had visited Iran and had told her that the whole family there are "under extreme pressure". She had advised the Appellant that it would not at present be safe to return. This relative had spoken with the Appellant's sister who is a lawyer and "knows more than the average person". Her sister had told this relative that the Appellant

should be careful about the telephone etc being monitored. The Appellant said that she already been aware of this issue, because her husband had always warned her about it. Ms Johnstone put it to the Appellant that she could have instructed a lawyer, for instance her sister, to make enquiries about her husband. The Appellant said that there was no point because Etelaat don't give out that kind of information about political prisoners.

12. Ms Johnstone asked PH about her son in Iran. She was asked how she came to know that he had been released. She clarified that she did not *know* he had been released, this was simply what her brother-in-law had been told when he had made enquiries with a 'contact' within Etelaat. She maintained that her son in the UK has made no attempt to find his brother or father through social media. She has told him not to.
13. PH expressed her own opinions as being opposed to the Iranian regime. She said that whilst she was still in Iran she had stood by her husband's side as they campaigned on human rights issues. For instance she spoke out at work about women's rights. She believes that the regime does not respect human rights. She has converted to Christianity. These are her beliefs but she could not admit to any of this on arrival since they would "straight away arrange execution".
14. PH accepted that when she left Iran her passport had been endorsed with an exit stamp but was unable to say with any certainty what kind or colour it had been. She said that she had left as a tourist and now anticipated being questioned on arrival since it was evident that she had not simply been on holiday. That was obvious from the length of time but also because she had failed to return to her job in a government department. Ms Johnstone put it to her that on her visa application form she had described herself as a librarian. PH agreed that this was the case - she was. She was employed by the government. She explained that if you wanted to leave Iran you had to fill in forms for the security services explaining where you are going and how long you will be away for. She had not wanted to do all of this so she had just taken 2 weeks leave. They had not known she was leaving the country.
15. I then heard evidence from PR. He adopted his witness statement. He too has converted to Christianity and has been baptised. He found the people in the church to be genuine and that they helped him from the bottom of their hearts with all the stress he was experiencing. In his statement he said that he had been prompted to go to church after meeting a woman named Mina who was in the hostel where he was staying with his mum. Mina had come in and prayed with them and he had felt relaxed and calm and "a new feeling" in his body. In his oral evidence he explained that his involvement in Christianity "goes back to a dream" he had. He was going up a mountain and in the distance he saw a man with a bright face, full of light, trying to take

his hand and pull him up the mountain. It makes him feel good – calm. Ms Johnstone asked why this dream had not featured in his statement. He said that he had not recalled it – it was only a month or two ago. He offered no comment on her observation that his mother had also mentioned a dream.

16. PR states that he was seventeen when he arrived in the UK. One of the things he is worried about is that he will be questioned on arrival about why he has not completed his military service. He was due for call up when he turned 18. He does not know what he will say if asked why he has not done it.
17. He confirmed that he has had no contact with either his brother or his father since he arrived. He has not tried to look on Facebook or anywhere else for his brother – he is frightened of finding out bad news.
18. I then heard oral evidence from a Mr Roy Teague. He is an elder of the Well Community Church and I was informed by way of letter dated 18th February 2015 that he was being sent in lieu of the church leader, Mr Wight. He confirmed that to his knowledge the Appellants had both been attending the church since March 2014. Neither he nor any other church leader can speak Farsi so they rely on other Iranians who come to translate the services. He was asked about the very short time that the Appellants had been attending the church before they were baptised. He agreed that it had been quick – only a matter of weeks. He said that the church does not have its own baptistery – it has to ‘book a slot’ at a church in Heywood which has one suitable. The slot had already been booked for a number of other people and so the Appellants were ‘moved up’ and were done on the same day. He denied that the church would agree to baptise people it was not sure about. He said that the Appellants were only baptised because Mr Wight and others were convinced that the Appellants had accepted the Lord Jesus Christ as their saviour. It was not particularly important that they had any great depth of knowledge about Christianity – that would come later, and in the case of these Appellants it had, as they pursued their learning as full members of the congregation. The church was alive to the possibility that they were being ‘used’. In this case that was categorically not their view. It is his understanding that the Well Community Church has baptised a total of 17 Iranians but he was unable to give a timeframe.

Current Circumstances of Appellants: My Findings

19. The Appellants must show it to be “reasonably likely” that they have converted to Christianity. I remind myself that this is a low standard of proof and that their evidence until this point has been accepted as true. I have considered all of the evidence in the round but find that the Appellant’s have not discharged the burden of proof and shown to that lower standard that they have in fact left Islam for Christianity.

20. The objective evidence of their conversion consisted of the evidence of Mr Teague that they had been attending his church for a matter of weeks before they were baptised. I accept that they attended those services between March and April 2014 and that they continue to do so. I heard evidence that their baptisms in April 2014 were brought forward for purely practical reasons – the church had already booked the use of the baptistery in the church in Heywood and so the Appellants were added to that group. I do not doubt that Mr Teague was telling the truth, or that he believes the Appellants to be true converts. His faith in them is however driven by the fact that he is a fervent Christian, who would very much like them to be fervent Christians. I have attached some weight to this subjective opinion, but having considered his evidence in the round with that of the Appellants, cannot at present be satisfied that this is a true conversion.
21. These Appellants have not been tested on their “knowledge” or understanding of the Christian faith but it is overwhelmingly likely that on the date that they were baptised it was minimal. I make this finding because there is no evidence that they were investigating Christianity prior to their meeting with Mina in the hostel, and can only have gleaned the most basic information in the month that they were attending services at the Well Community Church. The Appellants were both raised as Muslims, and Islam specifically forbids departure from the faith in trenchant terms. In those circumstances any faith journey away from it is likely to be a difficult process that any individual would struggle with. It is only rarely that it could be accomplished in a matter of weeks. The evidence of the Appellants suggests that they were both driven to this Damascene moment by having “feelings” and “dreams”. I do not doubt that both of these psychological phenomena are relevant to an individual’s spirituality, but the evidence on these matters was markedly inconsistent. PH wrote in her statement that she had become interested in Christianity after having a dream in Iran in which she was held by Jesus who told her that if she had any wishes she should let him know. One might think that such a dream would be regarded with great significance but there is no evidence that she took any steps to investigate Christianity after this. Even after her arrival in the UK in February 2013 it took her over a year to attend a church. PR expressly states in his written evidence of October 2014 that he decided to find out about Christianity after experiencing a “new kind of feeling” in his body when he prayed with Mina in the hostel in the UK. This is what led him to want to attend church. In his oral evidence he said that he had decided to attend church after having a dream about Jesus. When it was put to him that he had never mentioned this dream before he said that it was because he had only had it a few weeks ago: a reason for why it did not appear in his statement but hardly a possible explanation for why he decided to attend church in March 2014.
22. Overall there is insufficient evidence before me to demonstrate that

either of these Appellants has made a genuine conversion from Islam to Christianity. I do however accept that they have been attending the Well Community Church for just over a year and that they have undergone a baptism.

Risk Assessment

23. Both Appellants came to the UK with valid Iranian passports containing exit permits. I find that they left Iran lawfully.
24. If returned to Iran today they would have been out of the country for well over two years. Their UK visit visas expired on the 20th June 2013 and there would be no endorsement on their passports to show that there had been any extension of leave. Any competent officer would in those circumstances make some enquiry into what the pair had been doing in the UK: it is accepted country guidance that all returnees are screened⁴. In the context of Iran the officer's starting point, for a woman travelling with her son but without a husband, might be to enquire who her husband is and where he is: the COIR cites evidence that women need the permission of their husband to be able to travel, particularly with children⁵. In his report dated 17th September 2013 Dr Kakhki wrote the following:

“I have conducted extensive research using a Farsi Search engine and found a considerable amount of information relating to [SR]’s work as the Mayor of [X], his relationship with the members of the city council, his progressive and modern approach to developing the city in the interests of the local populace. He is generally well regarded as a well respected professional manager held in regard by voters, despite having conflict with hardline elements of the government.

There were numerous objections when [SR] was removed from his position as the Bushehr Mayor, and plentiful calls for his reinstatement can be found within various news websites/ internet articles. Consequently I have no doubt that [SR] was indeed the Mayor of [X] and was reappointed to his post in 2013, despite controversy between hardliners and progressive reformists regarding his reappointment”.

This was the background to Judge Foudy’s acceptance that SR had been compelled to return to Iran by political opponents and that he had been imprisoned on his arrival. I find it to be reasonably likely that this information would be readily available to the receiving immigration officer on arrival in Tehran. That is because the passport details, exit permits and any other identity documents held by the Appellants will be linked in central records to that of SR, and because neither Appellant can reasonably be expected to withhold the fact of their relationship with him. If they were to do so that would be a very risky strategy, since it would depend on the officer accepting at face value the information they provided and not conducting a check of his own.

⁴ BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC)

⁵ See Country of Origin Information Report September 2013 sections 31.03-31.05

25. I see no reason to doubt the evidence that the family left Iran having told the authorities that they would be returning within a matter of weeks, SR having been given a leave of absence on the basis that he needed medical treatment in the UK. PH explained that she had not even bothered to tell her employer that she was leaving the country, since to do so would involve filling in forms for the security services to check and authorise “ex-Iran leave”. I accept her evidence that she told her boss that she would be returning after two weeks. I accept that having established their Appellants’ relationships to SR the officer at the immigration desk would quickly establish all of this too.
26. The question at the heart of this appeal is what would happen next. It is the Respondent’s case that nothing would happen. The Appellants would be granted entry and be allowed to go on their way. If the information provided to PH’s brother-in-law is correct, her eldest son was released from custody and there is therefore no reason to suspect that either of these Appellants would be subject to any further investigation. There is a possibility that this is indeed what would happen, but in the context of Iran I find there to be a real risk that the Appellants would be subject to far greater scrutiny than that.
27. They are the immediate relatives of a man who has made enemies in the “hardliners” in the Iranian government to the extent that he has been removed from his public office and imprisoned. It is reasonable to infer from the circumstances that SR would have been questioned about his time in the UK. The country background material indicates that there is a real risk that SR has been ill-treated during his detention. I find it to be reasonably likely that he will have told the Iranian authorities that he and his family had claimed asylum in the UK. Even if he did not this would be a reasonable inference for any investigating officer to draw given that the Appellants have been away from Iran for over two years when they were supposed to return after two weeks. As Dr Kakhki explains, this lengthy, unauthorised absence from Iran is likely in itself to raise questions:
- “... spending a considerable amount of time abroad may create an additional risk factor for [PH] and her son upon their return as the authorities may investigate any potential connections and information they may have acquired during their stay abroad, as well as possible divulgence of confidential information to unauthorised persons during the asylum application process in the UK”
28. It is at this point that the authorities of HJ (Iran) and HT (Cameroon) [2010] UKSC 31 and RT (Zimbabwe) [2012] UKSC 38 become relevant. If I accept that the Appellants are likely to be questioned about their relationship to SR and their time in the UK, logic would suggest that this is reasonably likely to involve some questions about their own political views, particularly if the investigation is concerned with the details of their asylum claim. Mr Brown correctly points out that neither Appellant can reasonably be expected to conceal their allegiance to SR, nor their own antipathy towards the hardline

elements of the Iranian regime. Nor, applying RI, can they be expected to lie if asked about any connection to Christianity in the UK. An investigating officer would not be interested in “peering into their souls”: the fact that they have been attending church and have been formally baptised would be the focus of the enquiry. I find that in these circumstances there is a real risk the Appellants would be transferred from the airport into detention under the control of the security services and that this would likely involve direct ill-treatment or being held in conditions which themselves amounted to a violation of Article 3 ECHR. Section 3.17.3-3.17.11 of the Respondent’s Operational Guidance Note (v8.0 October 2012) sets out the detailed evidence that leads to the conclusion at 3.17.3: “as conditions in prisons and detention facilities are potentially life threatening in Iran, they are likely to reach the Article 3 threshold”. The same guidance goes on to state [at 3.17.14]: “It is clear that political opponents of the regime will suffer ill-treatment amounting to persecution. As imprisonment is related to one of the five Refugee grounds – political or perceived political opinion, a grant of asylum will be appropriate”. Applying that guidance, these appeals must be allowed.

Decisions

29. The decision of the First-tier Tribunal contains an error of law and it is set aside to the extent identified above.

30. The decisions in both appeals are:

“The appeals are allowed on asylum grounds.

The Appellants are not entitled to humanitarian protection because they are refugees.

The appeals are allowed on human rights grounds.”

31. I make a direction for anonymity in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”.

Deputy Upper Tribunal Judge Bruce
3rd April 2015