



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

Appeal Number: AA/10030/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 1st May 2015**

**Decision and Reasons Promulgated
On 20th May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**Mr Abdul Majid Marhemati
(NO ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Mason, Counsel instructed by Broudie Jackson & Canter
Solicitors

For the Respondent: Ms Johnson, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Mr Adbul Majid Marhemati date of birth 6th March 1981 is a citizen of Iran. Having considered all the circumstances I do not consider it necessary to make an anonymity direction.
2. This is an appeal by the Appellant against the Decision of First-tier Tribunal Judge Gladstone promulgated on 16th January 2015, whereby the judge dismissed the

Appellant's appeal against the decision of the Respondent dated 10th November 2014. The decision by the Respondent was to remove the Appellant from the UK.

3. By decision made on the 18th February 2015 leave to appeal to the Upper Tribunal was granted. Thus the matter appears before me to determine in the first instance whether or not there is an error of law in the original determination.
4. The first ground upon which the Decision is challenged relates to the judge's finding with regard to the appellant's claim to have converted to the Baha'i faith. In paragraph 5 of the grounds it is submitted that the judge has failed to give adequate reasons for her conclusions that she did not accept that the appellants had genuinely converted to the Baha'i faith, given her acceptance of evidence from the witness. Further it is alleged that the judge has failed to consider the fact that merely by reason of acting as members of the Baha'i faith, whether, even though the conversion may not be genuine the "persecutors" would not perceive such as genuine conversion and would persecute the appellant by reason of what they perceive to be the situation. In making that submission reliance is placed on the case of R v SSHD [2012] EWHC 2575 (Admin) specifically paragraph 24 of the decision.
5. The judge has carefully analysed the accounts given by the appellant and his wife as to why they left Iran. The judge has given adequate reasons for finding that fundamental parts of the appellant and his wife's account were not true as set out in paragraph 115.
6. The judge has also specifically considered the appellant and his wife's activities in the United Kingdom but given the adverse findings with regard to credibility was not satisfied that the appellant and his wife's conduct showed a genuine commitment to the Baha'i faith. The judge has properly assessed all the evidence and given valid reasons for coming to the conclusion that she did. The ground amounts to no more than a disagreement with the findings of fact made by the judge. The judge has given valid reasons for making the findings that she did.
7. The second ground of appeal relates to the appellants having illegally exited from Iran. In the current country guidance cases SB (risk on return - illegal exit) Iran [2009] UKAIT 00053 and BA (Demonstrator - risk on return) Iran CG 2011 UKUT 00036 the conclusion having considered all the background evidence was that merely by reason that an individual had left Iran illegally was not of itself sufficient to expose a person to a risk of mistreatment constituting persecution or a breach of article 3 of the ECHR.
8. The country guidance cases seemed to indicate that other factors have to exist, such as a known history of having been involved in anti-government activities, demonstrations and the like, or a pre-existing interest in an individual from the government, before an individual, who has left illegally, would be at risk on return.
9. It is the appellant's case that that guidance can no longer be maintained. As part of the skeleton arguments submitted on behalf of the appellant reference is made to two orders in the Court of Appeal wherein decisions refusing judicial review of Upper

Tribunal decisions were to be subject of review by the Court of Appeal on the grounds that it was arguable that the Upper Tribunal had failed to take into account the risk that an appellant would face on return to Iran as a failed asylum seeker. There does not appear to be any finding by the Court of Appeal that an individual is at risk but merely that the grounds may be argued.

10. The appellant was also seeking to rely upon further case law. The most relevant appears to be RC v Sweden 41827/07 [heard by the European Court of Human Rights on 9 March 2010] and KK v France 18913/11 [heard the European Court of Human Rights on the 10 October 2013]. In respect of the latter the judgement is in French that there is a summary in the appellant's bundle.
11. In RC the court noted that the applicant's account was credible. The applicant's account had related to his participation in demonstrations and his having been detained, arrested and tortured before being placed before an Iranian revolutionary court. He had allegedly escaped from the court with the assistance of friends. At paragraph 55 of the majority judgement it was found that the applicant's account was credible as to his detention, interrogation, ill-treatment and escape. Therefore the fact that the applicant thereafter left Iran illegally coupled with the fact that he was already wanted by the government was such that on return his illegal exit would result in his being questioned at which point his past was likely to be revealed. [See paragraph 56]. By reason of his past having been discovered the appellant would be at risk on return.
12. With regard to KK v France there is only a summary translation from the European Database of Asylum Law. However I would quote from the summary:-

The Court ruled the situation in Iran is insufficiently serious to prevent all returns. However the Court was persuaded by the applicant detailed story and documentary evidence of his stands against the IRS and there persecution of him due to his resignation. The Court found no reasoning in the decisions of the French authorities to justify their doubts about the applicant's authenticity. The Court also noted the specific risk of detention and questioning face by returning Iranians, including the applicant, who previously left Iran unlawfully.
13. As is clear from the passages cited the Court were satisfied that persons would be detained and questioned on return, when an individual is passed may be discovered. However the cited passages do not bring into question the guidance given in the Country Guidance case law. The indications being that where there are other factors such as the authorities being aware of an individual being involved in demonstrations or a person having taken specific steps to oppose the government which have come to the attention of the government an individual on return during questioning of their past will be discovered such that they would be at risk. That does not suggest that merely by reason of return they would be at risk but rather where other factors exist such other factors will be discovered if they have left the legally. That seems to be consistent with the existing Country Guidance case law.

14. In the circumstances the judge was entitled to follow the country guidance cases and was entitled to make the decision that she did.
15. There is a no material error of law in the determination. I uphold the decision to dismiss these appeals on all grounds.

Signed

Date

Deputy Upper Tribunal Judge McClure