



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

Appeal Numbers: AA/06483/2014
AA/06485/2014
AA/06490/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 15 July 2015**

**Decision & Reasons Promulgated
On 21 January 2016**

Before

**UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE A M BLACK**

Between

**ZFM
PA
AMA**

(Anonymity Direction Made)

**First Appellant
Second Appellant
Third Appellant**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr B Hoshi, Counsel instructed by Sutovic & Hartigan Solicitors

For the Respondent: Mr S Kandola, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we 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

appellants. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. We make this order because the First-tier Tribunal made a similar order and because there is a risk (not necessarily a strong one) that publishing the identity of an asylum seeker from Iran would of itself make it dangerous to return that person.

2. We are concerned with appeals against the decision of the First-tier Tribunal allowing the appeals of the appellants against a decision of the Secretary of State on 14 August 2014 to refuse to vary their leave to remain in the United Kingdom and to remove them from the United Kingdom. Each of the appellants and the respondents were dissatisfied with the First-tier Tribunal's decision and the appellants and the respondent were each given permission to appeal. In fact the Respondent's application was considered first.
3. At the risk of over simplification and for the purposes of introducing this decision, in broad terms the appellants complained that the first appellant should have been recognised as a victim of domestic violence under the Immigration Rules and given indefinite leave to remain and the Secretary of State complained that the Tribunal was wrong to allow the appeal, as it did, on asylum grounds and on human rights grounds with reference to both Article 3 of the European Convention on Human Rights and Article 8 of the European Convention and Human Rights.
4. We begin by considering carefully just what the First-tier Tribunal decided.
5. Uncontroversially the First-tier Tribunal accepted that the appellants are citizens of Iran. The first appellant was born in 1981. The second and third appellants are her children born in 2007 and 2009 respectively. The appellants entered the United Kingdom in May 2011 with leave until 21 December 2015 under the family refugee reunion policy. The first appellant's husband had been granted asylum in the United Kingdom. The first appellant's marriage had been troubled by her husband's violence for a long time. The marriage finally broke down in March 2013 when her husband was arrested and in April 2014 she sought indefinite leave to remain by reason of her husband's domestic violence.
6. The First-tier Tribunal Judge referred to the appellants' solicitors' letter of 11 April 2014 for the full relevant history. The letter described the first appellant's husband as "violent and abusive throughout their relationship." The first appellant had sought help from her father and the authorities in Iran but little or no help was forthcoming. She decided to try and make the relationship work and, appropriately, the appellants joined their husband or father in May 2011 under the refugee family reunion. The marital relationship finally broke down in March 2013 when the first appellant's husband tried to suffocate her. A prohibited steps order and non-molestation order were made and her husband was subject to criminal charges.

7. It was the first appellant's contention that she and her children should be entitled to remain in the United Kingdom indefinitely. Her solicitors accepted that she did not satisfy the apparent requirements of the Rules because she was not the spouse of a person present and settled in the United Kingdom but, according to the solicitors, a literal interpretation was unlawful because such an interpretation would involve unjustified discrimination.
8. In any event the appellants could not return to Iran safely. The first appellant would remain at risk because her husband would not consent to a divorce and there was no one to protect her. Her father had died and so could not offer even the little help that had been possible previously. Additionally the children would be taken from their mother at the father's insistence when they reached their 7th birthdays and such separation would be contrary to their human rights under Article 8 of the European Convention on Human Rights.
9. Further her husband had made an accusation of adultery against her and that could create real risks for her in the event of her return.
10. The First-tier Tribunal had to deal with the preliminary point. Although the appellants had raised asylum as a ground of appeal the first appellant had not been interviewed as an asylum seeker and no proper decision had been made by the Respondent.
11. The judge decided that the ground of appeal showed that the appellant wanted to be recognised as a refugee. If the respondent had wanted to interview the asylum seeker she should have tried to make arrangements. In fact interviewing might not have been possible because the first appellant was regarded as a vulnerable witness.
12. There was also evidence from the police saying that the first appellant's husband had returned to Iran but had then come back to the United Kingdom and had recently been sentenced to conspiracy to supply a quantity of class A drugs.
13. The First-tier Tribunal Judge accepted the evidence that the marriage had been violent.
14. She noted that in July 2009 the first appellant's husband was convicted of assault and battery at the Tehran Public Criminal Court. The conviction was based on the first appellant's complaint and a medical report. Sentence was passed in the defendant's absence because he had repeatedly failed to attend court. He was ordered to pay "blood money" as a consequence of various injuries he had inflicted to his wife's hands, feet, eyes and neck.
15. In the United Kingdom police and social workers had been involved with the family. In April 2012 the first appellant's husband broke her nose. The police were called by concerned neighbours. In March 2013 her husband

attacked her and tried to suffocate her. Again the police were called and he was arrested. That was when the first appellant decided that her marriage had finally broken down. The appellants moved out of the family home into accommodation provided by Social Services.

16. The first appellant reported to the police that her husband had been dealing in drugs.
17. In March 2013 the first appellant's husband was arrested for making threats. On 28 March a non-molestation order was made in the County Court against him.
18. It appears that he did not attend that hearing in the County Court. Neither did he answer bail because he had returned to Iran.
19. He was charged under the Protection from Harassment Act and with possessing Class A drugs with intent to supply. He was arrested at Luton Airport when he returned to the United Kingdom. He was convicted of possessing class A drugs and harassment and was sentenced to two years' imprisonment suspended for two years and ordered to carry out 200 hours' unpaid work.
20. He had also been convicted in Iran on 2 October 2013 at Tehran Public Criminal Court and sentenced to six months' imprisonment suspended for two years for criminal damage. He had broken windows and caused a disturbance at the first appellant's family home.
21. He had also used a procedural device that required the first appellant to choose between returning to Iran and losing her right to financial support in Iran.
22. The First-tier Tribunal was assisted by expert evidence and accepted that the documents purporting to come from the courts in Iran were genuine. The judge also accepted the evidence from the same expert that honour killings are to some extent tolerated in Iran and at paragraph 22 the judge said:

"I am satisfied that should the first appellant be returned to Iran she faces a real risk of violence, if not death, from her husband, and that such behaviour would not be prevented by the state authorities nor could she rely on state protection for her safety."
23. The judge then gave herself a five point direction in accordance with the speech of Lord Bingham in Regina v. Secretary of State for the Home Department (Appellant) ex parte Razgar (FC) (Respondent) [2004] UKHL 27.
24. The judge said that, even if she was wrong in her finding that it would be contrary to the first appellant's rights under Article 3 of the European Convention on Human Rights to remove her and that she was a refugee, removal would be disproportionate. The judge said:

“This is because the first appellant is at serious risk of physical harm from her husband and I have no doubt he would seek and obtain custody of the children. They are, at present, settled with their mother and attending school. Any disruption to their family unit in these circumstances here would be wholly disproportionate.”

25. It is a matter of record the judge made no finding on the contention that the first appellant should be treated as if she were the victim of domestic violence inflicted by somebody present and settled in the United Kingdom.
26. The respondent’s grounds are drawn carefully and make three different points.
27. The first contention is that the First-tier Tribunal failed to give any or adequate reasons of for its decision. The respondent contends that the Tribunal erred by failing to identify the Convention reason for allowing the appeal. Further the Tribunal is criticised for finding that the first appellant was able successfully to bring a prosecution in the courts in Iran against her husband because of his violent behaviour. The grounds suggest that this is prima facie evidence that there is state protection available and the judge erred by not explaining why, when state protection had been extended in the past, it was not available in the event of the first appellant’s return.
28. The second point is quite different. It complains that the Tribunal acted on evidence that had not been disclosed to the respondent.
29. The third point, at paragraph 8, contends that the Article 8 consideration was flawed because it was made on the assumption that effective protection was not available and so if the decision to allow the appeal on Article 3 and asylum grounds is unsound the Article 8 decision is unsound too.
30. The respondent’s Rule 24 notice draws attention to the skeleton argument used before the First-tier Tribunal and the expert report. We consider them now.
31. This explains that the first appellant contended that her marriage broke down because of prolonged severe domestic violence. As a result of the first appellant having contact with the police because of their support when she complained about domestic violence, she reported to them that her husband was concerned with the supply of class A drugs. Her husband fled to Iran and, she said, commenced a prolonged campaign of harassment against the first appellant’s family which led to his being the subject of a suspended prison sentence in Iran. He then returned to the United Kingdom.
32. On 11 April 2014 the first appellant applied for indefinite leave to remain as the victim of domestic violence, recognising that there was an issue

about whether she qualified because she was not the partner of a person present and settled in the United Kingdom.

33. There is a helpful summary of the argument on that point. It is that, as the spouse of a refugee, the appellant should be afforded the protection of the relevant Rule pursuant to “the interpretive duty in Section 3 of the Human Rights Act 1998”.
34. Her asylum claim was based on her fear of being persecuted in Iran by the state as an alleged adulteress at the instigation of her husband or his family by way of “honour based violent reprisals” because she had left him and reported him to the police for serious criminal offences.
35. The Article 8 claim is based on the need to be protected from the children being taken away from her when they reached the age of 7 years.
36. We will consider this below.
37. The protection claim was based on fear of the Iranian state because she risked being seen as an adulteress. The concern that she risked ill-treatment at the hands of her husband’s family was a separate and further reason for allowing the appeal. This was expressed to be a reason to allow it on Article 3 grounds.
38. According to the appellants, the respondent’s own guidance notes on Iran say that a person accepted to be an adulteress is entitled to protection.
39. It was further argued that, as a lone woman with two young children, internal relocation would be unreasonable or unduly harsh and in the circumstances there was no sensible prospect of avoiding persecution at the hands of her husband’s family.
40. The main point advanced in support of the Article 8 claim was that the children would be removed from their mother’s care when they reached the age of 7 years. The best interests of the children required them remaining with their mother.
41. The grounds relied heavily on a report of Dr Md Kakhki dated 8 October 2014.
42. Part of that report was devoted to an assessment of the authenticity of court documents relied upon by the appellant. That is not in issue.
43. The other part of the report related to his expectations of the risks facing the first appellant in the event of her return. He also found that the document dated 24 April 2013 in the European calendar confirming that the first appellant’s husband had used a device to disentitle her to maintenance appeared to be genuine.
44. Having given suitable illustrations he said:

“It is within this stilted legal and social interpretation of marriage, as a unilateral power relationship rather than a partnership of equals, that [the first appellant’s] circumstances should be assessed”.

45. The report then explains how women are at a practical disadvantage in the Iranian justice system. There is a widespread belief that a man is entitled to beat his wife to discipline her and that the authorities are loath to take action in domestic disputes.
46. There is also wide disparity of views amongst the judiciary. At the top of page 11 he says:

“It is apparent from the above account that there can be no guarantee or even strong likelihood of an abused wife being able to secure protection in court by way of divorce, as the line between permissible violence and impermissible violence depends on the bias of the particular judge”.
47. The report also emphasises how it can be seen as very shameful for a wife to leave her husband and that honour killing is rife. The report referred to a study in 2008 that noted 50 honour killings in the previous seven months in Iran. Dr Kakhki said at page 17:

“Mr Azimi’s history of being violent against his wife combined with his opinion on [the first appellant’s] behaviour in the UK, would, in my opinion, create a risk of honour killing, should she be returned to Iran. As highlighted previously with reference to the law, such killings can be legal and in any case, are perceived by the authorities as being to some extent justified.”
48. Dr Kakhki appeared to agree that the custody of the children would automatically transfer to the father when they are 7 years old although the law provides for the mother to continue contact.
49. He also indicated that (page 23) “adultery is not, in my opinion, one of the crimes that is punishable inside Iran if it was only committed abroad.”
50. Nevertheless he opined that, in the event of the first appellant returning to Iran, she was “likely” to face ill-treatment as part of any investigation. He regarded torture as “standard practice” when dealing with prisoners. Dr Kakhki concluded that it was “possible” that the first appellant would be subject to illegal treatment if she was investigated for her allegedly adulterous behaviour abroad. He said this could be done within the context of a private complaint.
51. The skeleton argument makes it clear that there has been no challenge to the decision to accept Dr Kakhki’s evidence.
52. At paragraph 24 of the decision the First-tier Tribunal Judge says:

“The first appellant also believes he has accused her of committing adultery.”

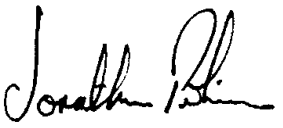
53. It might have been helpful to have made this observation at a much earlier stage because it is clearly one of the main reasons for allowing the appeal on human rights and/or asylum grounds.
54. It comes down to this. The first appellant says that she has had a very unhappy violent marriage with a very ill-tempered domineering man in Iran. He fled to the United Kingdom as a refugee and she joined him with their children. She has since left him and reported him to the police for being involved in drug offences. This caused him to flee the United Kingdom and return to Iran (suggesting that he was never a refugee in the first place but that is a different issue) and that he is outraged by her behaviour. There is clear evidence, and it is accepted, that he has contrived to require her to return to the family home and (albeit somewhat buried in the Decision) clear evidence that the first appellant believes that he has accused her of adultery.
55. Read with Dr Kakhki's report this leads to the conclusion that there is a real risk that the first appellant will be murdered by way of a so-called "honour killing". Dr Kakhki was careful to explain that the first appellant would not necessarily be in trouble with the authorities but that is not really the point. His evidence shows that the first appellant's husband is not going to cooperate in a divorce and is going to use the legal system to thwart her. The First-tier Tribunal clearly accepted the first appellant's contention that she had no one to support her in Iran. There is no reason to doubt her claim that her father is dead and the need for a woman in Iranian society to have a male guardian (the appellant does not have one) is well established.
56. The Operational Guidance Notes (which of course cannot bind us) recognise that it may well be difficult for a woman on her own to relocate but appeared to accept that it may be possible in appropriate cases. However, we note that the grounds do not raise criticism of any finding or implied finding that internal relocation was not an option and we do not take this point any further.
57. Whilst it is clear that the first appellant's willingness to use the judicial system, and the fact that her husband had been convicted, tends to suggest that there is effective protection in Iran we do not accept that the availability of some kind of protection in some circumstances extinguishes the risk of honour killing. Honour killing is a premeditated determined attack and destruction of another human being in pursuit of something which, from a Western perspective, is a wholly perverted and shocking idea of what is honourable. However there is clear evidence that it is tolerated by the Iranian state. We cannot see any objection to the legality of the First-tier Tribunal judge's conclusion that first appellant would be at risk.
58. Once a risk is established then we accept that the first appellant is a refugee. She is in trouble because she is a woman in Iran.

59. The other two appellants' appeals in this respect are dependent on their mothers. They are children and, broadly, are entitled to remain with their mother. In any event it cannot be in their best interest for quite young children to be removed from the care of their mother to be entrusted to the care of a father in Iran whose violent behaviour is the main reason for the mother needing protection. It follows that the First-tier Tribunal's decision is sufficiently clearly reasoned in law.
60. If the appellants are refugees then it would be contrary to their rights under articles 3 and 8 of the European Convention on Human Rights to remove them. It may not add anything of value but it was right in law to allow their appeals on human rights grounds with reference to articles 3 and 8.
61. We turn now to the appeal brought by first appellant.
62. The reasons for giving the appellants permission to appeal were explained pithily by Judge R A Cox when he gave permission. He said:
- "They seek permission to appeal, in time, against the decision of First-tier Tribunal Judge Clough whereby she allowed their appeals on asylum, Article 3 and Article 8 grounds. It may therefore be wondered why they seek permission to appeal. The reasons are twofold. Firstly, it is correctly said that the judge failed to make a finding on a material matter, namely whether A1 was entitled to leave under the Immigration Rules as a victim of domestic violence (the original basis of their application) – material because it was a matter in issue and because any resulting leave would be indefinite and not limited. Secondly the Respondent had made application for permission to appeal the Judge's decision (now, I understand, granted) and a Rule 24 response would not of itself serve to give the Upper Tribunal jurisdiction."
63. It is vexing that the point was not addressed by the First-tier Tribunal Judge because, as the grant makes clear, the first appellant's case had always been put very carefully on the basis that she should be entitled to protection under the Rule relating to domestic violence victims even though she was not the partner of an appropriately qualified person.
64. We understand the point Mr Hoshi is endeavouring to make. It is, we think, agreed and it is certainly clear that if the first appellant was a victim of violence at the hands of a person settled in the United Kingdom then she would qualify for indefinite leave to remain under the rules, the other requirements of the Rule seem to be made out.
65. The rules provide that a person who is not settled in the United Kingdom but who is the victim of domestic violence at the hands of someone who is settled in the United Kingdom is entitled to indefinite leave to remain but a person who is not settled and who is the victim of domestic violence at the hands of person who is similarly not settled cannot satisfy the rules. The status of the victim in each case is the same but the relief is different because of the status of the attacker is different.

66. We do not immediately see the point of this distinction. It may well be that it is an unintended consequence of changing the Immigration Rules so that refugees now find it harder to get indefinite leave to remain. It may be that all consequent changes have not been thought through. We do not know that and perhaps should not speculate.
67. We have considered the cases relied upon by Mr Hoshi. We certainly accept the principle that it is sometimes necessary to read into Rules extra words to give a meaning that would now be wholly consistent with current social values but probably not considered when the provisions were drawn. Applying provisions intended to benefit married couples to couples in long-term unmarried relationships may well be a paradigm example. Nevertheless we do find it necessary to direct ourselves (although we had not forgotten the point) that it is not for judges to be legislators and it is only permissible to embark on the kind of creative interpretation urged by Mr Hoshi if the alternative is so unconscionable it is unlawful.
68. We think Mr Hoshi may very well be right that the reason the protection extended to the “unsettled” victims of violence by people settled in the United Kingdom was to make it easier for them to complain about domestic violence without fearing that they would disadvantage themselves in their intentions to remain. Domestic violence is an emotive and sensitive as well as a criminal issue and experience shows that victims (usually women but not always) are very often vulnerable because they are emotionally battered as well as physically hurt. Additionally in the case of immigrants they are particularly vulnerable to bad advice and unjustified fear.
69. It would not surprise us in the least if it was seen as advantageous to favour such people in an attempt to redress the balance slightly in their favour in an attempt to stamp out a social evil. However, we cannot possibly know that that is right from construing the Rule which is what we are here to do. Neither can we accept that there is no difference between a wife beater settled in the United Kingdom and a wife beater recognised as a refugee in the United Kingdom. The fact is that the refugee is not settled. The refugee may very well become settled but his status is not that of a settled person. It is not immediately clear why a victim’s status in the United Kingdom should improve by reason of being a victim of domestic violence.
70. We do not wish to be drawn into a debate on this point because we do not see that as the role of the Tribunal. We just make the point that it is not right for Mr Hoshi to contend that there is no difference and therefore that the distinction can have no rational basis. We do not have to be able to give the rational basis. That is not our function.
71. The First-tier Tribunal clearly erred by not deciding what actually was the main point of the appeal. We have considered Mr Hoshi’s submission and we rule against him.

72. Putting all these things together we find that although the Decision might have benefitted from more explanation it passes the crucial test. That is the Secretary of State knows the result (the appeals were allowed) and knows the reasons (the evidence was believed, particularly the expert evidence which has not been challenged). These things taken together were sufficient reason to allow the appeal and there is no material error shown in the decision to allow.
73. There is an error shown in the failure to consider the grounds under the Immigration Rules but if had been considered the appeal would have been dismissed.
74. We therefore dismiss the Secretary of State's appeals against the decision to allow the appeal on human rights and Refugee Convention grounds.
75. We allow the first appellant's appeal to the very limit extent that we add to the First-tier Tribunal's decision that the appeal is dismissed under the Immigration Rules.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Jonathan Perkins

Dated 21 January 2016