



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/07307/2012

THE IMMIGRATION ACTS

Heard at Field House
On 11 February 2014

Determination Promulgated

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

MR KIANOUSH DADRAS HAGHIGHI PASAND
(No Anonymity Direction Made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Gayle of counsel instructed by Elder Rahimi Solicitors
For the Respondent: Ms C Everett a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Iran who was born on 5 September 1975. His appeal is against the respondent's decision of 27 July 2012 to give directions for his removal from the UK following the refusal of asylum. The respondent's reasons for refusal are set out in a lengthy letter of the same date.
2. The appeal history is that following the respondent's decision the appellant appealed to the First-Tier Tribunal where First-Tier Tribunal Judge Clough ("The FTTJ") heard his appeal on 4 September 2012. The appeal was dismissed on asylum, humanitarian protection and human rights grounds. The appellant was granted permission to appeal to the Upper Tribunal where an Upper

Tribunal Judge found that the FTTJ had erred in law and that her decision should be set aside and remade. The appeal then came before a Deputy Judge of the Upper Tribunal on 26 March 2013 who, after a hearing, also dismissed the appeal. The appellant applied for permission to appeal to the Court of Appeal which was granted by an Upper Tribunal Judge on 30 May 2013. Subsequently, on 1 November 2013 and by consent, the Court of Appeal ordered that the appellant's appeal be reconsidered by the Upper Tribunal. It is common ground that in these circumstances the appellant's appeal comes before me for rehearing with no findings of credibility or fact preserved from the earlier determinations.

3. The appellant claimed to be a citizen of Iran and a Shia Muslim. Born in September 1975 he married in 1997 or 1998 (it is not clear which) but is now divorced. His wife and two daughters born in October 1995 and January 2000 are still living in Iran. He was a member of the Basij and carried out his military service between 1994 and 1996. He did not join the Basij because of any religious or political conviction but to obtain the benefits which would come from membership. In reply to questions at interview he said that he never participated in any acts of violence against members of the public. Whilst carrying out his military service he was assigned as a driver to the man who subsequently became his father-in-law. He was a Brigadier General in the military division of Sepah Pasdaran (the Revolutionary Guards), a devout Muslim and strong supporter of the revolution. He met his future wife whose mother supported their marriage whilst his father-in-law strongly disapproved.
4. Following the marriage his father-in-law arranged for the appellant to be given a civilian job with Sepah in a shop reserved for members of the organisation. The appellant and his wife lived next door to his mother and father-in-law. His father-in-law tried to control his life and was constantly disapproving of the appellant, doubting his loyalty to the regime and devotion to Islam. The appellant accepts that he did not share his father-in-law's devotion and could not pretend that he did. In 1999 and because of the resulting tension it was agreed that the appellant and his wife would move away and that the appellant would take up a Sepah post at a facility for senior members of the organisation where the appellant would be responsible for allocating accommodation. The appellant believed that his father-in-law arranged the job because he would be able to make arrangements for others to keep an eye on him and report back.
5. The appellant believed that colleagues of his father-in-law reported back to him that he was not behaving like a faithful Muslim. In 2002 his father-in-law came to where the appellant was working and they had a violent argument during which his father-in-law threatened to kill him. The appellant decided to resign. He had to go to Teheran to explain himself and seek his resignation. It was two or three months before his resignation was accepted. His father-in-law tried to persuade him to divorce his daughter.

6. After some months unemployment the appellant obtained a civilian job with the Ministry of Work in Qom. He believes that his mother-in-law managed to placate his father-in-law sufficiently for him to agree to arrange this. After an interval the appellant resumed living with his wife and children. Sometime later he was told that he would have to improve his qualifications if he was to keep his job. He failed in his attempt to enter university and lost his job. After about a month during which he was not able to obtain work he decided to move away from Qom and the influence of his father-in-law and seek work as a lorry driver in Teheran, about an hour away from Qom. He obtained work as a lorry driver for an individual who owned the lorry. He did not have accommodation of his own whilst in Teheran, either sleeping in his lorry or at the homes of friends.
7. Whilst he was in Teheran and in about February 2008 the appellant discovered that he had been divorced in his absence. He was sure that this had been arranged through a lawyer by his father-in-law. His family had received an official letter at the family home.
8. The appellant believed that his father-in-law made allegations to the authorities that he had given secrets to his brother who was living in the USA. The appellant discovered this in March 2008. A warrant was issued for his arrest. The appellant's family who were living in Rasht informed him that their home had been raided by the police who were looking for him. His family obtained information from an officer in Sepah who said that the appellant had been accused of treason by passing sensitive information to his brother in the USA. The appellant believed that the accusation was likely to relate to the sensitive information which he would have had access to whilst he was working for Sepah. The appellant has made it clear throughout that the accusation was baseless and that he had never supplied any information to his brother in the USA or anyone else.
9. The appellant concluded that it would be unsafe to continue to live in Iran and in August 2008 he left the country travelling first to Turkey. The agent who had been paid approximately £9000 provided him with a false Finnish passport and he flew from Turkey intending to go to Canada with a transit stop in the UK. He was stopped before he could board a flight to Canada when his false documents were detected. He claimed asylum. The appellant had three asylum interviews the last on 23 October 2008. It took the respondent until 27 July 2012 to make a decision on his application.
10. The appellant claims that he would be at risk of arrest, torture and death at the hands of the authorities if he was returned to Iran. As a former member of Sepah the mere fact that he had claimed asylum in the UK would be enough for this to happen but worse than that the authorities were looking for him and there was a warrant for his arrest for treason.
11. The appellant claimed to have suffered psychological problems and to be receiving medication from his GP. He has not been in touch with his wife or

children since he came to the UK. He provided the respondent with a number of documents, most of which are originals. Ms Everett produced these and I inspected them. They are two Basij membership cards, a military service completion card, a military training certificate, two Basij commendations and a New Year's greeting letter, three Basij cinema discount cards, a "swimming" card and a "public running event" card, a letter confirming his inclusion in the Basij compensation payment scheme, two Basij polio eradication cards and a letter confirming that he passed a Basij training course.

12. In the refusal letter dated 27 July 2012 the respondent sets out and assesses the appellant's evidence, his claims and the documents submitted. The respondent accepted that the appellant was a citizen of Iran but not his account of events or that he would be at risk on return. The documents were considered to be of poor quality and there was no objective evidence to verify that they were genuine. There were a number of inconsistencies in his evidence both in relation to evidence given by him on different occasions and in relation to the country material. The respondent concluded that the appellant would not be at risk on return and was not entitled to asylum, humanitarian protection or to succeed on human rights grounds.
13. The appellant's representatives have provided a composite bundle which includes all the documents submitted at the previous hearings plus new material by way of a supplementary witness statement from the appellant, two letters from his father, a letter from his GP, a skeleton argument, a chronology and updated country material. I also have the Home Office bundle.
14. I heard oral evidence from the appellant through a Farsi speaking interpreter. His evidence in chief was brief and limited to formal matters such as identity and address. He also adopted and confirmed the truth and accuracy of his two witness statements dated 28 August 2012 and 14 March 2013. He was cross-examined at length by Ms Everett and re-examined. I asked some questions for the purpose of clarification. The evidence is set out in my record of proceedings.
15. Ms Everett relied on the reasons for refusal letter dated 27 July 2012. She said that she would confine her submissions to the evidence given by the appellant at the hearing. She submitted that there were problems with this evidence particularly the claim that the authorities did not know where he was after he claimed that they started looking for him. He said that during this period and whilst he was working as a lorry driver based in Tehran he visited the area where his wife and daughters were living about three times a week and took the opportunity to visit his elder daughter at her school as often as he could. It was not plausible that his ex-wife would not know that he was working as a lorry driver or visiting their daughter. It was not plausible that he would take the risk of doing this if he knew that the authorities were looking for him.

16. I asked Ms Everett whether she wished to make submissions in relation to the claimed inconsistencies referred to in the reasons for refusal letter and the explanations which the appellant had provided in his witness statement dated 23 August 2012. She said that she did not intend to make any further submissions beyond what was said in the refusal letter although she accepted that some of the explanations were plausible. She accepted that the appellant was partially credible. She did not now dispute that he was married with children or that he had had the jobs he claimed. However, she argued that on the facts he would not be at risk on return.
17. In reply to my question Ms Everett conceded that if I found the appellant's account of events to be accurate and credible in all material respects then he would be at risk on return to Iran for a Convention reason and would be entitled to asylum and to succeed on Article 2 and 3 human rights grounds. In the circumstances he would not need and would not be entitled to humanitarian protection.
18. Mr Gale accepted that the appellant's account of events was complicated but submitted that his evidence was consistent and plausible. It was not surprising or implausible that the authorities would have tried to find him at the family home. They had no reason to know where else he might be living because of his job and lack of a fixed address in Teheran. The most obvious place to try and find him was the family home. Similarly, there was no reason why his father-in-law would know where he was. There was no inconsistency between the evidence in paragraph 16 of his earlier witness statement where he said that he had travelled "home" and his later evidence that he had not gone to where his ex-wife was living but to see his elder daughter at her school on occasions when the delivery trips in his lorry took him to the area. In common parlance "home" could equally well be a reference to the area in which they lived.
19. Mr Gale argued that during his job at the facility for senior officers of Sepah it was not implausible that the appellant would have had access to what the authorities would perceive to be sensitive information. In view of Ms Everett's concession he made no submissions in relation to the country material before me or the question of whether in the light of this, if the appellant's account of events was accepted, he would be at risk on return.
20. I reserved my determination.
21. I have no relevant expertise which would enable me to assess the genuineness or otherwise of the documents submitted by the appellant. If the respondent has any such expertise she has not said what it is. Equally, the appellant has not provided any expert evidence. The respondent criticises some of the documents as being of poor quality and containing no redeeming security features. I am not told what the redeeming security features might be. I do not know whether they are of poor quality because I have no similar documents

with which to compare them. In the circumstances I will consider and assess them with all the other evidence in the round.

22. The respondent accepted that the appellant was a citizen of Iran. Ms Everett has accepted that he was married, has children and, importantly, had the jobs he claimed in Iran.
23. I find that on the evidence referred to by the respondent in the refusal letter it is not implausible that the appellant would not have been involved in acts of violence against individuals or the public generally. The evidence does not indicate that all members of the Basij do this. The appellant admitted to witnessing acts of violence by the Basij. His evidence was that he joined the Basij for the benefits he could gain rather than any religious or revolutionary beliefs. His evidence does not portray him as a man of strong moral convictions who would resign from the Basij even if he was disillusioned with the organisation.
24. On the country material relied on by the respondent I can find no inconsistency between the appellant becoming a member of the Basij and then having to perform his compulsory military service. There is no implausibility in the appellant's father-in-law threatening to kill him but not then doing so. I find it is plausible that his father-in-law's increasing dislike and disapproval of the appellant would have led to his procuring a divorce from his daughter and making false accusations against the appellant.
25. I accept that there are some inconsistencies as to the dates and order of events. In his witness statement dated 23 August 2012 the appellant answers the points taken against him in the refusal letter in detail. Whilst invited to do so Ms Everett did not make any submissions in relation to these answers other than to accept that some of them are plausible whilst still relying on the refusal letter. I accept that the appellant's representatives informed the respondent that the originals of the copy documents submitted could be made available for inspection and that at some stage they were submitted to the respondent. With one exception the documents produced to me by Ms Everett at the hearing were originals. Any criticism based on the lack of original documents falls away.
26. As to Ms Everett's submissions in relation to the evidence given by the appellant before me I do not find it implausible that during the period he was working as a lorry driver based in Teheran the authorities would not know where he was and would try and find him at the family home. During that period he had no fixed address and was either sleeping in his lorry or staying with various friends. I do not consider that the reference in his witness statement to visiting "home" is inconsistent with his evidence that he meant his home area including his elder daughter's school and not the place where his ex-wife was living. I find that it was risky for the appellant to visit his elder daughter and her school and that he was likely to have run the risk of detection by his ex-wife, his father-in-law and the authorities at a time when

he had discovered that they were looking for him. However, it is plausible that he would have taken the risk in order to see his daughter. It is understandable that the appellant does not know the details of the charges against him. It is plausible that if he worked at a facility for senior officers of Sepah he would have had access to information which the authorities would regard as sensitive.

27. There are two statements from the appellant's father. The date of one of them is not clear but the other is dated 5 March 2013. They state that after the appellant left Iran the authorities came to the family home on four occasions looking for the appellant and took away documents and papers belonging to him. They searched the property, questioned the appellant's father and mother and said that they had an arrest warrant for the appellant. The second statement, which appears to be the later, dated 5 March 2013, states that the appellant's mother and father are now living in the USA but have been told by a friend that during the preceding three months plainclothes police have made another visit to the family home looking for the appellant. Ms Everett made no submissions in relation to these statements.
28. Looking at all the evidence in the round including the documentary evidence and the statements from his father and whilst I accept that there are some minor inconsistencies in the appellant's evidence, including inconsistencies as to dates, I find that the main thrust of his account has been consistent and that he is a credible witness. I believe his account of events and find he has established to the standard of a reasonable likelihood that the facts and beliefs set out in paragraphs 3 to 11 of this determination and the statements from his father are true and that the documents he has produced are likely to be genuine.
29. In the light of the country information before me Ms Everett properly conceded that if I found the appellant's account of events to be accurate and credible in all material respects then he would be at risk on return to Iran for a Convention reason and would be entitled to asylum and to succeed on Article 2 and 3 human rights grounds. I so find.
30. The appellant has not asked for an anonymity direction and in the light of my findings in conclusion I see no good reason to make one.
31. The earlier decisions in this appeal having been set aside I remake the decision and allow the appellant's appeal on asylum and Article 2 and 3 human rights grounds.

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Signed
Upper Tribunal Judge Moulden

Date 12 February 2014